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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1864 OF 2017
IN
WRIT PETITION NO. 1388 OF 2015

Dr. Suman Shivaji Rathod …Petitioner
Versus
Indian Overseas Bank …Respondent

Mr. R.V. Sipahimalani, Adv. for the Applicant / Petitioner.
Mr. Rakesh Singh, i/b M. V. Kini & Co. for the Respondent.

CORAM: B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.
DATED: 3rd August 2017

PC:-

1. The Petition arises out of peculiar facts and circumstances. The Applicant had filed W.P. No. 1388 of 2015 challenging the order of the learned DRAT rejecting the application seeking pre-deposit. It was a contention of the Applicant that the Petitioner was neither a borrower nor a guarantor. It appears that there was interim protection granted by this Court in the said Petition. However, vide order dated 6th February 2017, this Court disposed of the Petition with a direction that, Petitioner shall deposit an amount of

Rs.30 lakhs in two instalments of Rs.15 lakhs each. This Court further directed the learned DRAT that the Appeal should be decided on merits. This Court granted interim protection to the Appellant for a period of four months with liberty to apply before learned Tribunal for grant of further interim protection.

2. In pursuance to the aforesaid order, the Applicant has deposited an amount of Rs.30 lakhs. It is stated in the application that after the expiry of four months period, when the Applicant applied for continuation of interim relief before the learned Tribunal, the Petitioner was informed that the Appeal stands dismissed on 29th December 2016.

3. Shri Singh, learned counsel for Respondent bank submits that once the Appeal of the Petitioner is dismissed, merely the deposit of the amount of Rs.30 lakhs would not create any right in favour of the Petitioner.

4. We find that the contention of the Respondent bank is totally inequitable. When the order was passed on 29th

December 2016, the counsel for the Appellant was not present. However, the bank was duly represented. It is pertinent to note that on the date on which the order was passed by learned Chairperson on 29th December 2016, the Writ Petition of the present Applicant was very much pending before this Court. However, when the matter was listed before this Court on 6th February 2017, the Respondent bank though was aware about the dismissal of the Appeal in default did not intimate about the same to this Court. In this circumstances, the Court has passed the order.

5. We, therefore, find that the interest of justice requires that when the Court has directed the Appeal of the Petitioner to be decided on merits vide order dated 6th December 2017, subject to condition of Rs.30 lakhs and when the Petitioner has complied with the said order, the Appeal should be decided on its own merits. We are inclined to pass such an order particularly in view of the totally inequitable conduct on behalf of the Respondent bank. Had the bank informed the Court about the said order dated 29th December 2016, the

Court could have passed some other order on 6th February 2017.

6. In that view of the matter, we find that interest of justice demands that the application be allowed in the following terms.

(a) The order passed by the learned DRAT dated 29th December 2016 is quashed and set aside.

(b) The Appeal of the present Applicant is restored to file.

(c) DRAT is directed to decide the Appeal of the present Petitioner on its own merits, till the decision of the DRAT and in the event the order of the DRAT is against the interest of the Petitioner, such relief shall continue to operate for a further period of two weeks.

(d) The Respondent bank is at liberty to apply to the DRAT for withdrawal of the amount which application shall be considered on its own merits after considering rival contentions of the parties.

(RIYAZ I. CHAGLA J.) **(B.R. GAVAI J.)**