IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP 8997 of 2017

Date of Decision: May 1, 2017

Kotak Mahindra Bank Ltd. and others

…..Petitioners

Vs.

Permanent Lok Adalat, Public Utility Services and anr.

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Nitin Ahluwalia, Advocate for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Respondent No.2 had been granted OD Limit of Rs.80 lacs till June 20, 2017 by a mutual agreement between the petitioner banker and respondent No.2. It appears that on deposit of hefty amount in the account regarding a payment received by respondent No.2, the petitioner had ordered freezing the account of respondent No.2 with an apprehension that respondent No.2 will misuse the OD Limit and will not comply with the terms and conditions of the OD Limit agreement. Finding the said act of the petitioner prima facie illegal, the Presiding Officer, Permanent Lok Adalat for Public Utility Service, Fatehgarh Sahib has passed an interim order that respondent No.2 will be permitted to operate the OD Limit and issued directions to the petitioner Bank to permit respondent No.2 to operate the OD Limit as it has been permitted till June 20, 2017.

The main contention of counsel for the petitioner is that the interim order tentamounts to virtually allowing the application giving an upper hand to respondent No.2 to utilize the upper limit of Rs.80 lacs and not to return the same.

Notice of motion to respondent No.2.

Mr.G.S. Punia, Sr. Advocate assisted by Ms.Harveen Kaur, Advocate present in the Court, accepts notice on behalf of respondent No.2.

The relationship of the customer and the banker is not merely governed by the contractual obligations but as per the Banking Regulation Act, the status of the Bank is that of a trustee. Having permitted respondent No.2 a limit till June 20, 2017 and there being no irregularity committed by respondent No.2, the order permitting respondent No.2 to operate the OD Limit does not suffer from any illegality. In case any violation of terms and conditions of Masters Facility Agreement is committed by respondent No.2, it is always open to the petitioner Bank to adopt the appropriate procedure of law and recover the amount from the debtor or from the collateral securities available with the petitioner. No doubt, the order dated March 24, 2017 is in the nature of a mandatory injunction at an interim stage which relief can be granted in rare cases.

I have considered the impugned order dated March 24, 2017 from legal aspect and I am of the opinion that respondent No.2 has got a prima facie good case to utilize the OD Limit granted vide agreement dated December 23, 2016 till June 20, 2017. The balance of convenience certainly lies with respondent No.2. Respondent No.2 is likely to suffer an irreparable loss in case the cheques issued by him in the name of the petitioner Bank are not honoured whereas neither the balance of convenience lies in favour of the petitioner nor any loss is likely to be caused to the petitioner, in case respondent No.2 utilise the OD Limit as per the terms and conditions of the agreement entered into between the parties. The order of freezing the account of respondent No.2 also appears to be arbitrary without following the rules of natural justice. No ground is made out to interfere in the order dated March 24, 2017.

Dismissed without prejudice to the rights of the petitioner to take penal steps in case there is violation of any condition of the agreement by respondent No.2.

May 1, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.