

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8838 OF 2013

Corporation Bank & Anr.Petitioners
V/S
Topline Shoes Limited & Ors.Respondents

...
Mr. Rakesh Singh i/b M/s. M.V. Kini & Co. for the Petitioners.
Mr. H.M.G. Murthy - the Respondent No.2 in person.
...

**CORAM : A.A. SAYED &
V.L. ACHLIYA, JJ.**
DATE : 24 JANUARY 2018.

ORDER:

1 On 12 November 2013 the following order was passed by this Court:

“Heard learned Counsel for the petitioners and the second respondent appearing in person for himself and on behalf of the first respondent. Arguable questions are raised.

2 Rule. Second Respondent waives service for himself and on
behalf of first respondent.

3 By the impugned order passed in a pending appeal preferred by the first and second respondents, the petitioners have been directed to settle the loan accounts of the first respondent in accordance with RBI guidelines dated 29 January 2003 within a period of three months. The impugned order is an interim order passed during the pendency of the substantive appeal preferred by the first respondent. In short, by a drastic interim order passed during the pendency of appeal, the DRAT has directed the petitioners to accept the proposal of the first respondent for one

time settlement and to close the accounts after accepting necessary amount.

4 We may note here that the substantive appeal preferred by the first and second respondents is against the final judgment and order dated 5th November 2003 passed by the presiding officer of the DRT, Ahmadabad. By the said final order, first petitioner was held entitled to recover from the respondents a sum of Rs.61,37,975/- with costs and interest at the rate of 10% per annum and the second petitioner was held entitled to recover a sum of Rs.93,69,391.05 with costs and interest at the rate of 10% per annum.

5 Admittedly, application made by the first respondent under the one time settlement scheme was rejected. When we made a query to second respondent in person whether the order of rejection of the application was challenged by filing any substantive proceedings, he stated that it was challenged in the proceedings before the DRT filed by the petitioners.

6 The DRAT was hearing an appeal challenging an order of recovery passed by DRT against the respondents. On interim application made by the first and second respondents in the appeal, the impugned interim order of directing the petitioners to close the accounts by granting benefit of one time settlement scheme to the first and second respondents has been passed. Prima facie, it appears to us that the said order is illegal for more than one reason. Firstly, there were no substantive proceedings preferred by the first and second respondents for challenging the action of the petitioners of refusing to grant benefit of one time settlement scheme. Secondly, such a drastic interim relief could not have been granted considering the scope of appeal before DRAT.

7 Therefore, a case is made out for grant of stay of operation of the impugned judgment and order. Accordingly, there will be interim relief in terms of prayer clause (b). We make it clear that notwithstanding the pendency of this petition, the DRAT shall proceed with the hearing of the appeal in accordance with law.

8 All contentions of the parties on merits in appeal are expressly kept open.”

2 The Respondent No.2 submits that the substantive Appeal which is pending before the DRAT was dismissed for default and an Application is made by him to restore the Appeal and the Appeal is likely to be heard soon, if restored. The Respondent No.2 states that he has no objection if the impugned order dated 12 April 2013 of the DRAT is set aside.

3 Hence, by consent of the Respondent No.2 and the learned Counsel for the Petitioners, the impugned order dated 12 April 2013 of the DRAT is set aside. The Writ Petition to stand disposed of accordingly.

(V.L. ACHLIYA, J.)

(A.A. SAYED,J.)

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