**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
**AND**
**THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Appeal No.467 of 2018**

**JUDGMENT:** {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P.No.25538 of 2017 in W.P.No.20812 of 2017 dated 26.02.2018. The 1st respondent herein filed the writ petition seeking a mandamus to declare the memo dated 29.05.2017, issued by the 1st respondent therein (appellant herein), to keep the lease agreement on hold as illegal, arbitrary and unjust; and to declare the proceedings of the Additional Registrar/Chief Auditor and Inquiry Officer dated 29.05.2017 as illegal and arbitrary. A consequential direction was sought to declare that the 1st respondent herein was entitled to the lease-hold premises in terms of tender finalised in their favour as per the letter of lease acceptance dated 05.03.2015.

Facts, to the limited extent necessary, are that the appellant had proposed to lease out a newly constructed building of the Bank, and had invited bids through an advertisement in a Telugu Daily on 21.02.2015. The Managing Committee of the Bank, in its meeting held on 27.03.2015, noted that four bids were received; and, since the bid submitted by the 1st respondent-writ petitioner was the highest among the four tenderers, their bid was accepted, and a draft letter of rent lease acceptance was issued on 05.03.2015. The Managing Committee resolved to place the subject for ratification, and to recommend to the ensuing general body for its ratification.

The Additional Registrar/Chief Auditor and Inquiry Officer issued proceedings, vide letter dated 29.05.2017, informing the Official

Administrator of the appellant-Bank that a detailed enquiry was being conducted into the constitution, working and financial condition of the Warangal DCCB, Warangal; this enquiry was at an advanced stage; a scrutiny of the records of the Bank, and depositions given by the officers of the Bank so far, pointed towards certain grave irregularities in the functioning of the Warangal DCCB; construction of a commercial complex was in progress as per the resolutions of the Managing Committee; agreements were entered into with M/s. Nallavelli Constructions as also the 1st respondent-writ petitioner; these agreements and resolutions were in violation of Sections 6 and 9 of the Banking Regulation Act, 1949; scrutiny of the records further revealed that the current account, opened in the name of M/s.Nallavelli Constructions in Hanmakonda Branch, was in violation of KYC norms; huge amounts were drawn from this account through self cheques; and, in view thereof, he felt that the following measures should be taken in the interest of the Warangal DCCB viz., (a) immediate ordering and ensuring stoppage of construction work in the premises of the Head Office of Waranal DCCB; (b) securing physically the commercial complex immediately where the construction work was in progress; (c) putting on hold, the construction agreement and lease agreement entered into with the said private agencies till approval/clearance from RBI; (d) immediate freezing of the current account in the name of M/s.Nallavelli Constructions in operation in the Hanmakonda Branch; and (e) divesting Sri Vijayender Reddy from the duties of Manager, Hanmakonda Branch. These measures were requested to be taken pending finalisation of the Statutory Inquiry Report. Pursuant thereto, the appellant-Bank issued memo dated 29.05.2017 informing the 1st respondent-writ petitioner that the lease agreement, entered into with them for the commercial complex in the premises of the Head Office, was being put on hold with immediate effect till further approval/clearance from RBI.

On both these memos being subjected to challenge, a Learned Single Judge of this Court had, in the interim order in W.P.No.20812 of 2017 on 27.06.2017, recorded that the impugned notice, of putting on hold the lease agreement, entered into for the commercial complex in the premises of the Head Office, by the Chief Executive Officer, consequent on the measures suggested by the Additional Registrar/Chief Auditor and Inquiry Officer, was not preceded by any notice; work, to an extent of 90%, was completed by the 1st respondent-writ petitioner; the 1st respondent-writ petitioner was a third party, and was not connected with the irregularities alleged to have been committed by the 1st respondent therein which were then noticed; the irregularities could be rectified/mitigated/action could be taken without causing damage to the interest of the 1st respondent-writ petitioner; and, in the circumstances, the equities were in favour of the 1st respondent-writ petitioner. The impugned memo dated 29.05.2017 was suspended until further orders.

Thereafter, on the appellant herein filing a petition to vacate the interim order, the order under appeal, in W.P.M.P.No.25538 of 2017 in W.P.No.20812 of 2017 dated 26.02.2018, came to be passed holding that the factum of suspension of the said memo was based on the information provided to the petitioner that the lease agreement for the commercial complex had been put on hold with immediate effect till further approval/clearance from the RBI; in as much as there was a registered lease deed, in favour of the petitioner, the respondents could not have unilaterally suspended or put it on hold by simply writing a letter; and, therefore, the interim order granted earlier was being made absolute.

While several contentions are urged by Sri V. Hari Haran, learned counsel appearing on behalf of the appellant, in challenge to the order under appeal, it would suffice to note his contentions that the erstwhile Managing Committee of the appellant-Bank headed by Sri Janga Raghava Reddy, the then President, had violated the statutory provisions, and had played fraud in the affairs of the Bank; M/s.Nallavelli Constructions, with which the appellant-Bank had entered into a construction agreement, was itself a firm of Sri Janga Raghava Reddy; it is this commercial complex, being constructed by M/s. Nallavelli Constructions, which is given on lease to the 1st respondent-writ petitioner; Sri Janga Raghava Reddy was found to have acted against the interests of the appellant-Bank; Sections 6 and 9 of the Bank Regulation Act prohibit a banking company from carrying on any business other than those specified therein; leasing out commercial properties is not among the functions which the Bank can carry on; the Managing Committee of the appellant-Bank, headed by Sri Janga Raghava Reddy, was not entitled, therefore, to give the subject property on lease for a commercial purpose; the appellant has also specifically alleged that there were interpolations in the lease agreement, the words "***date of commencement 01.05.2016 and date of termination30.04.2041***" written in hand writing remained unauthenticated by any of the parties to the agreement; and none of these contentions were even noted by the Learned Single Judge while passing the order under appeal, much less considered and dealt with.

On the other hand, Sri G.Vidya Sagar, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that it is not even the case of the appellant that the 1st respondent-writ petitioner is, in any manner, connected with Sri Janga Raghava Reddy; even if the allegation, in the counter-affidavit, that M/s.Nallavelli

Constructions is a firm which belongs to Sri Janga Raghava Reddy, the erstwhile President of the appellant- Bank, is presumed to be true, the agreement between the appellant-Bank and M/s.Nallavelli Constructions is only for construction of the commercial complex; the 1st respondent-writ petitioner is not connected in any manner with the construction of the complex; they are now being sought to be penalised for no fault of theirs; the 1st respondent-writ petitioner had paid an advance of Rs.1.80 crores during the months of January to April, 2017; despite having received the said amount, the appellant-Bank sought to deprive the 1st respondent-writ petitioner of the use of commercial complex; lease of the subject premises was given in favour of the 1st respondent -writ petitioner pursuant to a transparent tender process, where four bids were received including that of the 1st respondent-writ petitioner; the tender process was conducted pursuant to a notification, issued in a leading Telugu Daily, inviting bids from all eligible persons; and for no fault of theirs, the 1st respondent-writ petitioner is being penalised, and is being deprived of the use of the commercial complex, despite their having paid an advance of around Rs.1.80 crores more than a year ago.

In an intra-Court appeal, under Clause 15 of the Letters Patent, it would be wholly inappropriate for us to examine, for the first time, the rival contentions which have not been considered by the Learned Single Judge in the order under appeal on its merits. Except to hold that the lease deed cannot be unilaterally put on hold by way of a letter, none of the other contentions, noted hereinabove, have even been taken note of by the Learned Single Judge in the order under appeal, much less considered and dealt with. As the appellant-Bank alleges fraud and that the lease itself is contrary to the statutory provisions, and the 1st respondent-writ petitioner contends that they are being needlessly penalised for no fault of theirs despite having parted with a sum of around Rs.1.80 crores for lease of the subject property, the Learned Single Judge ought to have examined the rival submissions and recorded his, *prima facie,* conclusions before deciding whether or not the interim order should be made absolute.

As none of the aforesaid contentions have been examined by the Learned Single Judge, we consider it appropriate to set aside the order under appeal and restore W.P.M.P.No.25538 of 2017 to file. The Learned Single Judge shall hear the vacate stay petition in I.A.No.1 of 2018 in W.P.M.P.No.25538 of 2017 afresh and in accordance with law.

It is made clear that we have only set aside the order under appeal, whereby the earlier interim order of stay was made absolute, and the earlier ad-interim order, passed on 27.06.2017, shall continue to remain in force. The vacate stay petition, filed by the appellant, shall be heard and decided either before or along with the Contempt Case filed for violation of the interim order passed on 27.06.2017. We have no reason to doubt that, on a request being made either by Sri V. Hari Haran, learned counsel for the appellant, or by Sri G. Vidya Sagar, learned Senior Counsel appearing on behalf of the 1st respondent -writ petitioner, the Learned Single Judge shall give their request, for an out of turn hearing, its due consideration.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

**(KONGARA VIJAYA LAKSHMI, J)**

21st March, 2018
JSU

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

**AND**

**THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Appeal No.467 of 2018**

**Date: 21.03.2018**

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