

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

**AND**

**THE HON'BLE Ms. JUSTICE J. UMA DEVI**

**Writ Appeal No.868 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 interlocutory order passed by the learned Single Judge in I.A. No.1 of 2018 in W.P. No. 15712 of 2018 dated 10.5.2018.

The appellant herein is the 2<sup>nd</sup> respondent in W.P. No. 15712 of 2018, and is the daughter-in-law of the petitioner therein. The 1<sup>st</sup> respondent-writ petitioner filed the said Writ Petition seeking a mandamus to declare the action of the appellant, and the 2<sup>nd</sup> respondent-bank, in not permitting her to operate her bank locker bearing No. 252, allotted to her on condition of payment of the required charges and yearly rent to the 2<sup>nd</sup> respondent-bank, as illegal, unjust, contrary to law, in violation of the 1<sup>st</sup> respondent's fundamental rights guaranteed under the Constitution of India, and in violation of the Rules and Regulations of the Reserve Bank of India. She sought a consequential direction to the 2<sup>nd</sup> respondent-bank not to create any hurdles for her to operate the safe deposit locker bearing No. 252, allotted to her, in the interest of justice. By way of interim relief, the 1<sup>st</sup> respondent-writ petitioner sought a direction to the HDFC Bank to permit her to operate her safe deposit locker No. 252 situated at Banjara Hills.

In the order under appeal, the learned Single Judge noted the submission of the learned counsel for the 1<sup>st</sup> respondent-writ petitioner that notices were sent both to the appellant and the 2<sup>nd</sup> respondent; the postal receipts, filed along with the track consignment sheets, would show that the item was delivered; and there was no representation on behalf of the appellant and the 2<sup>nd</sup> respondent. The learned Single Judge, thereafter, noted the submission, urged on behalf of the 1<sup>st</sup>

respondent-writ petitioner, that the 1<sup>st</sup> respondent was an aged lady suffering with cancer, and she had to operate her locker; and without assigning any valid reasons, the Manager of HDFC Bank did not permit her to operate the locker. The learned Single Judge, therefore, permitted the 1<sup>st</sup> respondent-writ petitioner to operate the locker between 21.5.2018 and 25.5.2018, in which case the Manager, HDFC bank, Banjara Hills was directed to facilitate her to open the locker in his presence or any other Officer authorized by him; to make an inventory of the articles stored in the locker; and to submit the inventory list to the concerned Court for further orders.

Sri Prabhakar Sripada, learned counsel for the appellant-2<sup>nd</sup> respondent, would rely on the judgment of the Supreme Court in **Federal Bank Ltd. vs. Sagar Thomas**<sup>1</sup>, of the Madras High Court in **E. Ashok Kumar vs. HDFC Bank**<sup>2</sup> and of the Allahabad High Court in **Shabad Ahmad vs. HDFC Bank**<sup>3</sup> to submit that the HDFC bank is not an instrumentality of the State; a Writ Petition would not lie against the said bank; proceedings under Section 498-A IPC was instituted by the appellant against her estranged husband and mother-in-law (i.e the 1<sup>st</sup> respondent-writ petitioner); the jewellery given to her, by her father at the time of her marriage, was kept in two lockers, one belonging to her estranged husband, and the other to her mother-in-law (i.e the 1<sup>st</sup> respondent-writ petitioner); pursuant to a search warrant issued by the Hon'ble Chief Judicial Magistrate, Alipore Police Court dated 14.9.2017, the locker of the appellant's estranged husband was opened, and the entire jewellery was deposited before the Chief Judicial Magistrate, Alipore Police Court; it is only with a view to disable the search warrant being effected, has the 1<sup>st</sup> respondent-writ petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India; and, since inventory has already been taken in terms of the order under

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<sup>1</sup> [2003] 10 SCC 733

<sup>2</sup> W.P. No. 7595 of 2010, dated 20.4.2011

<sup>3</sup> Service Bench No. 5309 of 2016 dated 13.4.2016

appeal, this Court should direct that the inventorised jewellery be transmitted to the competent Court at Calcutta, in terms of the search warrant.

Sri N. Chandradhar Rao, learned counsel for the HDFC Bank, would submit that, in compliance with the interim order, the Investigating Officer from Calcutta had taken inventory in the presence of both the appellant and the 1<sup>st</sup> respondent-writ petitioner; an inventory list was handed over to the Investigating Officer who came from Calcutta; the jewellery was re-deposited in the locker, and it was locked; and the keys of the locker are with the 1<sup>st</sup> respondent-writ petitioner. It is evident that the order under appeal has since been complied with.

The learned Single Judge has not expressed any opinion on whether or not the jewellery, found in the locker, should be handed over to the Investigating Officer. All that the learned Single Judge has directed is for the locker to be opened and for an inventory, of the articles stored therein, to be made. The direction issued by the learned Single Judge, in the order under appeal, has been complied with. The appellant has not shown as to how she is prejudiced by the order under appeal. Her request that the Writ Petition be dismissed as not maintainable, and the HDFC bank be directed to deliver the jewellery, in the locker, to the Investigating Officer cannot be considered in an appeal preferred against the interlocutory order passed in a Writ Petition, filed not by the appellant, but by the 1<sup>st</sup> respondent-writ petitioner. Since the Learned Single Judge has merely directed that an inventory be caused, and such an inventory has already been caused, we see no reason to interfere with the order under appeal.

While Sri Prabhakar Sripada, learned counsel for the appellant, would submit that no notice was served on the appellant as contended by the learned counsel for the 1<sup>st</sup> respondent-writ petitioner, these are again matters which the appellant herein can agitate in the Writ Petition pending before the learned Single Judge. Suffice it to make it clear that

we have not expressed any opinion on merits, as the Writ Petition is still pending adjudication before the learned Single Judge. Needless to state that the order now passed by us shall not disable either parties from taking necessary action in accordance with law.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

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**(RAMESH RANGANATHAN, ACJ)**

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**(J. UMA DEVI, J)**

28<sup>th</sup> June, 2018

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**Writ Appeal No.868 of 2018**

Date: 28.6.2018

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