

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.46739 of 2016

ORDER: (per SK,J)

The prayer of the petitioner, Axis Bank Limited, Hyderabad, reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the preferential creditor between the Income Tax Department i.e the 1st Respondent under their Notice dated 16.03.2016 and the Employees Provident Fund Organization i.e the 2nd Respondent under their Notice dated 08.09.2016 with respect to the dues payable by the 3rd Respondent to both of them and consequently direct the Petitioner Bank to make payment to such preferential creditor and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the interest of justice, equity and fair play.'

The petitioner bank is holding monies of the third respondent concern, and the income tax authorities as well as the provident fund authorities lay a claim over the same. The notice issued by the income tax authorities in this regard is dated 16.03.2016, while the provident fund authorities trace their claim to the notice dated 25.05.2016, which is later in point of time.

By order dated 02.01.2017, this Court granted interim stay of the order of attachment issued by the Employees Provident Fund Organisation in relation to the amount lying in the custody of the petitioner bank.

The issue therefore boils down to the question as to which of these two organisations would have priority in claiming the said amount.

At this stage, it would be apposite to refer to Section 88 CPC, which reads as under:

'88.where interpleader-suit may be instituted:- Where two or more persons claim adversely to one another the same debts, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may

institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.'

In the light of the aforestated efficacious alternative remedy provided to the petitioner bank under Section 88 CPC, we are of the opinion that it is wholly unnecessary for this Court to entertain this writ petition. Further, various disputed factual aspects may arise for determination which would not be amenable to resolution in a writ petition. However, as this Court already granted interim relief, *vide* its order dated 02.01.2017, we are of the opinion that the interest of justice would be sufficiently served by directing the parties to maintain *status quo* in relation to the amount lying in the custody of the petitioner bank for a period of four weeks. In the meanwhile, the petitioner bank is granted liberty to take recourse to filing a suit under Section 88 CPC before the competent civil Court. Thereupon, the competent civil Court would be at liberty to consider any plea for interim relief independently on its own merits and in accordance with law, uninfluenced by the fact that this Court granted interim orders in this writ petition.

Subject to the above observation, the writ petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:29.01.2018

GJ