OC – 1

ORDER SHEET
APOT 12 OF 2021
WITH
CS 54 OF 2020
GA 1 OF 2021
IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

COMMERCIAL DIVISION

ORIGINAL SIDE

BRH WEALTH KREATORS LIMITED
Versus
HDFC BANK LIMITED

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE SUBHASIS DASGUPTA
Date : 5TH February, 2021.

Appearance:
Mr. Jishnu Choudhury, Adv.
Mr. C. Gupta, Adv.
Mr. A. Agarwalla, Adv.
Mr. B. Sharma, Adv.
....For the Appellant

Mr. S. N. Mookherjee, Sr. Adv.
Mr. D. N. Sharma, Adv.
Mr. P. K. Rai, Adv.
Mr. A. Basu, Adv.
Mr. S. Bhattacharya, Adv.
...For the Respondent

The Court : This is an appeal from an ad interim order dated 11th January, 2021 passed by a learned single judge of this Court, in an interlocutory application (GA No.869 of 2020) in aid of the aforesaid suit refusing an injunction sought by the appellant/plaintiff restraining the respondent/defendant from selling the allegedly pledged shares.

At the time of admission of the appeal and consideration of the stay application, the attention of this court was drawn by Mr. Choudhury, learned Counsel for the appellant/plaintiff to an order of the Security and Exchange Board of India made on 21st January, 2021, some ten days after the impugned order was made by this Court.

Mr. Choudhury, submits that by virtue of this order, the respondent cannot sell those shares and that this Court should restrain them from doing so.

Mr. Mookherjee, learned senior counsel appearing for the respondent questions the validity of this order. He says that his client is preferring an appeal therefrom before a higher forum. At any rate, he submits that under the arrangement between the parties where the appellant was acting as a broker for his clients, the appellant had the authority to pledge the shares.

Consequently, the respondent is entitled to sell them to realize about Rs.38 crores owing to them by the appellant. Learned counsel added that relying on the said SEBI order, his client could not be reduced to an unsecured creditor from a secured one.

Mr. Mookherjee, states that the respondent has already filed their affidavit-in-opposition to the interim application.

The appellant/plaintiff may file their affidavit-in-reply on 8th February, 2021 in Court with an advance copy delivered to the respondent by 7th February, 2021.

In our view, although this order of SEBI was made after the impugned order, the purport and scope thereof along with all other issues which are involved in the interim application should be gone into afresh by the learned single judge.

In those circumstances, without in any way interfering with the impugned order dated 11th January, 2021, we remit this matter to be considered afresh by the learned single judge as a 'Motion' to be listed before his lordship on 8th February, 2021 subject to the convenience of the Court.

We have not gone into the merits and all points are kept open before the learned first Court, to consider whether to grant or refuse the ad interim order prayed for.

This appeal (APOT No.12 of 2021) along with the connected application (GA No.1 of 2021) is heard out dispensing with all formalities and is disposed of.

(I. P. MUKERJI, J.)

(SUBHASIS DASGUPTA, J.)

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