

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 25.02.2022
Pronounced on: 04.03.2022

MAT 19 of 2022
(IA No: CAN 1 of 2022,
CAN 2 of 2022, CAN 3 of 2022)
(Through Video Conference)

Canara Bank

...Appellant

-Vs-

IQ City Foundation and Others

...Respondents

WITH

MAT 10 of 2022
(IA No: CAN 2 of 2022)
(Through Video Conference)

Bank of Baroda

...Appellant

-Vs-

IQ City Foundation and Others

...Respondents

Present:-

Mr. Raja Basu Chowdhury, Mr. Krishna Kishore Ganguly, Advocates	... for the Appellant in MAT 19 of 2022
Mr. Joydip Kar, Mr. Suddhasatava Banerjee, Mr. Avishek Guha, Ms. Akansha Chopra, Advocates	... for the Appellant in MAT 10 of 2022
Mr. P. Chidambaram, Sr. Adv., Mr. Joy Saha, Mr. Ishaan Saha, Mr. Meghajit Mukherjee, Ms. Shivangi Thard, Ms. Rishika Goyal, Mr. V. Upadhyay, Advocates	... for the Respondent Nos. 1 and 2
Mr. Debdutta Sen, Ms. Suchismita Chatterjee, Mr. Prasun Ghosh, Mr. M.K. Seal, Advocates	... for the Respondent No. 5/RBI.

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. These appeals at the instance of the Canara Bank and Bank of Baroda are directed against the interlocutory order of the learned Single Judge dated 18th November, 2021 passed in WPA No. 17088 of 2021 directing the Reserve Bank of India (in short, 'RBI') to look into the matter by appointing an independent Auditor.
2. In nutshell, the respondent Nos. 1 and 2 (writ petitioners) had filed the writ petition with the plea that the respondent No. 1 had obtained the credit facility amounting to Rs. 210 Crores and that the credit facility was jointly funded by the appellant banks along with the Axis Bank Limited. On account of certain restrictions, the cash flow of the writ petitioners was affected resulting in financial distress. The writ petitioners had approached the Court with the grievance relating to charging of excessive interest on the credit facility.
3. Learned Single Judge by the order under challenge has directed the respondent, RBI, to appoint an independent Auditor of its choice for the purpose of conducting an audit and assessment of the credit facility and as to the propriety and legality of the penal interest levied by the appellant banks in respect of the writ petitioner's organization. Further direction has been issued to prepare and file the Auditor's report within 05th January, 2022.
4. Submission of the learned Counsel for the appellants is that issue of maintainability of the writ petition is involved as in respect of contractual dispute, the writ petition cannot be maintained but without deciding the same, prayer (a), made in the writ petition, has been granted as interim relief which amounts to granting the final relief. It has further been submitted that the appellants did not get an opportunity to file affidavit-in-opposition and on the first date itself, the impugned order has been passed.
5. Learned Counsel for the respondent Nos. 1 and 2 (writ petitioners) has submitted that the issues which the appellants are raising before this Court can be argued before

the learned Single Judge and that before the learned Single Judge, the appellants and RBI were duly served and one of the appellants had filed the reply and had withdrawn it and the impugned interim order is not against the appellant and that the appellants can file their affidavit-in-opposition before the learned Single Judge, thereafter, the matter can be heard.

6. Learned Counsel for the respondent RBI has submitted that an application for recall of the impugned order has already been filed before the learned Single Judge and RBI cannot go into the contractual dispute between the parties and even otherwise, it is not the role of the RBI to conduct such an audit.

7. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that undisputedly, the application at the instance of the RBI for recall of the impugned order is pending before the learned Single Judge. Learned Counsel for the RBI has also categorically stated before this Court that the RBI will not be taking any steps for appointment of independent Auditor in terms of the impugned order till the application for recall is decided. The appellants have the grievance that the impugned order has been passed without giving them opportunity to file affidavit-in-opposition or without giving them full opportunity to place their stand on record. In such a case proper remedy available to the appellants is to place their stand on record and make an appropriate application for review/recall/modification of the impugned order before the learned Single Judge. Since the issue relating to maintainability of the writ petition as also grant of final relief contained in the prayer (a) of the writ petition at the interim stage is involved, therefore, if such an application is filed by the appellants learned Single Judge will duly consider it in accordance with law having due regard to the material which may be placed on record by the appellants. Learned Single Judge has not gone into rival contention of the parties, therefore, entire issue is now open which can be gone into by him. Since the Counsel for the RBI has already stated that the impugned direction will not be given effect to till the decision of the application for recall. Therefore, in view of the observations made above the impugned order needs no interference at this stage.

8. Hence, the appeals are disposed of on the above terms expressing the hope that the learned Single Judge will duly consider the stand of all the concerned parties at the time of deciding the application for review/recall/modification of the impugned order.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
04.03.2022

PA(RB)

(A.F.R./N.A.F.R.)