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

A.P.O. No. 25 of 2022
W.P.O. No. 305 of 2022
IA NO: G.A 1 of 2022

(Through Video Conference)

Reserved on: 14.03.2022
Pronounced on: 29.03.2022

Dalmia Securities Pvt. Ltd. and Anr.
...Appellants

-Vs-

The Calcutta Stock Exchange Ltd. and Anr.
...Respondents

Present:-

Mr. Ranjan Bachwat, Sr. Advocate
Mr. Subhasish Sengupta,
Mr. Sounak Mitra,
Mr. Subhrangsu Ganguly, Advocates
... for the appellants

Mr. Anirban Ray,
Mr. Jayanta Sengupta,
Mr. Uttam Kumar Mandal,
Ms. Maitree Roy, Advocates
... for the respondent no. 1

Mr. Syamantak Banerjee,
Mr. P.K. Dutt, Advocates
... for the respondent no. 2

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

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 2nd February, 2012 whereby WPO 305 of 2022 has been disposed of with certain directions.

2. The facts in nutshell are that the appellant had filed the writ petition with the plea that the appellant is registered with the Securities and Exchange Board of India (SEBI) as its top broker and had carried on business as a member of respondent No. 1, Calcutta Stock Exchange Limited (CSE), as also other stock exchanges namely, National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange (BSE). Further plea is raised that the CSE has been asked by the SEBI to initiate the process of compulsory exit of the company as a stock exchange which the CSE is litigating and that the respondent No. 1 was demanding inspection of books and records of the appellant No. 1 for the period from 01st April, 2000 to 09th May, 2002. Therefore, exchange of communication took place. As per the stand of the appellant, following the applicable norms, the appellant No. 1 was maintaining Rs. 50 lakhs as base minimum capital in the fixed deposit with the HDFC Bank and that as per the applicable norm, the stock exchange is not entitled to appropriate the interest accruing on the fixed deposit. However, vide notice dated 16th March, 2003, respondent No. 1 instructed the bank to stop crediting any interest to the account of appellant No. 1. Earlier round of litigation took place between the parties and as per the plea in the petition, a sum of about Rs. 39 lakhs is lying in deposit. The request of the appellant to release the funds in excess of minimum deposit requirement, was not responded by the respondent No. 1 and the appellant's request to surrender the membership was also not accepted. Hence, he had filed the WPO 305 of 2022 questioning the decision to withhold the excess security amount of about Rs. 39 lakhs as on 08th April, 2021.

3. Learned Single Judge by the order dated 02nd February, 2022 had disposed of the writ petition directing the respondent No. 1 to take a final call on investigation and if CSE finds in its final order that the appellant is not guilty of violation of any provisions of the exchange or that the continuation of proceedings is no longer feasible, then take a suitable decision to that effect would be taken and to refund the deposit together with accrued interest.

4. Submission raised by the learned Counsel for the appellant is that no investigation against the appellant is pending and in this regard, he has referred to the communications dated 06th May, 2004, 29th April, 2013, 30th April, 2013, 07th June, 2013 and 18th June, 2013 and has submitted that only inspection is to be done and as desired by respondent No. 1, Miscellaneous Case No. 581 of 2011 has been withdrawn, therefore, the respondent No. 1 has no option but to process the pending application. He has also submitted that since no affidavits were called for by the respondent, therefore, real picture has not come on record, hence, the matter be remanded back to the learned Single Judge for fresh adjudication.

5. The plea of the respondent is that the investigation and inspection of the books of accounts and record of the appellant is required to be done in connection with a fraud, hence, no error has been committed by the learned Single Judge in passing the impugned order.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the writ petition has been disposed of without calling affidavit from the respondent. Heavy reliance has been placed by the appellants on the communication dated 30th April, 2013

sent by the respondent No. 1 to the appellant to the effect that the surrender of membership will be proceeded after legal case is settled. Similar communications dated 17th June, 2013 and 18th June, 2013 were sent. Respondent vide communication dated 19th September, 2013 was informed about the withdrawal of the pending Miscellaneous Case No. 581 of 2011 arising out of Title Suit No. 60 of 2004. Hence, the plea of the appellant that respondents are bound by their own earlier restrained needs to be examined. Therefore, we set aside the order under challenge, and request the learned Single Judge to decide the issue afresh. Meanwhile, 45 days period fixed by the learned Single Judge to take final decision has expired, therefore, the final decision, if any, taken meanwhile, can be also placed/challenged before the learned Single Judge. Such a final decision will be subject to the final outcome of the petition. The appeal is accordingly, disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
29.03.2022

PA(RB)