21.03.2023
Item no.1 & 2
Court No.6.
AB

CPAN 593 of 2022
In
MAT 1697 of 2019

Paresh Kumar Mukherjee
Vs
Benojir Hossain

With
RVW No. 108 of 2022
With
CAN 1 of 2022

Birbhum District Central Cooperative Bank Ltd. & Others
Vs
Paresh Kumar Mukherjee & Others

Mr. P. S. Bhattacharya, Sr. Adv,
Mr. Saikat Chatterjee
….for the Review Applicants.

Mr. Kishore Mukherjee,
Mr. Ahitagni Dey …..for the Respondents.

Mr. Pradeep Kr. Roy,
Mr. Ankit Sureka,
Mr. Joydeep Roy,
Mr. Partha Sarathi Pal ……for the State.

In re : RVW 108 of 2022, CAN 1 of 2022

This application has been taken out by Birbhum District Central Cooperative Bank Limited (appellant in MAT 1697 of 2019), for review of a judgment and order dated April 13, 2022, whereby MAT 1697 of 2019 was disposed of.

The respondent no.1/writ petitioner had approached the learned Single Judge with a prayer for a direction on the Bank for payment of interest on delayed payment of retiral benefits.

The learned Single Judge disposed of the writ petition by an order dated August 6, 2019, the material portion whereof reads as follows:

> "*Considering the submissions as advanced by the learned advocate for the parties and after perusing the letter dated 17th July, 2019, I direct the Birbhum District Central Co-operative Bank Ltd. to take steps for disbursement of the petitioner's arrear salary for four months i.e. from May 2014 to August 2014 with interest at the rate of 9% per annum from the date of retirement till the date of actual payment without any further delay but positively within four weeks from the date of communication of this order.*
>
> *I also direct the respondent-Bank to release interest @ 9% per annum towards the gratuity amount as well as leave encashment amount from the date of retirement till the date of actual payment within the stipulated time as indicated above and failing which petitioner is entitled to enjoy additional 2% interest.*"

Being aggrieved, the Bank preferred an appeal being MAT 1697 of 2019. The said appeal was disposed of by the order under review, the material portion whereof reads as follows:

> *"We have noted the submission of learned senior counsel. However, the writ petitioner cannot be faulted for stoppage of the bank's business for the period May 15, 2014 till September 13, 2015. The Reserve Bank of India may have found irregularities in functioning of the bank which prompted the Reserve Bank of India, which has supervisory power over all other banks in India, to temporarily suspend the business of the appellant/bank. For such reason, the writ petitioner cannot be penalized. Admittedly, there was substantial delay in payment of the writ petitioner's retiral benefits. It is elementary law that a retired person must be compensated by way of interest if there is delay in payment of his retiral benefits. The learned Judge did nothing wrong in directing the appellant/bank to pay interest on the delayed payment of the retiral benefits of the writ petitioner. There is no infirmity in the order under challenge. The appellant/bank has already made substantial payment to the writ petitioner following the order of the learned Single Judge. Whatever balance amount remains due and payable in terms of the order of the learned Single Judge shall be paid by the appellant/bank to the writ petitioner within a period of four weeks from date."*

Appearing in support of the review application, Mr. Bhattacharya, learned Senior Advocate essentially submitted that the Bank cannot be faulted for delayed payment of the retiral benefits of the writ petitioner. The delay was unintentional and result of unavoidable circumstances. Mr. Bhattacharya drew our attention to paragraphs 9 to 13 of the review petition, which summarizes the case of the petitioner in support of its prayer for review. For the sake of convenience, the said paragraphs are extracted below:

> *"9. The petitioners state that the Bank was closed from 15.5.2014 to 30.9.2015 and the bank started functioning on and from 1.10.2015 and in the present review application the appellants are contending that the period for which the bank was closed and there was financial loss of bank which would be evident from the audit report of 2015-2016, 2016-2017 and 2017-2018 and because of severe financial crunch of the bank a direction passed that a retired person must be compensated by way of interest, if there is delay in payment of retiral benefits and the judgment and/or order is required to be reviewed in asmuch as for the period for which the bank was closed, bank cannot be saddled with any responsibility to make payment on the loss incurred by the bank to an employee.*
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> *10. The petitioners state that the documents annexed in the writ petitions being WP No.16517 (W) of 2014 with WP No.17270 (W) of 2014 with WP No.17302 (W) of 2014 are the documents which would reveal that by an order dated 9.5.2014 the Reserve Bank of India directed the Bank to stop its activities and such aspect of the matter could not be drawn to the kind attention of the Court and it is submitted that the observations of the Hon'ble Division Bench that the writ petitioner cannot be faulted for stoppage of bank's business for the period from May 15, 2014 till September 30, 2015 is required to be reviewed and/or modified to the extent it creates financial liability on the bank in the period from May 15, 2014 to September 30, 2015.*
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> *11. The petitioners state that the documents annexed in the present review application is required to be considered since the same are important matters of*

evidence and which could not be produced by the appellants at the time when the judgment was delivered.

12. The petitioners state that due to stoppage of business for a substantial period of time and other factors beyond control of the bank it appears that the bank faced severe financial crunch which resulted in the delay disbursement of writ petitioner's gratuity and leave encashment amount and the factum of facing financial crisis and the documents in support of the same could not be produced at the time when judgment was passed by the Hon'ble Division Bench and for which the appellants have filed the present application for review.

13. The petitioners state that Paresh Kumar Mukherjee retired from service on 24.8.2014, gratuity was released in favour of Paresh Kumar Mukherjee on 12.4.2019 and leave encashment was released on 17.7.2019 and the arrear salary of Paresh Kumar Mukherjee was also paid and the appellants humbly contend that no interest @9% per annum should be directed upon the bank to pay Paresh Kumar Mukherjee since the bank was closed and there was no business of the bank from May 15, 2014 to September 30, 2015 and the fact as to what was subsisting during within the interregnum period would be evident from the documents as annexed in the present review application."

Mr. Bhattacharya also drew our attention to a Memorandum of Understanding dated March 3, 2015, signatories whereto are the (I) President of India acting through the Joint Secretary, Ministry of Finance, Government of India ; (II) The Governor of the State of West Bengal acting through the Secretary, Ministry of

Cooperative, Government of West Bengal and (III) National Bank for Agricultural and Rural Development.

Learned Senior Counsel drew our attention to Sub-clause (f) at page 6 of the Memorandum, Clause 13 on the same page and Clause 17 at page 8. The said Clauses are setout hereunder:

> *"Clause (f) Cost cutting measures to be initiated that may include freezing the pay revision for a period till the bank reaches a viable business level (to be specified for each bank) as also control on capital expenditure."*
>
> *"Clause (13) The entire funding by the Government of India to the Government of West Bengal as interest free loan shall be routed through NABARD. The interest free loan will be converted as grant on fulfilment of the deliverables outlined in paras 8 to 12 of this MOU which are also specified in the Scheme"*
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> *"Clause 17. The DCCBs should strictly adhere to the directions/instructions issued by RBI from time to time to enable RBI to consider the application for grant of banking licence."*

Mr. Bhattacharya submitted that if the Bank is required to pay interest on the delayed payment, which was not due to any deliberate inaction on the part of the Bank, the same will militate against the scheme of rehabilitation of the Bank. Hence, the order disposing of the appeal should be reviewed.

Learned Senior Counsel also referred to a letter dated May 15, 2014, written by the Assistant General

Manager of Reserve Bank of India to the Chief Executive Officer, Birbhum District Central Cooperative Bank Limited, which required the Bank to stop banking transactions forthwith as per the direction of Reserve Bank of India. By the said letter, the Cooperative Bank was also directed not to take any step which will result in change in the composition of the assets and liabilities of the Bank in any manner till the appointment of a Liquidator by the Registrar of Cooperative Societies. Mr. Bhattacharya submitted that because of these restrictions imposed, the retiral benefits of the writ petitioner could not be disbursed in due time.

We have not called upon the respondent /writ petitioner to make submission.

We are not persuaded by the submission made on behalf of the review petitioner. In the order under review itself, we have recorded that the writ petitioner had no role to play in the closure of the Bank between the period May 15, 2014 and September 30, 2015. None of the restrictions imposed on the Bank by the Reserve Bank of India, in our opinion, could have justified the delay on the part of the Bank in releasing the retiral benefits of the writ petitioner.

Further, we do not find that any of the grounds for review contemplated under Order 47 Rule 1 of the Code of Civil Procedure have been made out by the petitioner. There is no error apparent on the face of the record. It is well settled that a Court exercising review jurisdiction will not act as an appellate court. We find no reason to change our order dated April 13, 2022.

The review application is, accordingly, dismissed along with IA CAN 1 of 2022.

In re : CPAN 593 of 2022

Let this matter stand adjourned and be listed again on 13.4.2023.

(Krishna Rao, J.) **(Arijit Banerjee, J.)**