

O- 5

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/46/2023
IA NO. GA/1/2023
SWAPAN KUMAR DATTA
-Versus-
STATE BANK OF INDIA AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 5th June, 2023

Appearance :
Mr. Jishnu Chowdhury, Adv.
Mr. S. Banerjee, Adv.
Mr. Pranav Sharma, Adv.
...for the petitioner
Mr. Joy Saha, Sr. Adv.
Mr. Anirban Pramanick, Adv.
Ms. Subhasree Dey, Adv.
Mr. Rajarshi Kundu, Adv.
Mr. Sankha Subhra Dutta, Adv.
...for respondents

The Court : This intra-Court appeal is directed against the common order passed by the learned Single Bench in a batch of five writ petitions dated 24th June, 2023. After elaborately hearing the learned Advocates for the parties it emerges that the following facts are not in dispute:

Out of five writ petitions, four writ petitions were filed by Companies and Others and the present appellant/writ petitioner is one Mr. Swapan Kumar Datta. The case of the appellant is that he was appointed as an Additional Director in EMC Infrastructure Private Limited on 22nd March,

2014. The scheme of amalgamation of EMC Infrastructure Private Limited with EMC Limited was approved by the National Company Law Tribunal, Calcutta Bench on 26th February 2018 along with other Companies, which were transferor Companies. The name of the new company was retained as EMC Infrastructure Private Limited. The case of the appellant is that there was no financial exposure by EMC Infrastructure Private Limited in which the appellant was the erstwhile Additional Director and, therefore, the question of branding the appellant, as a wilful defaulter does not arise. It is the further case of the appellant that the grounds which were raised by the appellant in the writ petition filed by him namely, in WPO/26/2021 were quite distinct from the grounds raised in the other writ petitions. However, the writ petition stood dismissed by a common order and the specific grounds which were canvassed by the appellant qua his status as the erstwhile Director of EMC Infrastructure Private Limited was not subject matter of adjudication by the learned Writ Court and there is no specific finding as to the correctness of the action of the respondent against the appellant. It appears that common arguments were advanced on behalf of all the writ petitioners though the grounds raised by the appellants/writ petitioners in WPO/26/2021 is said to be different from the grounds raised in the other writ petitions. That apart, we also note that there is no separate written submission in WPO/26/2021 and written submissions were filed only in WPO/13/2021. Thus, we cannot decide the correctness of the order passed by the learned single Bench on grounds which are canvassed before this court which were not the subject matter of adjudication before the

learned writ court. Therefore, we are of the view that the appellant should first make his submission before the learned Writ Court and seek to distinguish his case from that of the other writ petitions and also seek to establish that the appellant cannot be termed as a wilful defaulter.

In the light of the above, the appeal stands disposed of by granting liberty to the appellant to file review application before the learned Single Bench and canvass the specific grounds which were raised by the appellants in their writ petition in WPO/26/2021.

With the leave of the learned Writ Court, if such review application is filed, the learned Single Bench is requested to consider the matter on merits and in accordance with law. In the event, the respondent bank desires to file an additional affidavit-in-opposition to the grounds raised in the writ petition namely, WPO/26/2021, leave may be granted to the respondent bank to do so.

Accordingly, GA/1/2023 stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)