Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7511 OF 2025
WITH
INTERIM APPLICATION NO.1727 OF 2025
IN
FEMA (L) NO.-4112 OF 2025
WITH
INTERIM APPLICATION NO.3090 OF 2025
IN
FEMA NO.-26 OF 2025
WITH
FEMA NO.-05 OF 2025
WITH
INTERIM APPLICATION NO.1832 OF 2025
IN
FEMA (L) NO.5062 OF 2025
WITH
INTERIM APPLICATION NO.3095 OF 2025
IN
FEMA NO.-28 OF 2025
WITH
INTERIM APPLICATION NO.3745 OF 2025

Industrial Development Bank of India (IDBI) Ltd …Petitioner

Versus

Union of India through Enforcement Directorate …Respondent

Mr Madhur Rai i/b PRS Legal, for Applicant in IA 7511 of 2025.
Mr. Rajeev Kumar Panday with Mr. Sachin Kanse i/b PRS Legal, for Applicant in IA 1707 of 2025.
Mr. Sanjiv Punalekar i/b PRS Legal, for Applicant in IA-1832 of 2025.
Mr. Raghav Gupta with Ms. Treesa Benny with Ms. Rashi Savla i/b Wadia Ghandy and Co., for Applicant in IA 3090 of 2025 and IA 3095 of 2025 and IA 3745 of 2025.
Mr. Anil D. Yadav, for Respondent-ED in IA 3090 of 2025 and IA 3095 of 2025 and IA 3745 of 2025.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 09 July 2025

PC:-

1. Heard learned Counsel for the parties.

2. These are Interim Applications seeking a stay on the impugned orders in the accompanying Appeals. The accompanying Appeals have already been admitted. The impugned orders levy a penalty on the Applicants, *inter alia*, on the grounds of negligence and/or abetment.

3. The learned Counsel for the parties first submit that, from 2001, they have never been asked to deposit any amounts, and therefore, this position should continue now that we have admitted the Appeals. Secondly, they submit that even before the Appellate Tribunal, interim relief was granted without requiring any deposit, given the position that the

Applicants were banks with a sound financial base. Thirdly, they point out several errors in the impugned order and submit that this is a fit case where an unconditional stay ought to be granted.

4. Mr. Yadav submits that there is no question of the grant of any unconditional stay in such matters. The impugned orders have recorded findings of fact, and the interim orders granted earlier were based solely on a prima facie determination made before the Tribunal Court decided the matter.

5. The rival contentions now fall for our determination.

6. Normally, in matters of this nature, there is no question of the grant of any unconditional stay. The appellants must either deposit or secure the penalty amount now determined by the authority.

7. There are findings that some banks have abetted, while others, although they may not have directly abetted, have been negligent. Based on these findings, penalties have been imposed. Whether these findings warrant interference or not is a matter which will certainly be decided in the pending Appeals.

8. However, none of the Applicants, at this stage, have established a case of extreme perversity in the record of such findings, to be exempt from even depositing the penalty amount or otherwise securing such amounts by furnishing a

Bank guarantee. No case of hardship is made out by any of the applicants who contend that their financial position is very strong. Besides, considering the financial position of the Banks, even the amounts involved are not substantial.

9. The learned Counsel have strongly relied upon the arguments as well as the observations in the order dated 05 January 2024, by which the Appellate Tribunal granted an unconditional stay. Apart from the fact that this order does not bind this Court, we note that it was made at a stage where the Tribunal had yet to decide whether the orders passed by the adjudicating authorities imposing the penalties warranted interference or not. The fact that the Applicants are Banks may be a relevant consideration, but based on this alone, it would not be appropriate to grant the Banks an unconditional stay.

10. The learned Counsel also relied upon the judgment and order of this Court dated 14 February 2012 in FERA Appeal No. 47 of 2010 and connected matters. They pointed out that this was the earlier round when the matters came before this Court. They also pointed out that the impugned orders of the Tribunal were set aside and the matter was remitted to the Tribunal for consideration afresh. They emphasise that during the pendency of the Appeals before the Appellate Tribunals, the orders with regard to waiver of deposit and stay were directed to continue to operate.

11. The judgment and order dated 14 February 2012 was passed in appeals preferred by the Revenue – Union of India. The operative portion of this judgment indicates that the Union of India was successful in these Appeals. In these circumstances, a direction was naturally issued that, on remand, the position prevailing before the passing of the order impugned in those Appeals will operate. That is clearly not a situation in the present case, where the Applicants are confronted with an adverse order recording adverse findings against them.

12. Though we have admitted the Appeal on the questions of law which we have formulated, as noted earlier, this is not a case for the grant of any unconditional stay. The Banks, by virtue of their strong financial position, cannot claim to be more equal than others placed in a similar predicament.

13. Mr. Gupta, learned Counsel for one of the Applicants, submits that if at all this Court intends to impose any conditions, then, instead of directing a deposit, this Court should consider requiring the Applicants to furnish a Bank guarantee. This suggestion is reasonable.

14. Accordingly, we direct the Respondents not to take any coercive action to recover the penalty amount imposed upon the Applicants by the impugned orders, subject to the Applicants either depositing the amounts which they have been directed to pay or furnishing a Bank guarantee in the like amount within a period of four weeks from today. Such deposit or furnishing of a Bank guarantee must be with due intimation to the Respondents and their Advocates. Such intimation must be given within four weeks from the date of uploading of this order.

15. If no such deposit is made or a Bank guarantee is furnished, and further, if no intimation is given within four weeks from the date of uploading of this order, the interim relief granted by this order shall be deemed to have been vacated without any further reference to this Court. The Respondents shall then be free to recover the penalties.

16. The Interim Applications are disposed of in the above terms. No costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**