

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16548 of 2003

to

SPECIAL CIVIL APPLICATION No 16564 of 2003

with

SPECIAL CIVIL APPLICATION No 16565 of 2003

to

SPECIAL CIVIL APPLICATION No 16581 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MAGANBHAI KALIDAS PATEL M.D. OF KAUSHIDEEP COLD STORAGE PVT

Versus

CHHANI NAGRIK SAHKARI BANK LTD.

Appearance:

1. Special Civil Application No. 16548 to 16581 of 2003
MR BHARAT R PANDYA for Petitioners
MR BS PATEL for Respondent No. 1
MRS RANJAN B PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 31/08/2004

COMMON ORAL JUDGEMENT

All these matters are finally heard and decided today because notices were issued for final disposal.

2. In all these matters there are common issues and common questions and, therefore, they are being dealt with and considered by this common order.

3. The petitioners have preferred these petitions challenging the interim order passed by the Gujarat State Coop. Tribunal below stay application in Appeals No.738/2003 to 754/2003 and Appeals No.758/2003 to 774/2003. By the impugned order the Tribunal granted stay on condition to deposit 25% of the awarded amount.

4. Heard Mr.Pandya, learned Counsel for the petitioners in all the petitions and Mr.Patel, learned Counsel for respondent No.1 Bank, which is the main contesting respondent.

5. Upon hearing the learned Counsel appearing for the parties, it appears that the contention of the petitioners which is one of the defences in the suit proceedings is that the petitioners are running Cold Storage, and since the petitioners had stored the potatoes, undertakings were given by the petitioners not to part with the possession of the potatoes until there is specific intimation in writing is given by the respondent No.1 Bank for the concerned loanee. It is the defence of the petitioners that such undertakings were signed on blank documents. It appears that the Bank filed Lavad Suit against the concerned loanee and the guarantor for recovery of the amount before the learned Nominee at Vadodara. In the said suits as the item of potatoes was stored in the cold storage of the petitioners, the petitioners were also impleaded as party defendants in the said proceedings. It is the case of the petitioners that the petitioners were not served with the summons, nor have they signed any Vakalatnama, whereas the case of the respondent No.1 Bank is that the petitioners appeared in the suit proceedings and a written statement was also filed through their Advocate. It appears that ultimately the learned Nominee passed the judgement and award in the concerned suit against the

loanee, guarantor as well as the petitioners herein, who were also defendants in the suits. A statement has been made at the bar by the learned Counsel for the parties that the concerned loanee and the guarantors have not preferred any appeal before the Tribunal and the Bank has proceeded for the execution of the awards against the loanees and guarantors and the execution proceedings are going on. So far as the petitioners herein are concerned, since they were neither the loanees, nor the guarantors in the transactions of loan, but were the custodian of the potatoes, which as per the Bank were the properties over which the loans were given and as the petitioners' liability was fixed in the award as one of the defendants in the concerned suits, the petitioners preferred the aforesaid appeals before the Gujarat State Coop. Tribunal. In the said appeals the stay applications were also submitted and it appears that the Tribunal ultimately, after hearing both the sides, passed the aforesaid impugned order, whereby the stay has been granted on condition to deposit 25% of the awarded amount, in the concerned suit.

6. Mr.Pandya, learned Counsel for the petitioners submitted that the capacity of the petitioners was neither as loanee, nor as guarantor, but was holder or the custodian of potatoes in the cold storage and it has been submitted that as such the Bank ought to have given lien notice which has not been given and he further submitted that in any event the summons were not served and no opportunity of defending the suit was given to the petitioners and, therefore, the Tribunal ought to have granted unconditional stay. Mr.Pandya also alternatively submitted that the Tribunal has proceeded on the basis that there is a joint and several liability of the petitioners to the fullest extent and the condition of depositing 25% of the awarded amount is imposed. He submitted that the Tribunal as such has not considered the value of the potatoes at the time when the disposal has taken place and he submitted that at the most the petitioners can be directed to deposit a reasonable portion of the amount which may form part of the total value of the goods disposed or which were in the custody of the petitioners and the Tribunal ought not to have directed the petitioners to deposit 25% of the awarded amount.

7. Mr.Patel, learned Counsel appearing for the respondent Bank, while supporting the order passed by the Tribunal submitted, inter alia, that as such the petitioners could not have parted with the possession of the potatoes without there being any written intimation

for the purpose by the Bank, because the potatoes were the goods pledged for the loan transaction and, therefore, there will be a liability of the petitioners being the custodian of the said property over which the loan was granted by respondent No.1 Bank to the concerned loanee.

8. Having considered the above, it appears that the Tribunal has committed error apparent on the face of the record in not considering that what could be the value of the potatoes which were in custody of the petitioners in cold storage. It is an admitted position that the petitioners are neither loanee nor guarantor. Therefore, the liability of the petitioners at the most could be to the extent of parting with the potatoes which were the properties pledged with the Bank. Further, while deciding the question of liability, the Tribunal will have to prima facie consider the actual valuation or the probable market value of the potatoes at the time when the disposal took place or at the time when the goods were in custody of the petitioners' cold storage. The reasoning recorded by the Tribunal shows that the petitioners can be held responsible to the fullest extent of the suit claim, while granting stay against the execution of the award, since the petitioners were neither loanee nor guarantor of the transactions, but were the custodian of the potatoes or goods which were pledged with the Bank, the Tribunal ought to have examined the aforesaid aspects while imposing such condition for granting stay against the execution of the award.

9. It appears that for arriving at the figure regarding the valuation of the potatoes which have been disposed of unauthorisedly by the principal debtor/loanee of the Bank, it may be required for the Tribunal to examine the record which may be produced by the petitioners or the Bank, as the case may be. It may also be required for the Tribunal to give opportunity any party to the proceedings of appeal to produce documentary proof, if any showing the value of potatoes which were stored and over which the loans were granted. Thereafter, at the most the Tribunal could have directed for deposit of 50% of the value of the goods which were stored with the petitioners, as the aforesaid exercise is not undertaken and considering the facts and circumstances, it appears that the Tribunal can be directed to undertake aforesaid the exercise for prima facie value of the potatoes which were stored in cold storage of the petitioner over which the loans were given by Bank to loanees. At the same time, while ordering to

deposit the amount, since the status of the petitioners was as that of custodian of the goods, in the event the Bank recovers the amount from the principal debtor or the guarantor, as the case may be, the petitioners should be in a position to get back the amount if the award is ultimately executed and the amount is recovered, consequently results into no loss to the respondent Bank.

10. In view of the aforesaid I find that the following directions shall meet with the ends of justice:

10.1) The Tribunal before whom the Appeals No.738/2003 to 754/2003 and Appeals No.758/2003 to 774/2003, which are pending shall prima facie arrive at a figure of probable value of the potatoes which were stored by the petitioners belonging to the judgement debtor over which the loan was granted by the respondent No.1 Bank. The Tribunal shall consider the aforesaid aspect in light of the observations made hereinabove.

10.2) After the amount is ascertained, the petitioners shall deposit 50% of the said amount as condition for stay of the execution of the award against the concerned petitioners herein in the concerned suit. The amount which may be deposited by the petitioners after the ascertainment of the amount as indicated hereinabove by the Tribunal, shall be subject to the final outcome in the proceedings of the concerned appeal and the respondent No.1 Bank shall keep the said amount in separate Bank Account with any nationalized bank and the petitioners will be entitled to the refund of the amount under any circumstances, either of allowing the appeal or rejection of the appeal, in the event the concerned award is satisfied in the execution proceedings and the respondent No.1 Bank has been able to recover the amount as per the award from loanee or the guarantor/principal debtor or the guarantor, as the case may be, of the concerned suit proceedings.

10.3) The Tribunal shall complete the aforesaid exercise as early as possible preferably within a period of four weeks from the date of receipt of the order of this Court and the petitioners shall deposit the amount as indicated earlier within a period of two weeks after the ascertainment of the figure by the Tribunal.

10.4) In view of the earlier direction, the impugned order passed by the Tribunal shall not remain in operation and until the aforesaid exercise of ascertainment of the value of the goods is finalized, the ad-interim relief granted by this Court in favour of the petitioners shall continue to remain in operation.

All the petitions are partly allowed to the aforesaid extent. There shall be no order as to costs.

31.8.2004 (Jayant Patel, J.)

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