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SLP(C)No. 12861 OF 2000

ITEM No.1

Court No. 1

SECTION XVI
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.12861/2000

(From the judgement and order dated 05/05/2000 in SA 2/90
of The HIGH COURT OF CALCUTTA)

COMMNR., SANCHAITA INVESTMENTS

Petitioner (s)

VERSUS

PUNJAB NATIONAL BANK & ANR.

Respondent (s)

(With prayer for interim relief and office report)
(For Final Disposal)
With

SLP(C)No.13511/2000

Date : 27/03/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. Jaideep Gupta, adv.
Mr. H.K. Puri, adv.

For Respondent (s) Mr. Bhaskar P. Gupta, Sr. adv.
Mr. Amarendra Nath Dawn, adv.
Mr. B.K. Satija, adv.
Mr. A.K. Roy, adv.

UPON hearing counsel the Court made the following
O R D E R

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Leave granted.
The appeals are disposed of in terms of the signed
order. No costs.

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(Neena Verma)
Court Master

(Prem Prakash)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2400 OF 2001@@
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(@ Special Leave Petition (C) No.12861/2000)

Commissioner, Sanchaita Investments Appellant

Versus

Punjab National Bank & Anr. Respondents

WITH@@
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CIVIL APPEAL NO.2401 OF 2001@@
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(@ Special Leave Petition (C) No.13511/2000)

O R D E R@@
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Leave granted in both special leave petitions.

The Division Bench of the High Court of Calcutta, by its order dated 05.05.2000 (impugned through SLP(C) No.12861 of 2000) found that the observations of the Commissioner (appellant herein) to the effect that the deed of assignment, dated 31st July, 1982 of the Bank was "a myth, pure and simple" and that the same could not be accepted to and that the story of "overdraft facility" was an afterthought, were erroneous. After going through the order of the learned Commissioner, we are in agreement with the ...2/-

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Division Bench of the High Court. Keeping in view some of the observations made by the Commissioner in the order impugned before the High Court, the finding that the advancement of the amount of Rs.26,50,000/- by the Bank was "a myth" cannot be sustained. The Division Bench rightly opined :

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"And on an overall consideration of the relevant facts and circumstances, we are firmly of the view that the Bank having established beyond any doubt (This actually is an admitted fact) that the Bank had advanced the aforesaid amount to the Company and that the Company had received this amount from the Bank through the aforesaid facility of the grant of overdraft, there is no reason whatsoever why

the Bank should be deprived to its claim for the return of the said money. Bank undoubtedly is the guarantor of the Company and once the Bank's claim is established, denying to the Bank the repayment of the amount will be unjustifiable."

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After having thus observed, the Division Bench went on to hold:

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"We allow the Appeal, set aside the order of the learned Commissioner and direct him to pay to the Bank the principal amount of Rs.26,50,000/- from out of the amounts lying with him within a

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period of three months from today. Since we are told that the Commissioner has with him at present amounts lying in excess of Rs.26,50,000/- we see no difficulty in the Commissioner arranging to pay the aforesaid amount to the bank within the aforesaid period. We therefore direct that until the Commissioner pay this amount to the Bank, he shall not use the amount lying with him for any other purpose except to meet the routine administrative expenditure and routine administrative costs. If the amount is not paid within a period of three months from today, the Commissioner shall be liable to pay to the Bank interest on the aforesaid principal amount of Rs.26,50,000/- @ 12% per annum. The interest liability shall in that event start accruing from today itself and shall go on till the amount is actually paid."

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By filing GA No.2244 of 2000 in Special Appeal No.2 of 1990, the appellant - Commissioner sought a review of the above directions regarding disbursement of an amount of Rs.26,50,000/- to the Bank within a fixed period in preference to other unsecured creditors.

On 24th July, 2000, Commissioner's prayer for review was rejected. Civil Appeal arising out of SLP (C) No.13511 of 2000 has put in issue the said order dated 24th July, 2000.

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After hearing learned counsel for the parties and examining the record, we are of the opinion that since the plea of Punjab National Bank against an order of attachment had failed before the High Court of Calcutta and that order was sustained by this Court, the position of the Bank in so far as the money it had advanced through overdraft facility is concerned, can not be any better than that of an unsecured creditor since the Bank is not a decree holder.

The question whether the Bank ought to be treated at par with other unsecured creditors and pari-pasu or whether it has any preferential right or a priority of claim over the other unsecured creditors, as canvassed on behalf of the Bank before us, has not been gone into by the Division Bench of the High Court. While issuing the direction for making payment to the Bank of Rs.26,50,000/- within a specified time, no opinion has been expressed by the Bench as to how the Bank has to be preferred over the other unsecured creditors. Without giving reasons, for the direction (supra) order for disbursement in favour of Bank should not have been made. To say the least, it was not a correct approach. The Division Bench of the High Court ought to
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have considered the question of preferential right of the Bank, admittedly an unsecured creditor, over other unsecured creditors and passed appropriate orders. We, accordingly, set aside the direction re: disbursement (supra) and remit the matter to the Division Bench of the High Court to decide the question whether Punjab National Bank has any prior claim or preferential right over the other unsecured creditors and to pass appropriate orders after hearing the parties.

By our order dated 28th August, 2000, while issuing notice in the special leave petition, we had directed that the amount of Rs.26,50,000/- shall not be disbursed to the depositors and will remain invested in a short term fixed deposit initially for six months. We are informed that the amount is still lying in fixed deposit, which receipt has been renewed from time to time. We direct that said amount shall continue to remain in fixed deposit till the matter is decided by the Division Bench of the High Court. It shall be open to the Division Bench of the High Court to pass appropriate orders for disbursement of the amount at the conclusion of the hearing by varying/modifying or vacating
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our order dated 28th August, 2000. The Division Bench is requested to dispose of the matter re: disbursement of the amount expeditiously. Learned counsel for the parties are at liberty to make a mention before the Division Bench of the High Court.

Both the appeals are disposed of in the above terms.
No costs.

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.....CJI.

.....J.
(R.C. LAHOTI)

New Delhi,
March 27, 2001.

.....J.
(DORAISWAMY RAJU)