

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1468 OF 2010

M/S SIDHARTH FOAM & FURNISHING P. LTD. Appellant (s)

VERSUS

INDORE PARASPER SAH. BANK LTD. Respondent(s)

O R D E R

Heard the learned counsel appearing for the parties.

It is an admitted fact that the applicant-appellant paid the amount which was to be paid by it, but it was paid little late.

In the facts of the case, we direct that ad-interim relief granted earlier shall continue to operate even if the amount was not paid in the prescribed period and we condone the delay which has been caused in making the payment.

It would be open to the applicant-appellant to approach the lender-Bank for settling the issues out of the Court and if such an effort is made by the applicant-appellant, the respondent-Bank shall make an effort to give concession to it, which it normally gives in the matter of settlement.

In view of the above, the Civil Appeal is disposed of.

.....J.
[ANIL R. DAVE]

.....J.
[KURIAN JOSEPH]

New Delhi;
July 30, 2015.

ITEM NO.101 (PH)

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s) .5674/2009

PANDURANG GANPATI CHAUGULE

Appellant(s)

VERSUS

VISHWASRAO PATIL MURGUD SAHAKARI BANK L.

Respondent(s)

WITH

SLP(C) No. 25930/2009

(With appln.(s) for directions and Interim Relief and Office Report)

W.P.(C) No. 922/2013

(With appln.(s) for directions, permission to file addl. Documents and Office Report)

W.P.(C) No. 1007/2013

(With appln.(s) for stay and Office Report)

W.P.(C) No. 142/2014

(With appln. for ex-parte stay and Office Report)

W.P.(C) No. 168/2014

(With appln.(s) for stay and vacating stay and Office Report)

W.P.(C) No. 169/2014

(With appln.(s) for stay and vacating stay and Office Report)

W.P.(C) No. 421/2014

(With appln.(s) for stay and vacating stay and Office Report)

W.P.(C) No. 1020/2014

(With appln.(s) for directions and Office Report)

C.A. No. 5675/2009

(With Interim Relief and Office Report)

C.A. No. 5681/2009

(With Office Report)

C.A. No. 5682/2009

(With Interim Relief and Office Report)

C.A. No. 5684/2009

(With appln. (s) for directions and Interim Relief)

W.P. (C) No. 318/2010

(With appln. (s) for stay and Office Report)

C.A. No. 1468/2010

(With appln. (s) for exemption from filing O.T. and vacating stay)

C.A. No. 4391/2010

(With appln. (s) appln. (s) for permission to file counter affidavit and for recalling the Court's order and Office Report)

C.A. No. 7410/2010

SLP(C) No. 24309/2010

W.P. (C) No. 41/2011

(With appln. (s) for stay and vacating stay and Office Report)

W.P. (C) No. 220/2011

(With appln. (s) for stay and Office Report)

W.P. (C) No. 293/2011

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 306/2011

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 308/2011

(With Office Report)

W.P. (C) No. 338/2011

(With appln. (s) for stay and Office Report)

W.P. (C) No. 375/2011

(With appln. (s) for stay and Office Report)

SLP(C) No. 7295-7298/2011

(With Office Report)

SLP(C) No. 22304-22305/2011

(With appln. (s) for exemption from filing c/c of the impugned judgment and Office Report)

SLP(C) No. 24479-24480/2011

(With Interim Relief and Office Report)

W.P. (C) No. 97/2012

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 103/2012
(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 122/2012
(With appln. (s) for stay and vacating stay and Office Report)

W.P. (C) No. 199/2012
(With appln. (s) for stay and Office Report)

W.P. (C) No. 250/2012
(With appln. (s) for stay and Office Report)

W.P. (C) No. 291/2012
(With appln. (s) for ex-parte and Office Report)

W.P. (C) No. 386/2012
(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 487/2012
(With appln. (s) for stay and Office Report)

W.P. (C) No. 537/2012
(With appln. (s) for permission to file addl. documents and stay and Office Report)

W.P. (C) No. 554/2012
(With appln. (s) for directions and stay and Office Report)

SLP(C) No. 24276/2012
(With Interim Relief and Office Report)

W.P. (C) No. 36/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 111/2013
(With appln. (s) for directions and for modification of Court's order and stay and Office Report)

W.P. (C) No. 112/2013
(With appln. (s) for directions and for modification of Court's order and stay and Office Report)

W.P. (C) No. 138/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 146/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 151/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 175/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 179/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 181/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 191/2013
(With appln. (s) for directions, stay and vacation of ex-parte stay
and Office Report)

W.P. (C) No. 192/2013
(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 201/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 233/2013
(With appln. (s) for stay and substitution of respondent and Office
Report)

W.P. (C) No. 236/2013
(With appln. (s) for stay and substitution of respondent and Office
Report)

W.P. (C) No. 238/2013
(With appln. (s) for stay and substitution of respondent and Office
Report)

W.P. (C) No. 248/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 250/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 253/2013
(With appln. (s) for stay and vacating stay and Office Report)

W.P. (C) No. 264/2013
(With appln. (s) for impleadment and stay and Office Report)

W.P. (C) No. 265/2013
(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 266/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 270/2013

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 271/2013

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 279/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 280/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 284/2013

(With appln. (s) for impleadment and stay and Office Report)

W.P. (C) No. 353/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 452/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 469/2013

(With Office Report)

W.P. (C) No. 588/2013

(With appln. (s) for impleadment, impleadment as party respondent and stay and Office Report)

W.P. (C) No. 753/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 758/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 761/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 762/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 800/2013

(With appln. (s) for directions and Office Report)

W.P. (C) No. 819/2013

(With appln. (s) for stay and Office Report)

W.P. (C) No. 877/2013

(With appln. (s) for directions and Office Report)

W.P. (C) No. 1037/2013

(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 1043/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 1044/2013
(With appln. (s) for stay and Office Report)

W.P. (C) No. 1045/2013
(With appln. (s) for stay and Office Report)

SLP(C) No. 12916/2013
(With appln. (s) for extension of time and Interim Relief and Office Report)

SLP(C) No. 15634-15635/2013
(With appln. (s) for c/delay in filing SLP and Office Report)

SLP(C) No. 17054/2013
(With Interim Relief and Office Report)

SLP(C) No. 18775/2013
(With Interim Relief and Office Report)

SLP(C) No. 18777/2013
(With Interim Relief and Office Report)

SLP(C) No. 29720/2013
(With Office Report)

SLP(C) No. 29721/2013
(With Office Report)

SLP(C) No. 35137/2013
(With appln. (s) for modification/recalling of Court's order and Interim Relief and Office Report)

W.P. (C) No. 5/2014
(With appln. (s) for stay and Office Report)

W.P. (C) No. 10/2014
(With appln. (s) for stay and Office Report)

W.P. (C) No. 352/2014
(With appln. (s) for directions and stay and Office Report)

W.P. (C) No. 408/2014
(With appln. (s) for stay and Office Report)

W.P. (C) No. 420/2014
(With appln. (s) for stay and Office Report)

W.P. (C) No. 492/2014
(With appln.(s) for exemption from filing O.T. and stay and Office Report)

W.P. (C) No. 712/2014
(With appln.(s) for modification of Court's order and stay and vacating stay and Office Report)

W.P. (C) No. 714/2014
(With appln.(s) for stay and vacating stay)

W.P. (C) No. 754/2014
(With appln.(s) for exemption from filing O.T. and stay and Office Report)

W.P. (C) No. 756/2014
(With appln.(s) for directions and Office Report)

S.L.P. (C) No...../2015 (CC No.7586/2014)
(With appln.(s) for c/delay in filing SLP and Office Report)

W.P. (C) No. 795/2014
(With appln.(s) for stay and Office Report)

W.P. (C) No. 849/2014
(With appln.(s) for ex-parte stay and vacating interim order and Office Report)

W.P. (C) No. 838/2014
(With appln.(s) for stay and vacating interim order and Office Report)

W.P. (C) No. 827/2014
(With appln.(s) for ex-parte stay and Office Report)

SLP(C) No. 32589/2014
(With appln(s) for compliance of order and exemption from filing O.T. and Office Report)

W.P. (C) No. 26/2015
(With appln.(s) for modification and stay and Office Report)

W.P. (C) No. 79/2015
(With appln.(s) for extension of time and stay and Office Report)

W.P. (C) No. 131/2015
(With appln.(s) for extension of time and stay and Office Report)

W.P. (C) No. 86/2015

(With appln.(s) for directions)

SLP(C) No. 7694/2015

(With appln.(s) for exemption from filing c/c of the impugned judgment and Interim Relief and Office Report)

W.P.(C) No. 186/2015

(With appln.(s) for stay and Office Report)

W.P.(C) No. 264/2015

(With appln.(s) for modification of Court's order, recalling the Court's order, stay and vacating stay and Office Report)

SLP(C) No. 29859/2010

(With appln.(s) for leave to place on record the subsequent developments and withdrawal and Interim Relief and Office Report)

Date : 30/07/2015 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Devansh A. Mohta,Adv.
Mr. Shishir Deshpande,Adv.
Ms. Sujata Kurdukar,Adv.
Mr. Amit Yadav,Adv.

Mr. Devansh A. Mohta,Adv.
Mr. Gaurav Agarwal,Adv.

Mr. Pratap Venugopal, Adv.
Mr. Gaurav Nair, Adv.
Ms. Niharika, Adv.

Ms. Rashmi Singh,Adv.

Mr. S. K. Kulkarni, Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni,Adv.

Mr. S. Wasim A. Qadri, Adv.
Mr. Zaid Ali, Adv.
Mr. Saurabh Chopra, Adv.
For Mr. Lakshmi Raman Singh, Adv.

Mr. Mathews J. Nedumpara,Adv.
Mr. Rabin Majumder,Adv.
Mr. Mobin Jacob,Adv.

Mr. S. Sadasiva Reddy, Adv.
For Ms. S. Usha Reddy, Adv.

Mr. N. D. B. Raju, Adv.
Mr. N. Ganpathy, Adv.

Ms. Rakhi Ray, Adv.
Mr. S.S. Ray, Adv.
Mr. vaibhav Gulia, Adv.

Mr. Jayant Kumar Mehta, Adv.
Mr. Saurabh D. Karan Singh, Adv.
Ms. Madhavi Khare, Adv.

Mr. Renjith B. Marar, Adv.
Mr. Lakshmi N. Kaimal, Adv.
Mr. K.L. Taneja, Adv.
Mr. Anuj Dixit Kaushik, Adv.

Mr. Satpal Singh, Adv.
Mr. D.K. Chaubey, Adv.

Mr. M.Y. Deshmukh, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Mr. Rajiv Kumar, Adv.
For Ms. Kusum Chaudhary, Adv.

Mr. Nipun Goel, Adv.
Mr. Jatin Zaveri, Adv.

Mr. Ankur Saigal, Adv.
Mr. Vikrant Pachnanda, Adv.

Ms. Vanshaja Shukla, Adv.
Mr. Annirudh Sharma, Adv.

Mr. Gaurav Agrawal, Adv.
Mr. Garvesh Kabra, Adv.
Mr. Vijay Kumar, Adv.
Mr. Nikhil Nayyar, Adv.
Ms. Anagha S. Desai, Adv.
Ms. Chandan Ramamurthi, Adv.
Mr. A. Venayagam Balan, Adv.
Ms. Charu Mathur, Adv.
Mr. H. Chandra Sekhar, Adv.
Mr. Nikhil Goel, Adv.
Mr. Bankey Bihari Sharma, Adv.
Mr. Sarad Kumar Singhania, Adv.
Mr. Harish Pandey, Adv.

Ms. Pragya Baghel, Adv.

Mr. M.J. Paul, Adv.
Mr. Anirudh Sanganeria, Adv.
Mr. Mukul Kumar, Adv.

Mr. E.C. Agrawala, Adv.
M/s. Temple Law Firm, Advs.
Ms. Garima Prashad, Adv.
Mr. Atul Babasaheb Dakh, Adv.
Mr. Santosh Krishnan, Adv.
Mr. Vineet Bhagat, Adv.
Mr. K. Krishna Kumar, Adv.
Mr. Chirag M. Shroff, Adv.
Mr. Yadav Narender Singh, Adv.

For Respondent(s) Mr. Shekhar Naphade, Sr. Adv.
Mr. Krishan Kumar, Adv.
Mr. Abhay N., Adv.
Mr. Vinay Navare, Adv.
Mr. Satyajeet Kumar, Adv.
Mr. Keshav Ranjan, Adv.
Ms. Gwen K.B., Adv.
For Ms. Abha R. Sharma, Adv.

Mr. B.B. Sawhney, Sr. Adv.
Mr. Yashank Adhyaru, Sr. Adv.
Ms. Sunita Sharma, Adv.
Ms. Sadhana Sandhu, Adv.
Mr. T.N. Razdan, Adv.
Mr. R.K. Verma, Adv.
For Ms. Sushma Suri, Adv.
Mr. Shreekant N. Terdal, Adv.

Mr. Chimay Khaladkar, Adv.
Mr. Deeptakirti Verma, Adv.
Ms. Neha Sharma, Adv.

Mr. Chand Qureshi, Adv.
Mr. Ashok Kumar Juneja, Adv.
For Mr. Irshad Ahmad, Adv.

Mr. Shekhar Naphade, Sr. Adv.
Mr. Krishan Kumar, Adv.

Mr. Shekhar Naphade, Sr. Adv.
Ms. Shubhangi Tuli, Adv.
Mr. Shivaji M. Jadhav, Adv.
M/s. S.M. Jadhav & Company, Advs.

Mr. Arjun Krishnan, Adv.

Mr. Manish Pitale, Adv.
Mr. Shiv Ram Pandey, Adv.

Mr. Gaurav Sharma, Adv.
Mr. Prateek B., Adv.

Mr. Lalit Bhasin, Adv.
Ms. Nina Gupta, Adv.
Mr. Mudit Sharma, Adv.
For Mr. P.V. Yogeswaran, Adv.

Mr. Siddhesh Kotwal, Adv.
Mr. Annirudh Sharma, Adv.
For Mr. Nirnimesh Dube, Adv.

Mr. Kunal A. Cheema, Adv.
Mr. Nishant Katneshwarkar, Adv.

Mr. D. Banerjee, Adv.
Mr. Jasmeet Singh, Adv.
Mr. A. S. Aman, Adv.
For M/s. Karanjawala & Co., Adv.

Ms. Anne Mathew, Adv.
Mr. Raj Kumar Kaushik, Adv.
For Mr. P.S. Sudheer, Adv.

Mr. Anuj Sharma, Adv.
Ms. Niharika, Adv.
For M/s. K.J. John & Co., Adv.

Mr. Arun Aggarwal, Adv.
Mr. Anil Rai, Adv.
Mr. Sandeep Lamba, Adv.

Mr. D. Bharat Kumar, Adv.
Mr. Sayooj Mohandas M., Adv.
Mr. T. Baskar Gowtham, Adv.
Mr. Abhijit Sengupta, Adv.

Mr. Rajeev K. Panday, Adv.
Mr. Rajeev Maheshwaranand Roy, Adv.

Ms. Praveena Gautam, Adv.
Mr. Deepak Tyagi, Adv.
Ms. Pusshp Gupta, Adv.

Mr. Ankur Prakash, Adv.

Mr. Suresh Dutt Dobhal, Adv.

Ms. Rajani K. Prasad, Adv.

Mrs. N. Annapoorani, Adv.

Mr. Praveen Chaturvedi, Adv.

Ms. Anuradha Mutatkar, Adv.

Mr. H.S. Parihar, Adv.

Mr. Uday B. Dube, Adv.

Mr. Niraj Sharma, Adv.

Mr. M.T. George, Adv.

Mr. Anil Kumar Mishra, Adv.

Mr. D.M. Nargolkar, Adv.

Mr. Piyush Sharma, Adv.

Mr. B. Subrahmanya Prasad, Adv.

Mr. V.N. Raghupathy, Adv.

Mr. Rajiv Shankar Dvivedi, Adv.

Ms. Hemantika Wahi, Adv.

Mr. S.N. Bhat, Adv.

Mr. Rajesh Mahale, Adv.

Mr. Anup Jain, Adv.

Mr. Aniruddha P. Mayee, Adv.

UPON hearing the counsel the Court made the following

O R D E R

W.P. (C) 103 of 2012

The Writ Petition is disposed of as withdrawn in terms of the signed order.

Civil Appeal No. 1468 of 2010

The Civil Appeal is disposed of in terms of the signed order.

Rest of the matters :

Application of SARAFESI Act to Cooperative Banks is the issue which arises for consideration in these cases. The notifications issued under the SARAFESI Act and an amendment with regard to the Multi-State Cooperative Societies are also under challenge in these cases. Regarding "The Enforcement of

Security Interest and Recovery of Debts Laws (Amendment) Act, 2012", there is a three-Judge Bench decision in Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex (P) Ltd. and Others reported in (2007) 6 SCC 236, wherein a specific finding has been given in paragraph 89 which reads as under :-

".....the cooperative banks performing functions for the public with a limited commercial function as opposed to corporate banks cannot be covered by Entry 45 of List I dealing with "banking". The subject of cooperative societies is not included in the Union List rather it is covered under Entry 32 of List II of the Seventh Schedule appended to the Constitution."

In paragraphs 97 and 98, it has been held as follows :-

"97. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant Statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, we answer the Reference as under:-

"Co-operative banks" established under the Maharashtra Co-operative Societies Act, 1960 [MCS Act, 1960]; the Andhra Pradesh Co-operative Societies Act, 1964 [APCS Act, 1964]; and the

Multi-State Co-operative Societies Act, 2002 [MSCS Act, 2002] transacting the business of banking, do not fall within the meaning of "banking company" as defined in Section 5 (c) of the Banking Regulation Act, 1949 [BR Act]. Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [RDB Act] by invoking the Doctrine of Incorporation are not applicable to the recovery of dues by the co-operatives from their members."

98. The field of co-operative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Co-operative Banks constituted under the Co-operative Societies Acts enacted by the respective States would be covered by co-operative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India"

However, regarding the entry of 'banking', a contrary view is taken by three-Judge Benches of this Court in Delhi Cloth & General Mills Co. Ltd. Vs. Union of India (1983) 4 SCC 166, T. Velayudhan Vs. Union of India (1993) 2 SCC 582 and Union of India Vs. Delhi High Court Bar Association (2002) 4 SCC 275.

These decisions are unfortunately not referred to in Greater Bombay (Supra).

In the above circumstances, we feel that it would be more appropriate if the issues raised in these Writ Petitions/Special Leave Petitions/Appeals before us are considered by a larger Bench.

In some of the cases before us, initially there was a blanket stay which we had modified subsequently to the effect that borrowers should pay at least 50% of the current dues. The learned counsel for the Indian Banks' Association made an anxious submission that several High Courts in the country are granting blanket stay of recovery on the basis of the earlier interim orders passed by this Court.

It would be open to the counsel concerned to bring this fact to the notice of the High Courts concerned so that blanket stay, if any, granted by the High Courts can be modified appropriately in terms of the orders passed by this Court for payment of 50% of the current dues as a condition for stay/confirmation of stay.

We, therefore, refer the matters to a larger Bench. The Registry is directed to place the matters before Hon'ble The Chief Justice of India so that the issues, as abovesaid, may be considered and decided by a larger Bench.

(Jayant Kumar Arora)
Sr. P.A.

(Sneh Bala Mehra)
Assistant Registrar

(Signed orders in WRIT PETITION (C) No. 103 OF 2012 and CIVIL APPEAL NO. 1468 OF 2010 are placed on the file)