

CASE NO.:
Appeal (crl.) 1265-66 of 2004

PETITIONER:
Arvind Mohan Johari and Anr.

RESPONDENT:
State of U.P. and Anr.

DATE OF JUDGMENT: 04/05/2005

BENCH:
N. Santosh Hegde & D.M. Dharmadhikari & S.B. Sinha

JUDGMENT:
JUDGMENT

ORDER

IN

(Criminal Misc. Petition Nos. 47-48 of 2005.)

These applications have been filed for clarification and/or recalling an order dated 3.11.2004 passed by this Court in Criminal Appeal Nos.1265-66 of 2004 whereby and whereunder the respective applicants were directed to deposit the money lying in the credit of the Appellants herein.

The said applications have been filed in the following circumstances. The Appellants floated various groups of companies including one known as 'M/s Century Consultants Ltd.' Two criminal cases were initiated against them arising out FIR No. R.C. No. 8(S)/2001 to R.C. No. 12(S) of 2001/CBI, Lucknow dated 6.7.2001 and R.C. No. 15(S)/2001 to R.C. No. 18(S)/2001/CBI, Lucknow dated 6.7.2001; one relating to transactions in respect of M/s Country Inform Tech Pvt. Ltd. and another in relation to M/s Century Consultants Ltd.. M/s Century Consultants Ltd. has since been directed to be wound up in a winding up proceeding by the learned Company Judge.

In the aforementioned criminal proceedings, the Appellants prayed for grant of bail which was rejected whereagainst these appeals were preferred. The Appellants before us had contended that they would have no objection if the assets held and possessed by them are sold for payment to the depositors of M/s Century Consultants and M/s City Cooperative Bank Ltd. It was contended that the amounts of Rs. 17 Crores and Rs. 13 Crores were lying with the Bombay Stock Exchange and National Stock Exchange respectively. It was further urged that the amounts lying with the Stock Exchanges stand admitted in their written statements filed in Civil Suit No. 312 of 2002.

The Bombay Stock Exchange now contends that the aforementioned two contentions raised on behalf of the Appellants herein were not correct. In this behalf, our attention has been drawn by Mr. Dushyant A. Dave, learned senior counsel appearing on behalf of Bombay Stock Exchange, to the following statements: :

"(ii) That in the instant case, the Century Consultant Ltd., during the period from 15th March 2001 to 23rd March 2001 had failed to make payments to the Exchange towards their settlement obligations in respect of the Rolling as well as Weekly settlement on the respective pay-in dates. The said member initially failed to pay its pay-in obligation pertaining to the Rolling Settlement No. 241/00-01 (Pay-in date was 16th March 2001) and thereafter had committed defaults in paying its obligations in subsequent Rolling Settlements as well as Weekly Settlements on the respective Pay-in dates as under :

Settlement No.	Trading Pay-in date	Amount (Rs.)	
DR-241/00-01	09.03.01	16.03.01	3,70,26,753.00
DR-242/00-01	12.03.01	19.03.01	2,53,13,535.00
DR-243/00-01	13.03.01	20.03.01	2,02,24,601.00
DR-244/00-01	14.03.01	21.03.01	2,67,24,553.00
DR-245/00-01	15.03.01	22.03.01	27,45,540.00
DR-246/00-01	16.03.01	23.03.01	3,03,01,237.00
DR-51/00-01	12.03.01	22.03.01	4,27,89,326.00
(Weekly)	to		
16.03.01			
DR-52/00-01	19.03.01	29.03.01	13,31,602.00
(Weekly)	to		
23.03.01			

xxx

xxx

xxx

(vi) Though the Century Consultants Ltd. failed to meet its obligations in the aforesaid settlements, the Exchange being bound to ensure timely completion of the bona fide transaction of the members of the Exchange inter se in the aforesaid settlements as per its Rules, Bye-laws and Regulations of the Exchange. As at the relevant time, the securities and margin deposits furnished by Century Consultants Ltd., to avail the trading facility, was sufficient to meet their liabilities in the aforesaid settlements, the Exchange completed the Pay-out in the aforesaid Settlements by utilizing same as provided in its Rules, Bye-laws and Regulations. As these aforesaid Pay-out was to be made/completed on their respective Pay-out dates and as the realization/liquidation of the collateral Securities/guarantees would take some time to receive the payment, the Exchange fulfilled the above obligations of the Century Consultants Ltd. initially from the funds of the Exchange. Thereafter the collateral securities/guarantees provided by the Century Consultants Ltd. were liquidated in accordance with the Rules, Bye-laws and regulations of the Exchange and recouped the same. Accordingly, the Exchange fulfill the Pay-in obligations of the Century Consultant Ltd., in the aforesaid Settlements amounting to Rs. 21,06,72,837.00 including the value of short delivery of shares by the Century Consultants Ltd., in the above Settlements out of the collateral securities/guarantees provided by the Century Consultants Ltd. As such, there are no assets of the Century Consultant Ltd., lying with the Applicant Exchange by way of bank guarantee, security margin money etc. amounting to Rs. 17 crores as alleged before this Hon'ble Court. The Exchange respectfully says and submits that on the other hand Century Consultant Ltd., are required to pay to the Exchange an amount of approximately Rs. 18.14 crores towards their liabilities on account of non-payment of arbitration awards obtained by other members/clients, arbitration fees, debit balance with Clearing House, Transaction Guarantee Fund (TGF) etc. as per Rules, Bye-laws and Regulations of the Exchange. The Exchange has also from time to time apprised SEBI about default of Century Consultants Ltd. in making Pay-in obligations in the aforesaid settlements and completion of settlements as stated herein above."

It is urged that the Appellants herein were aware of the said proceedings as in relation thereto show cause notices had been served upon M/s Century Consultants Ltd. Mr. Dave would further contend that in the said suit even no written statement was filed by the Bombay Stock Exchange, as alleged by the Appellants.

Mr. J.L. Gupta, learned Senior Counsel appearing on behalf of the National Stock Exchange, would submit that although written statement had been filed by the National Stock Exchange in the aforementioned suit but it had

categorically been contended therein :

"The Defendant No. 1 traded on the Defendant No. 3 and had cleared all its settlement dues up to Settlement No. W 2001045 (pay in date March 13, 2001). It is submitted that the Defendant No. 1 did not pay subsequent settlement and other obligations to Defendant No. 3 and National Securities Clearing Corporation of India Ltd. (NSCCL), a subsidiary company of Defendant No. 3 amounting Rs. 18,94,80,836.52. Out of the said sum, an amount of Rs. 10,80,74,719.54 was adjusted against from the security deposits, bank guarantee invocation amounts, sale of securities and release of margins and other amounts lying to the credit of Defendant No. 1 still leaving a balance liability of Rs. 8,14,06,116.98 due from Defendant No. 1 to Defendant No. 3 and NSCCL. Therefore, it is clear from the above that the claim of the Plaintiff in para 8 of the plaint that the Defendant No. 1 paid Rs. 30 crores towards purchase of shares and that Rs. 30 crores is lying with the Defendant No. 3 is completely false. Thus, the very basis of the claim of the Plaintiff is false and there is no cause of action in favour of the Plaintiff."

In the counter affidavit filed by the Appellants to the said applications, the said contentions raised in the said applications were denied and disputed, Mr. Swaraj Kaushal and Mr. D.K. Gupta, learned counsel appearing on behalf of the Appellants would contend that the question as to whether the respective Stock Exchanges were entitled to debit the amounts of Rs. 21 Crores and 17 Crores respectively towards their purported claim should be directed to be scrutinized by us by a Chartered Accountant. According to the learned counsel, the Bombay Stock Exchange and National Stock Exchange have raised frivolous pleas in support of the applications and in that view of the matter, it would be proper to determine the dispute between the parties.

It is not in dispute that this Court passed the aforementioned order dated 3.11.2004 granting bail to the Appellants herein relying on or on the basis of the representation made by them that all endeavours would be made to disburse to the claimants realise as much amount as possible from the personal and other assets of the Appellants by putting them on sale or otherwise. It was with that end in view, this Court directed :

"The National Stock Exchange and the Bombay Stock Exchange are directed to deposit the money lying in the credit of the Company/Appellants as early as possible subject to the determination of the pending enquiry by SEBI. If any enquiry is pending, SEBI shall dispose of the same as expeditiously as possible."

This Court directed release of the Appellants herein on bail on the conditions mentioned therein and issued several directives in exercise of its jurisdiction under Article 142 of the Constitution of India to do complete justice to all the parties. While considering application for grant of bail in a criminal case, this Court ordinarily cannot determine a dispute between the parties wherefor forums have been created under the statutes.

It appears that the recoveries have been directed to be made by the Stock Exchanges in exercise of their power conferred upon them under the bye-laws governing the parties. Furthermore, several arbitration awards are said to have been passed in favour of the clients/investors and the members of the Stock Exchanges. The parties, therefore, must get their disputes determined in an appropriate forum.

The fact, however, remains that no amount as such is admittedly payable by the applicants Stock Exchanges. In their respective applications, as indicated hereinbefore, the Applicants had stated that they, in fact, would

be entitled to realize a huge amount from the Appellants. In that view of the matter, we are of the opinion that the Appellants misled this Court in passing the said order dated 3.11.2004 by raising contention to the effect that a sum of Rs. 17 Crores and 13 Crores are admittedly lying with the Bombay Stock Exchange and National Stock Exchange in the shape of bank guarantee money and securities margin money etc.

It is true that the prayers made by the Applicants herein in their applications are confined to the directions issued against them but we are of the opinion, having regard to the peculiar facts and circumstances of this case, that if a substantial sum lying with them are not available for disbursement to the claimants, the very purpose for enlarging the Appellants herein on bail would not be subserved and in that view of the matter the order dated 3.4.2004 granting bail to the Appellants herein should be recalled. Accordingly, the Appellants, Arvind Mohan Johari and Anand Krishna Johari are hereby directed to surrender before the Trial Court within one week from date whereupon they may be taken into custody. If and when the disputes between the Stock Exchanges and the Appellants are adjudicated upon by a competent forum and/or court of law, as a result whereof the Appellants would be in a position to repay the outstanding dues of the claimants, namely, M/s City Cooperative Bank Ltd. and M/s Century Consultants Ltd., they may apply for grant of bail afresh.

These applications are disposed of with the aforementioned observations and directions.