

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

PETITIONER:
Arvind Mohan Johari & Anr.

RESPONDENT:
State of U.P. & Anr.

DATE OF JUDGMENT: 03/11/2004

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

O R D E R

(Arising out of SLP (Crl.) No.2057-2058 of 2004)

Leave granted.

The Appellants who are two in number allegedly committed various offences of cheating, forgery, etc. in respect whereof two First Information Reports were lodged being 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.

The Appellants floated various groups of companies, viz., M/s. Country Inform Tech. Pvt. Ltd., M/s Kamal Infosys Ltd, M/s. Triputi Financial Services and M/s. Century Consultant Ltd.. Allegedly, once Shri G.N. Srivastava, Secretary, City Cooperative Bank Ltd. in criminal conspiracy with the appellants herein unauthorisedly and fraudulently permitted purchase of nine cheques of aforementioned two groups, viz., Country Inform. Tech. and Kamal Infosys worth of Rs. 1,71,35,000/-. These cheques are said to have been signed by Shri A.K. Johri. Shri Johri allegedly, furthermore, in conspiracy with Shri G.N. Srivastava got prepared a demand draft for Rs. 45.00 lacs from Bombay Mercantile Bank out of the cheques purchased proceeds of Rs. 71,35,000/- on his oral instruction. He also allegedly transferred Rs. 99.00 lacs from the account of Country Inform. Tech. Services at State Bank of Hyderabad, Lucknow and remitted it to Century Consultant Ltd., Mumbai although he was neither Director nor Authorised Signatory in respect thereof. The Appellants herein are said to have got transferred Rs. 1.45 crores out of cheques purchased proceeds of Rs. 1,71,35,000/- to Mumbai and got a pay order prepared for Rs. 99,90,000/- in favour of Century Consultant.

The other case being Criminal Case No. 51 of 2001 relates to M/s. Century Consultants Ltd. in which the Appellants are Directors. They allegedly with Shri A.K. Shah and Pradeep Narain started a scheme known as 'Byaz Badla' in terms whereof they were supposed to deposit the amount received from investors with the Bombay Stock Exchange but did not do it.

By reason of the alleged action on the part of the Appellants and other accused persons, allegedly a large number of depositors who deposited the amount in 'Byaz Badla' Scheme as also the depositors in City Cooperative Bank Ltd. were invested therein suffered a huge loss.

A petition for winding up of the Century Consultants Ltd. was filed. The said Company was directed to be wound up by the learned Company Judge.

The Appellants applied for and were granted a short-term bail by an order dated 25.6.2003 on certain conditions including that they would make payments to the investors who are parties to the compromise with the Directors of Century Consultants in the pending Company Petition by releasing first instalment of 20% amount within two months as first instalment and the second instalment of 20% in the next two months.

The Appellants were enlarged on bail for six months on the following conditions:

- "(i) Accused applicants shall furnish two sureties and a personal bond of the amount of Rs. 1 lac each to the satisfaction of the Special Judicial Magistrate, CBI for a period of six months.
- (ii) Both the accused will file an undertaking on affidavit that they will not leave the jurisdiction of the court without the permission of the court during trial.
- (iii) They will not seek any adjournment during trial on the ground of their ailment or otherwise and they will always either appear personally or they will be represented through their counsel on the date fixed in the trial court.
- (iv) Both the accused will not leave the country without permission of the CBI for which they will furnish an undertaking on affidavit.
- (v) They will surrender their passport and visa, if any, which shall remain in the custody of the CBI. In case the accused do not have any passport and visa, they will make it clear in their affidavits.
- (vi) According to the own statement of the accused, they have assets more than fifty crores of rupees, therefore they will honour the proposed compromise with the depositors and irrespective of the order in the company petition, they will release first instalment of 20% amount within two months by which they will give undertaking on affidavit that they will comply with this condition by 25.8.2003.
- (vii) They will also make payment of second instalment of 20% to the depositors in the next two months i.e. by 25.10.2003 and the third instalment of 20% by 25.12.2003.
- (viii) The payment will be made to the depositors as contained in the list annexed to the compromise."

The aforementioned directions were issued in view the assertion made by the Appellants to the effect that the total amount involved by way of claim of the depositors of City Cooperative Bank Ltd. would be to the extent of Rs. seven crores to Rs. eight crores and so far as depositors of M/s Century Consultants are concerned, the same may be to the tune of Rs. nineteen crores; whereas they hold and possess assets worth to Rs. twenty three to fifty crores.

It was further asserted that if they are enlarged on bail, they would be in a position to make the payment due to the investors by disposing of their properties and assets. The City Cooperative Bank Ltd. and Century

Consultants Investors Welfare Association did not oppose the bail application of the Appellants.

The said order was later on modified in the manner stated hereinafter.

Condition Nos. (ii), (vi) and (vii) were modified by an order dated 11.7.2003 in the following terms:

"(ii) Both the accused will file an undertaking on affidavit, that they will not leave the jurisdiction of the Court without intimating the court concerned by giving address on affidavit.

(vi) The accused \026 applicants will file an undertaking on an affidavit that they will release first instalment of 20% amount within three months to liquidate their debts of the depositors/ investors from the assets shown in para \026 6 of the supplementary affidavit of Shri Mohit Lal dated 7.7.2003.

(vii) They will also undertake that they will make payment of second instalment of the other 20% amount due to the depositors/ investors as per compromise with the investors' association in the next three months i.e. by 25.12.2003."

On an application filed by the City Cooperative Bank Ltd. conditions No. (vi), (vii) and (viii) were further modified by an order dated 9.10. 2003 in the following terms.

"(vi) The accused-applicants will file an undertaking on an affidavit that they will release first instalment of 20% amount within the period prescribed earlier to liquidate their debts of all the depositors/investors whether they are depositors of Century Consultant Limited or they are account holders in City Cooperative Bank from the assets shown in para of the supplementary affidavit of Shri Mohit Lal dated 7.7.2003.

(vii) They will also undertake that they will make payment of second instalment of other 20% amount due to all the depositors/ investors either of the Century Consultant Limited or the City Cooperative Bank irrespective of the list annexed to the compromise within a period prescribed earlier on 11.7.2003.

(viii) The payment will be made as indicated above to all individual depositor/investor except the financial institutions notwithstanding their names find place in the list of the investors association or not".

However, the prayer of the Bank for direction to make payment to its depositors only through it was rejected.

A Special Leave Petition was filed thereagainst which was marked as CrI. MP NOs. 9881-9882/2003 wherein the Appellants herein were restrained from operating the Bank account and parting with the assets and properties of the Society.

The period of six months for which the interim bail was granted in the meantime elapsed and the Appellants filed applications for regular bail. The

said bail applications having been rejected, the Special Leave Petition filed by the City Cooperative Bank Limited became infructuous and it was dismissed as such by this Court by an order dated 27.04.2004.

This appeal is directed against the order dated 23.04.2004 refusing regular bail to the Appellants.

Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the Appellants in support of the appeal would submit that from the records it would appear that despite directions by the Court in its order dated 23.3.2004 to complete the trial within six months the same has not complied with as dilatory tactics were adopted by the CBI. The learned counsel would contend that the Appellants have no objection if from the assets held and possessed by them the depositors of Century Consultants and the City Cooperative Bank Ltd. are paid their dues on a pro-rata basis. The Appellants, furthermore would have no objection, Mr. Sorabjee would argue, if the depositors of the City Cooperative Bank are paid through the Bank itself.

A supplementary affidavit has been filed on behalf of the Appellants herein wherein it is stated that the value of the assets seized by CBI, as would appear from a report filed before the Registrar of Companies in the winding up petition pending with the Allahabad High Court is Rs. 19.75 crores. Furthermore, an amount of Rs. 17 crores and Rs. 13 crores are allegedly lying with the Bombay Stock Exchange and National Stock Exchange respectively in the shape of bank guarantee money, securities margin money, etc. A suit for injunction was filed by the Investors Forum of Century Consultants Ltd. at Lucknow as Civil Suit No. 312 of 2002 praying for an order restraining the CBI from releasing the said amount. In the said suit, National Stock Exchange and Bombay Stock Exchange have filed their written statements admitting that the said monies are lying to the credit of the company but the CBI has asked them not to release or disburse these amounts in view of a pending Securities and Exchange Board of India (SEBI) inquiry into the transactions entered into by the Appellants during the period January, February and March, 2001. The Appellants have also liquid assets of Rs. 2.56 crores as stated at paragraphs (a) to (h) at pages 240-242 of the Paper Book, Vol. I.

Out of the said assets of Rs. 2.56 crores, a sum of Rs. 1.45 crores were realized by the Appellants in the shape of release of demat accounts, fixed deposits, money from one debtor, release back of money by the CBI. Out of it, they had disbursed Rs. 81.75 lakhs to 629 investors and a sum of Rs. 65 lakhs are lying with them which could not be disbursed on account of the restraint order passed by this Court.

Furthermore, a sum of Rs. 5.45 crores are owing to them from various debtors, the details whereof are at pages 111-113 of the Paper Book, Vol. I. They have furthermore more than 100 bank accounts which have been seized by the CBI, the details whereof are at pages 242-243 of the Paper Book, Vol. I. Besides that, they are said to be in possession of the following personal assets, as contended in an Additional Affidavit.

"(i) The residential house belonging to the Joint Hindu Family of G.N. Johri at 14, Prem Nagar, Lucknow has also been seized by the CBI. The value of the said house is approximately Rs. 50 lakhs. CBI has wrongfully attributed this residential house in the names of the Petitioners. Later on the CBI has released the house only for the purpose of its residential use and has restrained the Petitioners from alienating the house.

(ii) The Petitioners hold at an average of nearly 5% equity each in Century Consultants Ltd. and in other group companies in their individual status.

(iii) The Petitioners hold 12% equity share in lease-hold plot of Carlton Hotel, Lucknow and 12% in equity partnership of Carton Hotel in their personal capacity.

(iv) The Petitioners have given unsecured loans to almost all the group companies and firms for exigencies of business and the same are outstanding as on date.

(v) The Petitioners hold investments in secured bonds of Century Consultants Ltd. and in fixed deposits of Cyber Space."

The details of the said assets and the bank accounts allegedly are not available to the Appellants as the same have been seized by the CBI. The Appellants have furthermore inter alia contended that they have no objection if payments are made to the investors of the Century Consultants Investors Welfare Association and the depositors of City Cooperative Bank upon proof thereof. It has been further urged :

"However, it is most respectfully submitted that in order to disburse these amounts and satisfy these claims, it is essential that the properties which have been seized by the CBI may be released and be placed at the disposal of the Company Court which may issue appropriate directions for their protection and realization in order to meet the established claims of the creditors. The Company Court may appoint a Presiding Officer who may take requisite steps for this purpose.

The Petitioners submit that the Company Court may disburse the established claims of the depositors of the City Cooperative Bank to the depositors directly or through the City Cooperative Bank as this Hon'ble Court may be pleased to direct.

The Petitioners submit that they are willing to abide by all directions of this Hon'ble Court in the above matter as this Hon'ble Court may deem fit to issue."

Intervention applications have been filed by Century Consultants Investors Welfare Association, Satya Prakash Choudhary and City Cooperative Bank Depositors Welfare Association through Ashok Sur.

Having heard the learned counsel for the parties, we are of the opinion that no fruitful purpose would be served by keeping the Appellants in continued detention.

We are further of the opinion that all endeavours should be made to realise as much amount as possible from the personal and other assets of the Appellants by putting them on sale or otherwise. For the aforementioned purpose, we direct :

1. All the amounts seized by CBI shall forthwith be placed at the disposal of the learned Company Judge.
2. The Appellants herein shall also furnish details of their personal assets as also the list of its creditors and the bank accounts. Bank accounts of the Appellants seized by the CBI shall be released and the amount lying in the banks to the credit of the Appellants shall also be deposited before the Company Judge.

3. The personal assets of the properties shall be sold in such a manner as the learned Company Judge deems fit and proper but endeavours should be made to see that the maximum price is fetched as far as possible by selling the said properties.

4. 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 determination of the pending enquiry by SEBI. If any enquiry is pending, SEBI shall dispose of the same as expeditiously as possible.

5. Steps be taken by the learned Company Judge to direct the banks in which the Appellants have accounts to remit the money lying in their credit to the court.

6. In fine, all the assets whether movable or immovable including shares, debentures, promissory notes, etc. lying with the Appellants themselves or with their creditors or any other persons or authorities including CBI shall be placed at the disposal of the learned Company Judge.

7. A bank account shall be opened in a nationalized bank by the learned Company Judge which may be operated by such person or persons as may be authorized by it.

8. All the depositors including the depositors of the City Cooperative Bank shall file their claims before the Company Judge and in case of any dispute, the claimants would be given opportunities to establish such claims.

9. In order to disperse of claims of the creditors, the learned Company Judge may appoint such number of Presiding Officer or Officers as may be necessary for effectuating realisation of the amount by sale of the properties and disbursement thereof as well as disposal of the claims as may be found to be necessary. For the said purpose requisite direction(s) shall be issued by the learned Company Judge as regard realization and disposal of the assets including sale of the movable or immovable properties, if any.

10. The City Cooperative Bank shall within a week from today shall file the statement of claims in respect of the depositors before the learned Company Judge.

The claims of the City Cooperative Bank shall have preference over the claims of the others. The depositors of City Cooperative Bank on establishing their claims, shall be paid through the City Cooperative Bank.

11. In the event, the amounts and the assets lying at the disposal of the learned Company Judge are found to be insufficient to satisfy all the claims, subject to the preference given to the City Cooperative Bank, the claimants shall be paid on a pro-rata basis.

12. All claims which are pending before the learned Company Judge shall be deemed to have been filed pursuant to this order.

13. The depositors in relation to City Cooperative Bank shall through the Bank or otherwise file their claims within one month from the date of communication of this order for which the City Cooperative Bank shall duly notify the depositors therefor.

14. It will be open to the City Cooperative Bank Depositors Welfare Association and Century Consultants Investors Welfare Association to represent their respective members before the Company Judge or such presiding officer(s) as may be appointed in this behalf.

15. All further proceedings pending before any Court in relation to the claim of the depositors both in relation to the Company and City

Cooperative Bank shall remain stayed.

16. The Company Judge is hereby requested to supervise the proceedings wherefor he would be entitled to issue such direction or directions to the Presiding Officer, he may deem fit and proper. It will also be open to the learned Company Judge to issue a general direction by way of guidelines.

17. The Appellants herein, the CBI, the City Cooperative Bank and the official liquidator are hereby directed to render all cooperation to the learned Company Judge for smooth conduct of the proceedings.

18. The Appellants herein shall be entitled to scrutinize the Books of Accounts and other records and documents which have been seized by the CBI for the purpose of assisting the learned Company Judge in finding out their assets and debts in presence of the officer authorized in this behalf. They are also permitted to take notes from the respective Books of Accounts and other records and documents.

19. While disbursing the claims, the learned Company Judge or the Presiding Officer(s) shall take into consideration the fact that some persons have already received some amount from the Appellants herein in terms of the order of the High Court dated 25.6.2003 as modified on 11.7.2003 and 9.10.2003.

20. All Courts, Tribunals and Statutory Authority are hereby directed to produce all documents and papers which are in their power and possession in accordance with law, as and when called for by the learned Company Judge or the Presiding Officer(s) appointed in terms of this order.

The learned Chief Justice of the High Court is requested to place at the disposal of the learned Company Judge services of such number of officers and other employees as may be asked for by the learned Company Judge. The High Court shall also consider the desirability of placing services of such number of judicial officers as may be found to be necessary for expeditious disposal of the claim cases as also for other purpose, if any order in this behalf is passed by the learned Company Judge.

It would be open to the learned Company Judge to avail the services of official liquidator as also lawyers and their remuneration may be fixed by the learned Company Judge which would be realized from the assets of the Appellants.

We are conscious of the fact that such directions could not have ordinarily been issued by this Court while disposing of a bail application but keeping in view the fact that the Appellants herein had been released on interim bail in terms of the order dated 25.6.2003 on conditions and steps had already been taken to pay to the depositors their dues, we have issued the aforementioned directions in exercise of our power under Article 142 of the Constitution of India to do complete justice to all the parties.

The parties shall be at liberty to approach this Court for any clarification or direction or directions, if any occasion arises therefor.

The Appellants herein shall be released on bail on furnishing personal bonds of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Special Judicial Magistrate, CBI subject to the following conditions:

- (i) They would surrender their passports before the Special Judicial Magistrate, CBI.
- (ii) They would also file an undertaking that they would not leave the jurisdiction of the court without its prior permission.
- (iii) They shall, save and except for cogent reasons, shall appear before the Court on each and every date of hearing.
- (iv) They shall not intimidate the witnesses nor interfere in any manner the trial.

(v) They shall not do any act or acts or things which may delay the disposal of the criminal cases.

(vi) They shall render all cooperation to the learned Company Judge and the Presiding Officer.

These Appeals are disposed of with the aforementioned directions. There shall be no order as to costs.

JUDIS