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CENTRAL BANK OF INDIA
v.
STATE OF GUJARAT & ORS.

SEPTEMBER 11, 1987

B

[RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Code of Civil Procedure—0.41, r. 5(1)—Exercise of power to stay execution of a decree—When an amount has been deposited pursuant to an order of execution the appellate court cannot order its refund to the judgment-debtor.

C

The respondent filed a first appeal in the High Court against a decree and an application for stay of its operation. Before any order was made in the stay application, the appellant, who was the decree-holder, levied execution, pursuant to which the respondent deposited the decretal amount in the executing court. The respondent moved the High Court for an order stay of further proceedings in execution. The High Court passed an order of stay in the application already pending before it and directed refund of the amount deposited in the executing court to the respondent. The appellant challenged the order of refund.

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Allowing the appeal,

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HELD: In the absence of an order of stay under O.41, r. 5(1) C.P.C., the decree was executable and the judgment-debtor deposited the decretal dues in the executing court. Once the decretal dues had come into the executing court there was indeed no justification for the direction to refund the same to the judgment-debtor. On the other hand, the High Court could in its discretion either direct payment of the amount to the decree-holder subject to terms safeguarding the interest of the judgment-debtor in the eventuality of reversal of the decree or direct the amount to be deposited or invested on terms of interest so that on the disposal of the First Appeal appropriate directions could be given. [108D-F]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2200 of 1987.

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From the Judgment and Order dated 11/23.4.1986 of the Gujarat High Court in C.A. No. 953 of 1985.

Soli J. Sorabjee, M.V. Singhvi, Mrs. Manik Karanjawala, N.J. Mehta, R.F. Nariman, D.M. Shah and Rajan Karanjawala for the Appellant. A

Dr. Y.S. Chitale, T.U. Mehta, P.H. Parekh, Suresh Daluja, M.N. Shroff and Girish Chandra for the Respondents. B

The following Order of the Court was delivered:

O R D E R

Special leave granted.

Ordinarily in a matter of this jurisdiction under Article 136 of the Constitution would not have been permitted to be invoked but having heard learned counsel for the parties we are of the view that in the facts and circumstances of this matter, the order of the High Court should be reversed by allowing the appeal. C

The appellant, a nationalised Bank, obtained a decree in Civil Suit No. 1169 of 1977 from the City Civil Court at Ahmedabad against several defendants including the State of Gujarat. So far as the defendant-State is concerned, the decree ran thus:- D

“The suit is partly decreed against the defendant No. 3 and the defendant No. 3 is ordered to pay Rs.59,69,422.59 to the plaintiff with interest at the rate of 6% from the date of the suit till realisation of the amount by the plaintiff. The defendant No. 3 shall pay the proportionate costs of the suit to the plaintiff and bear its own

The State of Gujarat has filed a First Appeal in the High Court of Gujarat being First Appeal No. 1993 of 1983 against the decree and it is pending disposal. An application for stay of execution of the operation of the decree was filed by the State of Gujarat being C.A. No. 953 of 1985 but before any order was made thereon, the appellant decree-holder levied execution of the decree in Execution Application No. 240 of 1985. On 5th of March, 1986, the State Government deposited the decretal amount of Rs.88,92,280 in the Executing Court and moved the High Court for an order of stay of further proceedings in execution and for restraining the decree-holder from withdrawing the amount from the Executing Court by alleging that in the event of E
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- A reversal of the trial court's decree in appeal it would be difficult for the State Government to recover the amount. On 21st of March, 1986, the High Court passed an order of stay of execution in the pending application, C.A., 953 of 1985, and on the 23rd of April, 1986, the impugned order was made directing refund of the amount deposited by the State Government in the Executing Court. Challenge is to the order directing refund.

Order 41 Rule 5(1) of the Code of Civil Procedure provides:-

- C "An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation"

- D In the absence of an order of stay the decree was executable and the judgment-debtor deposited the decretal dues in the Executing Court. Once the decretal dues had come into the executing court there was indeed no justification for the direction to refund the same to the judgment-debtor. On the other hand, the High Court could in its discretion either direct payment of the amount to the decree-holder subject to terms safeguarding the interest of the judgment-debtor in the eventuality of reversal of the decree or direct the amount to be deposited or invested on terms of interest so that on the disposal of the First Appeal appropriate directions could be given.

- F In the impugned order which in the setting of the matter appears to be long one, the High Court has referred to many aspects which perhaps were not necessary but we do not propose to go into the same. We allow the appeal, reverse the order of refund and direct that the amount shall be paid to the decree-holder subject to the condition that in the event of the decree of the trial court being reversed the appellant-Bank would redeposit the amount in the executing court within two weeks of the date of the reversal along with 18 per cent of interest on the amount from the date the money is withdrawn till the date of depositing. The appellant is a nationalised bank and we see no justification to demand any security from it. There will be no order for costs.

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Learned counsel for the State of Gujarat contended that the State is facing acute drought condition and is looking for funds to meet the emergency. This of course was stated as a ground in support of the plea that the refund directed by the High Court should not be reversed. In case the State looks for funds, we are sure, the appellant-Bank would consider favourably the request for accommodation on appropriate terms. **A**

H.L.C.

Appeal allowed. **B**