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INDIAN BANK

V.

GODHARA NAGRIK COOP CREDIT SOCIETY LTD. &
ANR. ETC. ETC.

I.A. No. 1 In Civil Appeal No. 3303 of 2005

B

MARCH 24, 2009

(S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ)

BANKS/BANKING:

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Indian Bank – Scam pertaining to FDs of Co-operative Societies/Cooperative Banks – Directions given by Supreme Court in its judgment dated 16.5.2008 – Clarification of – HELD: Direction contained in Para 20 of the judgment to the extent that ‘the bank with the assistance of Officer of the Central*

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Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies and cooperative banks are in no way involved in the scam’, shall not apply to the cases of Indian Bank – Indian Bank, however, in the interest of cooperative societies whose FDRs are lying in deposits and

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who have availed the loan facilities, shall on its own identify and ascertain the societies that are not involved in any CBI investigation/case and on such ascertainment and verification, the cooperative societies-depositors shall be informed regarding the maturity of their FDRs – If the maturity amounts of the FDRs are adjusted against the loan amount advanced

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to the cooperative societies and if there exists any dispute between the depositor-societies and Indian Bank about the recovery or payment of the money, the aggrieved party can get its claim adjudicated through appropriate proceedings before the appropriate forum as permissible under law – If there

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is no dispute in regard to the payment of amount of matured FDRs, Indian Bank shall not debar or preclude the innocent cooperative societies-depositors from taking loan against FDRs being deposited with the Bank – It is made clear that the judgment dated 16.05.2008 shall stand clarified to the

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extent it pertains to the cases of Indian Bank – This clarification will however, not dilute or affect other directions issued in the final judgment. A

**Indian Bank Vs. Godhara Nagrik Coop Credit Society Ltd. & Anr. Etc. etc.2008 (9) SCR 450 = 2008 (7) SCALE 363 – clarified.* B

Case Law Reference

2008 (9) SCR 450 clarified para 3

CIVIL APPELLATE JURISDICTION : I. A. No. 1 In Civil Appeal No. 3303 of 2005 C

From the Judgement and Order dated 01.10.2003 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 258 of 2000. D

WITH

I. A. No. 1 In Civil Appeal No. 3336 of 2005

I. A. No. 1 In Civil Appeal No. 3337 of 2005

I. A. No. 1 In Civil Appeal No. 3338 of 2005 E

Ajay Kumar, Anuradha Dubey Mishra, Vikram, Himanshu Munshi, Pramod B. Agarwala, Praveena Gautam, for the Appellant. F

K. Radhakrishnan, Aniruddha P. Mayee, K.S. Rathod, Sanjeev Kumar Choudhary, Navin Prakash, A Deb Kumar, B.V. Balaram, for the Respondents.

The order of the Court was delivered :

1] Indian Bank has filed these applications praying for clarification of certain directions contained in the final judgment dated 16.05.2008 of this Court in Civil Appeal No. 3303/2005 along with Civil Appeal Nos. 3336, 3337, 3338 and 3304-3335 of 2005. G
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A 2.1] Respondents herein are cooperative societies registered under the Cooperative Societies Act. They deposited certain amounts in cash in fixed deposits of Banks wherefor Fixed Deposit Receipts (FDRs) were to be issued. Such deposits were made through some so-called Commission Agents of the Banks on payment of huge commission which is ordinarily not allowed by the Nationalized Banks.

C 2.2] Applications for grant of loans by various persons were filed before the prescribed authorities of the banks on the basis of the said FDRs. Allegedly a large number of officers of the banks were involved in a scam whereby unofficial investments of the said amount were being made.

D 2.3] As and when the FDRs matured, the investors requested the Banks for their encashment. The banks refused to accede thereto stating that the amount under the FDRs had already been paid by way of loans and, thus, no further amount was payable. It was contended that a fraud on the banks has been practiced to which the depositors and the officers of the banks were parties.

E 2.4] Writ petitions were filed. A learned Single Judge of the High Court opined that serious disputed questions of fact being involved in the said writ petitions, no relief can be granted to the writ petitioners.

F 2.5] Despite the same, the learned single judge relying on the provisions contained in Section 35A of the Banking Regulations Act, 1949 directed constitution of a Committee under the Chairmanship of the Deputy Governor of Reserve Bank of India or his nominee to go into the matter in great details. Various powers were delegated in favour of the Committee including the one that the decision of the Committee shall be final and binding upon the parties.

H 2.5.1] A Division Bench of the said Court in an intra court appeal preferred thereagainst, however, stayed only the operation of some of the clauses of the said order. The Committee, however, was allowed to function.

2.5.2] A special leave petition filed thereagainst has been dismissed by this Court with certain observations. A

2.6] The Committee submitted its report. It was found that principally the officers of the banks were involved in the matter of commission of the alleged fraud on the Banks. B

2.6.1] Members of the Committee, however, differed in their opinion as to whether, having regard to the limited scope of the enquiry, any positive direction could be issued.

2.7] Relying on the report of the Committee, the Division Bench of the High Court opined that as the writ petitioners were not parties to the fraud, subject to any other or further orders that may be passed in the criminal case, appellant-banks should be directed to pay the amounts under the FDRs to the depositors. C

2.8.1] Appellants filed appeals aggrieved by the said order, upon obtaining special leave thereof. D

2.8.2] On 5th April 2004, a limited notice was issued by this Court, which is to the following effect:-

“Issue notice on the special leave petition limited to the question as to whether the High Court should have directed payment having regard to the fact that the Committee itself had not finally resolved the question of liability as far as the disputed amount was concerned. E

Issue notice on the prayer for interim relief also.” F

2.8.3] This Court in its order dated 10th December, 2004 explained the said order stating:

“The issue which is now required to be resolved is a narrow one viz. whether the Committee had finally decided that the amounts payable by the Bank (a) were the liability of the Bank and (b) if so, what was the quantum if any, payable by the Bank to the depositors. Learned Counsel appearing on behalf of the respondent prays for time till after the vacation. G H

A Let the matter appear two weeks after reopening on a miscellaneous day.

There will be interim order staying the operation of the impugned order.”

B 2.8.4] However, by an order dated 9th May, 2005, upon hearing the counsel for the parties, ‘Leave’ was granted, as a result whereof all the contentions of the parties are now open.

C 3] Having heard the learned counsel for the parties at length and having noticed and considered the propositions of law touching the issues involved in these appeals, this Court allowed the appeals with the following directions [see 2008 (7) SCALE 363 paras 18,19,20,21,22,& 23 at pgs. 376-377]:-

D “18. But it is, in our opinion, not a public interest litigation in that sense of the term. The report, however, was not unanimous. The opinion of the Committee was a divided one on the crucial issue. Two members of the Committee were of the opinion that whether the amount deposited by the cooperative banks was received back by them or not, was yet to be ascertained. We are, therefore, of the opinion

E that it cannot be said that the fact finding body, assuming that the same could be constituted, made such recommendations which could be accepted by the Court without going into the merit thereof. It is also not a case

F where any mandatory relief could be granted in favour of the respondents.

G 19. Having however said so, we must pose unto ourselves a further question. Could those cooperative societies which had absolutely no role to play in the entire episode should suffer in any manner whatsoever? The cooperative societies/cooperative banks for the purpose of their day-to-day functioning require the amount which they have invested in FDRs on their maturity. Should they wait till the criminal cases are over? Should they be pushed to institute

H civil suits? They can indisputably be compensated by grant

of interest. What, however, happens if in the meanwhile in the absence of the requisite funds being available to them, they find it difficult to run the day-to-day affairs? A

20. Answers thereto may be difficult to find but it is not a wholly impossible task. We think that the appellant Bank being a 'State' within the meaning of Article 12 of the Constitution of India with the assistance of officer(s) of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies/ cooperative banks are in no way involved with the scam, and subject to such precautions as may be found necessary to be taken, release the amount in their favour. B C

21. In any event, the quantum of the amount which all the depositors would have otherwise received, in the event their investment in FDRs is found to be genuine, should be informed thereabout. Once the liability of the bank is determined, the bank may invest the said amount in its own account and issue fresh FDRs therefor. Whereas the bank may keep the original FDRs with itself, it may issue the duplicate copies thereof to the eligible cooperative bank. Such an exercise should be completed within a period of four weeks from date. D E

22. In the event, the cooperative society intending to avail loan facilities from the banks for running their business, may approach them which may apart from usual conditions release the same on a further condition that the amount of FDR would remain with them and on that basis, loans may be granted of such amount. The usual precautions in regard thereto may also be taken by the Bank(s). F

23. We, while saying so, do not intend to lay down any law. These directions should not be treated to be precedent. We are issuing these directions keeping in view that the factual scenario obtaining in the case and that non-release of the amount is likely to enure hardships that may be faced by the cooperative societies. We would also direct G H

A the criminal court to dispose of the criminal cases pending before them with utmost expedition. These appeals are allowed with the aforementioned directions. There shall, however, be no order as to costs."

B 4] Applicant-Indian Bank by means of these applications submits that this Court has proceeded on the basis that in the Indian Bank matters also there was CBI investigation, but in fact there is no CBI investigation nor there are CBI cases registered or pending in respect of the Indian Bank matters. C The applicant-Bank has averred that in the absence of any case pending against the cooperative societies in the Indian Bank matters except one where FDRs were lost and police case was instituted in which the office bearers of the said society was found to be involved by the police and after filing of the charge sheet, criminal case is pending in the concerned court, there is D no protection of recovery of loan amount by the Indian Bank from the societies, who are not involved in the CBI cases. Further, it is stated that the facts of the cases of Indian Bank and the Bank of Baroda were not similar and identical. It appears that E are pending in which some officers of the Bank of Baroda are involved in the scam without the fault of the cooperative societies who should not suffer and should be paid the FDR amount along with interest.

F 5] The applicant-bank next submits that there is no direction in the judgment of this Court dated 16.05.2008 that the tainted societies will have to file civil suit and the FDRs invested as per the directions of this Court will be subject to the outcome of the suit. It is also submitted that pursuant to the judgment passed by this Court the societies involved in the Indian Bank matters G have raised demand notices calling up the banks to make payment mentioned in the demand notices and if the demand of the societies is accepted then that would amount to double payment without there being any protection to the bank. The applicant-bank also submits that as per its understanding from H the text of the judgment, the bank should proceed on the basis

that if the tainted societies are innocent and thus to inform them in regard to the matured amount as on date and then to invest the said amount in the bank in the form of FDRs. The fate of the invested FDR will be subject to the outcome of the criminal cases as well as civil cases which may be instituted by the societies. The applicant-Bank is aggrieved against the above extracted directions contained in the judgment to the extent that there is no categorical direction that invested FDR amount will be subject to civil or criminal cases.

6] On the above-noted premise, the present applications have been filed seeking clarification of the directions relating to the cases of the applicant-Indian Bank.

7] We have heard learned counsel for the parties.

8] In Para 20 of the judgment, the direction that, Banks and CBI shall sit together and identify cooperative societies which are in no way involved in scam, has been issued on the assumption that CBI has investigated matters pertaining to all cooperative societies and thus innocent societies can be identified and the amount may be paid to them. The submissions of the applicant-Indian Bank pleaded in these applications that there was no CBI investigation/case pertaining to the matters of Indian Bank have not been brought to the notice of this Court at the time of hearing and disposal of the appeals filed by the Indian Bank. Had the correct statement of facts been pleaded and contended by the applicant-Indian Bank at the time of hearing of its appeals, undisputedly there was no occasion for this Court to labour hard for issuing such a direction pertaining to the cases of the cooperative societies-depositors which are not in any way involved in the scam. Thus, applicant-Indian Bank has misrepresented the facts before this Court at the time of hearing of its appeals and now, after realizing its glaring mistakes, these applications have been filed for seeking clarification of the directions contained in Paras 20, 21 and 22 of the original judgment.

9] Now, in the background and on reconsideration of the

A factual situation, the direction contained in Para 20 of the judgment to the extent that 'the bank with the assistance of Officer of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies and cooperative banks are in no way involved in the scam', shall
B not apply to the cases of the Indian Bank. The Indian Bank, however, in the interest of cooperative societies whose FDRs are lying in deposits and availed the loan facilities, shall on its own identify and ascertain the societies who are not involved in
C any CBI investigation/case and on such ascertainment and verification, the cooperative societies-depositors shall be informed regarding the maturity of their FDRs. If the maturity amounts of the FDRs are adjusted against the loan amount advanced to the cooperative societies and if there exists any
D dispute between the depositors societies and the Indian Bank about the recovery or payment of the money, the aggrieved party can get its claim adjudicated through appropriate proceedings before the appropriate forum or court as permissible under law. If there is no dispute in regard to the payment of amount of
E matured FDRs, the Indian Bank shall not debar or preclude the innocent cooperative societies-depositors from taking loan against FDRs being deposited with the Bank.

10] We make it clear that the judgment dated 16.05.2008 shall stand clarified to the extent indicated above so far, it pertains to the cases of Indian Bank. This clarification will
F however, not dilute or affect other directions issued in the final judgment.

11] In the facts and circumstances of the case for the above-stated reasons, the applications filed by applicant-Indian Bank are allowed. However, in view of the conduct of the applicant-
G Indian Bank, it is directed to pay cost of Rs.20,000/- within four weeks from this order, which shall be deposited in the account of the Supreme Court Legal Services Authority.