

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA No. 3 of 2008

in

CIVIL APPEAL NO.1528 OF 2005

M/s Neeldeep Investments (P) Ltd. ...Appellant

Versus

The Custodian & Ors. ...Respondents

With
I.A.No. _____ of 2008
(For extension of time)

O R D E R

1. Interlocutory Application No. 3 of 2008 has been filed in Civil Appeal No. 1528 of 2005, which had been disposed of on 13th March, 2008 with certain directions.

2. The Custodian under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, took out Miscellaneous Petition No. 43 of 1995 on behalf of the notified party, Bhupen Dalal for recovery of Rs.1,421,65,000/-, with interest, from M/s. Neeldeep Investment Company Private Limited. The said petition was allowed and a decree was passed by a Special Court by its order dated 8th June, 1995. Thereafter, for the execution of the said decree, Miscellaneous Application No. 470 of 1999 was taken out by the Custodian and on that application on 24th November, 1999, the Court passed an interim order restraining the Judgment Debtor and its Directors from in any manner dealing with, disposing of, transferring or alienating or encumbering any of their properties.
3. Notice was also issued by the Court to the garnishees who appeared and filed their respective affidavits. In their affidavits, the defence taken was that though they owed

various amounts to the Judgment debtor, subsequently shares of different companies were accepted by the Judgment debtor towards repayment of the loans. The Court also referred to the various affidavits filed on behalf of the garnishees and observed that the transactions mentioned by them appeared to be fictitious and had been mentioned only to mislead the court. Accordingly, a show-cause notice was directed to be issued to the noticee to show-cause as to why he should not be tried and punished for having committed criminal contempt of Court.

4. Pursuant to the order dated 19th September, 2003, a show cause notice was issued to the applicant herein for alleged disobedience of the order dated 24th November, 1999. Upon hearing the matter extensively, the Special Court came to the conclusion that the noticee/applicant herein had committed criminal contempt of court and sentenced him to undergo simple imprisonment for a period of three

months and also directed him to pay a fine of Rs.2,000/-. The said order was suspended for a period of 12 weeks, within which period the applicant filed Civil Appeal No. 1528 of 2005.

1. In the appeal a suggestion was mooted on behalf of the appellant/applicant that he would pay the amount of Rs.1,26,25,000/-, being the balance decretal amount of Rs.1,42,00,000/- in three instalments, of which the first instalment would be paid on 3rd April, 2006, the second on 10th July, 2006 and the third by 4th December, 2006. Accordingly, the appeal was adjourned and it was indicated that in the event all the instalments were paid, the appeal would stand allowed and the order of the High Court would stand set aside and the garnishee notices would be discharged. It was also indicated that in default of payment of any one instalment or any portion thereof, the appeal would stand dismissed and the impugned order of the High Court would become operative.

2. When the matter was again listed for hearing on 14th November, 2007, it was submitted on behalf of the Custodian that there was an error in the decretal amount mentioned, which went unnoticed when the decree was passed and subsequently an application for modification of the Order passed in the Appeal of 20th January, 2006 was filed by the Custodian. The said matter was heard at length and ultimately by Order dated 13th March, 2008, the decretal amount was corrected to read Rs.1,59,04,500/-, together with interest, as decreed by the Special Court upon credit having been given for Rs.15,75,000/- which had already been recovered by the Custodian. In view of the amendment of the decretal amount, the applicant was directed to pay the balance of the decretal amount within 30th June, 2008 in three equal instalments commencing from the month of April, 2008. The hearing of the garnishee notices before the Special Court, Mumbai, was directed to remain stayed till the said date, with the

addition, that in case of default of payment of any of the instalments, the order passed by the Court would cease to be operative and the order appealed against would revive.

3. Now a fresh application, being I.A. No. 3 of 2008, has been filed in the Appeal once again agitating that the decretal amount should be Rs.1,42,65,000/- less Rs.15,00,000/-, instead of the amount of Rs.1,59,04,500/-, together with interest, as indicated in our order of 13th March, 2008. However, when the application was taken up for consideration, it was submitted by Mr. Nageshwar Rao, learned senior counsel, that he was not pressing the said prayer in the application, but he was seeking a modification of the directions contained in our order of 13th March, 2008, where in Paragraph 15 we had indicated while allowing the application filed by the Custodian that the decretal amount was to be corrected to read as Rs.1,59,04,500/-, together with interest, as decreed by the Special Court. He also submitted that in

Paragraph 16 of the Judgment we had indicated that after taking into account the decretal amount as amended, together with interest as directed by the learned Special Judge, the applicant was directed to pay the balance decretal amount within 30th June, 2008, in three equal instalments. Mr. Rao submitted that such a direction virtually amounted to execution of the decree, which was pending execution before the Trial Court. He also submitted that the order of 13th March, 2008, having been passed on a contempt application, where the order had been made for payment of the decretal amount only, the inclusion of the interest factor in the order was beyond the scope of the Appeal before this Court. It was submitted that the direction to include the interest in the balance decretal amount payable was liable to be corrected, so that the issue relating to payment of interest could be heard and decided by the Executing Court where the execution proceeding was pending.

1. Having heard learned counsel for the respective parties, and having regard to the fact that the order passed by us on 13th March, 2008, was in a Contempt proceeding, we modify the directions contained in our order dated 13th March, 2008, and while rejecting the prayer made in I.A. No. 3 of 2008, we direct that the quantum of interest payable on the decretal amount will be decided by the Executing Court. We make it clear that in this order we have merely clarified that the decretal amount will be Rs.1,59,04,500/- in stead of Rs.1,42,00,000/- and we have not altered any other part of the order dated 13th March, 2008.

1. However, the other application filed on behalf of the appellant for extension of time to pay the third instalment in terms of our order dated 13th March, 2008, is taken on Board and is allowed and time for deposit of the said instalment is extended till 18th August, 2008.

1. Both the applications are disposed of accordingly.

.....J
(C.K. THAKKER)

.....J
(ALTAMAS KABIR)

New Delhi
Dated: 04.08.2008