(2022) 03 CAL CK 0070

In the Calcutta High Court

Case No : APO No. 19 of 2020, WPO 619 of 2019, IA No: GA 1 of 2020, (Old No. GA 285 of 2020)

Securities And Exchange Board Of India & Anr. APPELLANT

Vs

Manoj Agarwala RESPONDENT

Date of Decision : 23-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Securities and Exchange Board of India Act, 1992 — Section 15JB

Citation : (2022) 03 CAL CK 0070

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Tilak Kr. Bose, Prasanta Kr. Dutt, Susanta Kr. Dutt, Syamantak Banerjee, Victor Dutt

Final Decision : Dismissed

Judgement

Prakash Shrivastava, CJ

1. The respondents in W.P. No. 619 of 2019 being dissatisfied with the order of the learned Single Judge dated 02nd of January, 2020 has filed this appeal. Learned Single Judge has found the communication dated 31st of July, 2019 to be cryptic and has directed the appellant No. 2 to consider the respondent's application for settlement under Section 15JB of the Securities and Exchange Board of India Act, 1992.

2. The respondent had filed the writ petition before the learned Single Judge with the plea that he was working at M/s Bharatiya Real Estate Development Limited as marketing and sales officer and had become one of the directors of the company but had never participated in the day to day management of the company and had subsequently resigned from the company as well as from directorship on March 01, 2012 and the information in this regard was published in the newspaper thereafter he had no connection with the company. In the year 2014, SEBI had initiated action against the company and its directors including

the respondents in respect of allegation of fund mobilization activities from public by making offers and issuing Redeemable Preference Shares (RPS) in violation of the provisions of the Companies Act. The respondent had participated in the proceedings and SEBI had passed the order dated 21st of January, 2016 which was subject matter of the appeal before the Securities Appellate Tribunal and the appeal was dismissed by order dated 14th of July, 2017 by observing that the respondent's liability was restricted to refunding the amount of Rs. 40,00,000/- with interest jointly and severally with the company and the other directors of the company. Thereafter respondent had received the certificate and notice of demand. The certificate was issued for payment of Rs. 40,00,000/- with an interest of 15% per annum compounded at half yearly intervals from the date when the payments becomes due to the investors till the date of actual payment along with further interest, all costs, charges and expenses incurred in respect of the proceedings taken for recovery of the said sum. The stand of the respondent was that he was liable to pay 1/7th of the share of aforesaid liability of Rs. 40,00,000/- which comes to Rs. 5,71,428.71/- out of which a part amount was already paid and the remaining payable amount was Rs. 1,31,428.71/-. The respondent had received the notice dated 10th of May, 2018 from the recovery officer informing that he may take up the matter before the competent authority. Thereafter, the respondent had filed application under Section 15JB of the Act praying for waiver of interest along with the application fee and the application was returned vide letter dated 31.07.2019, hence the writ petition was filed by the respondent.

3. Learned Single Judge finding the communication dated 31st of July, 2019 to be cryptic has directed the respondent No. 2 to consider the application of the respondent after giving opportunity of hearing by passing reasoned order within a time bound period.

4. Submission of the Counsel for the appellant is that the respondent has tried to reopen the issue of liability which was fixed in terms of quasi-judicial order which has attained finality and that by virtue of regulation 5(1)(c) the application for settlement moneys are due and are liable to be recovered is, not permissible and the respondent has no right of settlement and learned Single Judge has committed an error in allowing the writ petition on the first day itself. In support of his submission he has placed reliance upon the order of the Bombay High Court in the matter of Shilpa Stock Broker Pvt. Ltd. & Anr. vs. Securities and Exchange Board of India, 2012 SCC OnLine Bom 58.

5. As against this learned Counsel for the respondent has supported impugned order.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the application filed by the respondent under Section 15JB of the Act, 1992 has been returned vide letter dated 31st of July, 2019 without passing any detailed reasoned order. Learned Single Judge by the impugned order has not entered into the merits of the controversies and has only found the

order dated 31st of July, 2019 to be cryptic and has directed the respondent No. 2 to consider the application after giving opportunity of hearing to the respondent and pass a reasoned order.

7. The issues which the appellants are raising in this appeal can be looked into while deciding the application of the respondent under Section 15JB of the Act. So far as the judgment of the Bombay High Court in Shilpa Stock Broker Pvt. Ltd. (supra) is concerned, in that case Bombay High Court has held that High Court in exercise of jurisdiction under Article 226 of the Constitution would not be justified in issuing a mandamus to SEBI to act upon the settlement or to accept a settlement as proposed but in the present case the direction of the learned Single Judge is only to consider the application and pass a reasoned order.

8. Hence, we find no reason to interfere in the impugned order passed by the learned Single Judge. The appeal is accordingly dismissed.

