
(2007) 06 CAL CK 0049
In the Calcutta High Court
Case No : F.M.A. No. 119 of 2002

Sibnath Koley and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 226

Citation : AIR 2007 Cal 223 : (2007) 3 CHN 192 : (2007) 4 JCR 258

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : L.K. Gupta, J.L. De, Gurusaday Dey and Amalesh Roy, for the Appellant; Sandip Srimani, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—All the appeals have been preferred from the judgment and order dated 25th September, 2000 passed by the learned Single Judge in W.P. No. 8030 (W) of 1999 and the other similar writ petitions, which were heard analogously. The learned Single Judge by the aforesaid judgment and order dismissed all the writ petitions.

2. All the appeals preferred from the aforesaid judgment and order passed by the learned Single Judge have also been heard analogously and are disposed of by this common judgment.

3. The appellants/writ petitioners are the librarians of Rural/Area/Primary Unit Libraries duly sponsored/aided by the Government of West Bengal. They possess the higher qualification i.e. graduate with the recognised diploma in Library Science. The appellants/writ petitioners moved the application under Article 226 of the Constitution of India before the Hon'ble High Court claiming the benefit of higher revised scale of pay of Rs. 1,3,90-2,970/- appropriate to their higher qualification in terms of the memorandum being No. 33-Edn(B) dated 7th March, 1990 issued by the Secretary, Education Department, Government of West

Bengal with effect from the date as indicated in the said memorandum dated 7th March, 1990 in the following backdrop:

One Biswajit Das holds the post of Librarian in a rural library. He is graduate and possesses a recognised diploma in Library Science. He moved an application under Article 226 of the Constitution of India being CO. No. 9580 (W) of 1996 before the Hon''ble High Court, Calcutta and prayed therein for the benefit of the higher revised scale of pay of Rs. 1,390-2,970/-, appropriate to his higher qualification in terms of Sub-clause (3) of clause 16 of the Memorandum being No. 33-Edn(B) dated 7th March, 1990 issued by the Secretary, Education Department, Government of West Bengal.

4. The said writ application was finally heard and disposed of by the judgment and order dated 19th September, 1996 passed by Altamas Kabir, J. (as His Lordship then was). From the said judgment we find that the learned Counsel of the State-respondents submitted that having regard to the subsequent memo dated 26th July, 1994, where no provision has been made for librarians who were graduates having a certificate of librarianship, the scale of pay indicated in the said memo would be the scale which the petitioner was entitled to. The aforesaid submission of the State-respondents was, however, not accepted by Justice Kabir as the said learned Judge was inclined to agree with the learned Counsel of the petitioners that the subsequent memo dated 26th July, 1994 was issued not in supersession of but in continuation of the earlier memo dated 7th March, 1990. Justice Kabir thereafter disposed of the said writ petition with a direction upon the respondents concerned to give to the petitioner the scale of pay of Rs. 1,390-2,970/- with effect from the date as indicated in the said memorandum dated 7th March, 1990.

5. The State-respondents then preferred an appeal from the said judgment and order dated 19th September, 1996 passed by Altamas Kabir, J. (as His Lordship then was) and the said appeal was also dismissed by the Hon''ble Division Bench.

6. From the said order passed by the Division Bench, State-respondents filed a SLP before the Hon''ble Supreme Court which was numbered as SLP (Civil) 15807 of 1998. In the said special leave petition, the State-respondents raised inter alia the following question of law:

Whether the High Court has properly interpreted and applied the memorandum issued by the authorities concerned on 7.3.1990 and subsequent circular issued on 21.7.1990, 2.6.1994 and 26.7.1994?

The Hon''ble Supreme Court was pleased to dismiss the SLP on 26th October, 1998.

7. In view of dismissal of the aforesaid special leave petition, benefit of the higher revised scale of pay of Rs. 1,390-2,970/- with arrear had already been given to the said writ petitioner, Shri Biswajit Das in compliance with the order dated 19th September, 1996 passed by Altamas Kabir, J. (now elevated as the

Hon''ble Judge of the Supreme Court of India).

8. The appellants/writ petitioners herein are similarly placed with the said Shri Biswajit Das and therefore, the said appellants/writ petitioners made a representation before the respondent authorities for extending the identical benefit of higher revised scale of pay as have already been granted to Shri Biswajit Das. The respondent authorities, however, did not grant the benefit of higher revised scale of pay to the appellants/writ petitioners herein in spite of submission of the representations.

9. In the aforesaid circumstances, several writ applications were filed by the present appellants/writ petitioners before this Hon''ble Court which were heard analogously by the learned Single Judge and by the common judgment and order dated 25th September, 2000 the said learned Single Judge was pleased to dismiss all the writ applications. While dismissing the writ petitions, learned Single Judge in the penultimate paragraph of the said judgment and order dated 25th September, 2000 held:

The learned Advocate for the petitioners argued that a Single Bench is bound by a decision of Division Bench and Co-ordinate Bench and in support of his submission the learned Advocate for the petitioners referred to certain decisions of the Supreme Court. It is not necessary to refer to those decisions of Supreme Court because it is now well-settled that a Single Bench of a High Court is bound by the decision of a Division Bench and Co-ordinate Bench of the same High Court. But this principle has no manner of application if the earlier decisions of Division Bench and Single Bench of the High Court were passed sub silentio or be treated as given per incuriam and when there is basic mistake of fact. From the discussions made hereinabove I am of the opinion that the decisions of Division Bench and Single Bench of this High Court referred to and relied upon by the learned Advocate for the petitioners cannot have binding force on me for the reasons discussed in the earlier part of this judgment, the said judgments and orders were passed sub silentio, should be treated as given per incuriam and there were basic mistake of fact.

10. From the aforesaid common judgment and order dated 25th September, 2000 passed by the learned Single Judge, all these appeals have been preferred.

11. It has been submitted on behalf of the appellants that Altamas Kabir, J. while deciding the writ petition being C.O. No. 9580 (W) of 1996 (Biswajit Das v. State of West Bengal and Ors.) specifically dealt with the subsequent memorandum being No. 663-Edn (MEE)/SL-42/90 dated 26th July, 1994 issued by the Secretary, Education Department, Government of West Bengal and held that the said writ petitioner namely, Shri Biswajit Das, a librarian of a Rural Library being graduate with the recognised diploma in Library Science is entitled to enjoy the benefit of the higher revised scale of pay of Rs. 1,390-2,970/- in terms of the memorandum being 33-Edn(B) dated 7th March, 1990. Mr. L. K. Gupta, learned Senior Counsel of the appellants further submits that the Hon''ble Division Bench

also while dealing with the appeal preferred from the aforesaid judgment and order dated 19th September, 1996 passed by Altamas Kabir, J. in CO. No. 9580 (W) of 1996 specifically dealt with the said memorandum being No. 663-Edn (MEE)/SL-42/90 dated 26th July, 1994 and affirmed the said judgment and order passed by the learned Single Judge.

12. Mr. Sandip Srimani, learned Counsel representing the State-respondents, however, submits that in Biswajit Das's case (supra), learned Single Judge did not at all take into consideration the G.O. No. 230-Edn (B) dated 21st July, 1990 and G.O. No. 663-Edn (MEE) dated 26th July, 1994. Mr. Srimani further submits that the learned Single Judge had no scope to consider the aforesaid circulars while deciding the writ petition in the case of Biswajit Das (supra) as the said circulars were neither placed nor referred to by any of the parties. Mr. Srimani, however, submits that the State of West Bengal subsequently brought on record two circulars of 1981 and G.O. No. 663-Edn (MEE) dated 26th July, 1994 before the Division Bench at the time of adjudication of the appeal by filing an application for additional evidence although the other circular being G.O. No. 230-Edn (B) dated 21st July, 1990 was neither brought on record before the Appeal Court nor the said circular was referred to before the Hon'ble Division Bench at the time of hearing of the appeal preferred from the judgment and order dated 19th September, 1996 passed by the learned Single Judge in CO. No. 9580 (W) of 1996.

13. In any event, it has been admitted by the learned Counsel of the State-respondents that in the SLP filed before the Hon'ble Supreme Court, aforesaid circular dated 21st July, 1990 was brought on record for the first time. Mr. Srimani specifically urged before this Court that not only the learned Single Judge while deciding the writ petition in the case of Biswajit Das (supra) had no scope to consider the aforesaid circular of the Government of West Bengal but also the Division Bench had no occasion to consider the effect of those circulars as the same were filed along with the application for additional evidence before the Division Bench in connection with the appeal being M.A.I. No. 1898 of 1997 (State of West Bengal and Ors. v. Biswajit Das). The learned Counsel of the State-respondents submits that the dismissal of the SLP filed by the State of West Bengal in the case of Shri Biswajit Das (supra) by a non-speaking order does not constitute any declaration of law by the Supreme Court and therefore, the same cannot have any binding precedent. Mr. Srimani referred to and relied on the following decision of the Supreme Court in this regard:

- 1) Kunhayammed and Others Vs. State of Kerala and Another,
- 2) 2004(2) SCC 456 [Narcotics Control Bureau v. Dilip Pralhad Namade] (paragraph 12 at page 460)

14. The learned Counsel of the State-respondents submits that in Biswajit Das's case, SLP filed by the Government of West Bengal was dismissed at the threshold without assigning any reason and, therefore, the judgment of the Division Bench

of this Hon''ble Court in the appeal preferred by the State of West Bengal in Biswajit Das case (supra) cannot merge with the order of the Hon''ble Supreme Court nor the said order passed in the SLP filed by the State of West Bengal could be said to be a binding precedent under Article 141 of the Constitution of India. Mr. Srimani, learned Counsel of the State-respondents submits that the learned Trial Judge in the instant case has rightly held that since the Government order dated 21'' July, 1990 was not taken into consideration at the time of disposal of the writ petition filed by Shri Biswajit Das or before the Division Bench in appeal, the said decision in Biswajit Das''s case cannot be said to be a binding precedent and non-consideration of the said G.O. No. 230-Edn(B) dated 21st July, 1990 by the earlier Division Bench is an important factor for deciding the subsequent writ petitions in a different way by the learned Single Judge wherefrom the present appeals have been preferred. According to Mr. Srimani, earlier decisions of the Division Bench and Single Bench of this Hon''ble Court in Biswajit Das''s case were passed sub silentio or should be treated as per incuriam since the Government Order dated 21'' July, 1990 was not considered at all. The learned Counsel of the State-respondents submits that due to the amendment by the subsequent memorandum dated 21st July, 1990, the very basis of the claim of the present writ petitioners had been scored out and the learned Single Judge has rightly arrived at a different conclusion while deciding the writ petitions wherefrom the present appeals have been preferred.

15. Mr. L.K. Gupta, learned Senior Counsel of the appellants submits that undisputedly in the SLP filed by the State-respondents before the Hon''ble Supreme Court in connection with Biswajit Das''s case, all the aforesaid circulars including the circular dated 21st July, 1990 was brought on record and upon considering the submissions of the State-respondents herein, Hon''ble Supreme Court was pleased to dismiss the said Special Leave Petition. Mr. Gupta also submits that the State-respondents themselves questioned the correctness of the earlier decisions of this Hon''ble Court in Bisivajit Das''s case before the Hon''ble Supreme Court upon referring to and relying on the relevant circulars including the circular dated 21st July, 1990 and the Hon''ble Supreme Court even after considering the effect of those circulars was pleased to dismiss the said SLP filed by the State-respondents herein. Mr. Gupta, therefore, submits that since the aforesaid SLP was dismissed by the Hon''ble Supreme Court even after considering the effect of the respective circulars including the circular dated 21st July, 1990 the earlier judgment and order passed by the Division Bench of this Court in Biswajit Das''s case has become final and binding on the State.

16. Mr. Gupta further submits that in the above context learned Trial Judge while deciding the writ petitions completely erred in holding that the decision of the Division Bench of this Hon''ble Court in Biswajit Das''s case could not have binding force on the learned Trial Judge on an observation that the Division Bench of this Hon''ble Court in Biswajit Das''s case did not refer to or did not give any finding in respect of the memorandum being No. 230-Edn (B)/1M-6/90 dated 21st July, 1990 and effect thereof. Mr. Gupta also submits that the learned Trial

Judge could, not ignore or bypass the binding nature of the decision of the Hon''ble Division Bench in Biswajit Das's case in any manner whatsoever in regard to the self-same issue.

17. Since the issues relating to the circulars were duly considered and decided by the earlier Division Bench we are of the opinion that non-mentioning of a particular circular in the earlier judgment of the Division Bench cannot render the said judgment per incuriam. When the issue has been specifically decided by the learned Single Judge as well as the Division Bench of this Hon''ble Court in the case of Biswajit Das (supra), the question of sub silentio cannot and does not arise.

18. Mr. Gupta referred to and relied on the decisions of the Supreme Court in the case of State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, . In the aforesaid decision, Hon''ble Supreme Court has specifically held:

10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh the Court did not consider the question as to whether the consolidation authorities are Courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a co-ordinate jurisdiction considering the question later on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of co-ordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

19. Mr. Gupta also relied on a Special Bench judgment of this Hon''ble Court in the case of Dwip Chand Munda and Another Vs. Pravash Kumar Chowdhury and Another, , in this regard. Paragraphs 10 and 11 of the aforesaid judgment are quoted hereunder:

10. In criminal matters the Appellate Side Rules of this Court have no provision for the constitution of a Special Bench on the requisition of a Single Judge. On the other hand, there is a specific provision in the second proviso to Rule 9(2) of Part I, Chapter II of the Rules which lays down that a Single Judge may send back a particular case to the Criminal Division Bench. A Single Judge cannot

therefore bypass the Division Bench and ask for a reference to a larger Bench and the learned Chief Justice, in the event of such reference, cannot be deemed to have any inherent power to constitute a larger Bench in clear violation of the Rules of this Court. To this extent we must respectfully differ from the views of the Special Bench in the case of Tara Dutta Vs. The State and Another, and hold that the learned Chief Justice has no inherent power to constitute a Special Bench in criminal matters on the requisition made by a Single Judge.

11. We are also constrained to point out the impropriety of a Single Judge making a reference to the learned Chief Justice, not because there are conflicting decisions of Division Benches of this Court, but on account of conflicting decisions of Benches of this High Court and other High Courts. Unless a Single Judge follows the precedents laid down by Division Benches of this Court the resultant judicial anarchy and ununiformity of decisions can well be imagined. The Supreme Court has also in a recent decision in the case of B. Banerjee Vs. Smt. Anita Pan, observed as follows (at p. 1148):

The two appeals before us, raising substantially identical points, have been heard together and are being disposed of by a common judgment. Both of them stem from a decision of the Calcutta High Court reported as Sailendra Nath Ghosal and Others Vs. S. Ena Dutt and Others, . One of the decisions under Appeal (C.A. 2063 of 1973) was rendered by a Single Judge of the High Court following a Division Bench ruling of the same Court (i.e. the one reported as AIR 1971 Cal 331) since he was obviously bound by it.

20. In the present case, learned Single Judge should not have ignored the earlier decision of the Division Bench and the Single Bench of this Hon''ble Court on the ground that the same were passed sub silentio or were rendered per incuriam. We also do not accept that there is any basic mistake of fact which has been recorded by the learned Single Judge in the impugned judgment and order under appeal. The learned Single Judge, in our opinion, had no other option but to follow the earlier decisions of the learned Single Judge in Biswajit Das's case, which was subsequently affirmed by the Division Bench of this Hon''ble Court.

21. A learned Single Bench must follow the precedents laid down by a Division Bench in order to avoid any judicial anarchy and to ensure strict observance of judicial discipline. The judgment of Hon''ble Justice Altamas Kabir in the case of Biswajit Das (supra) was admittedly approved subsequently by the Division Bench of this Hon''ble Court and, therefore, the learned Single Judge herein erred in law by ignoring the aforesaid judgment of the Division Bench and Single Bench of this Hon''ble Court on the ground that the said judgment and orders were passed sub silentio and should be treated as given per incuriam.

22. In the instant case, the learned Single Judge while deciding similar issues could not have ignored the judgment of Altamas Kabir, J. in Biswajit Das's case, which was subsequently affirmed by the Hon''ble Division Bench. The decision of the Division Bench of this Court, which affirmed the judgment of Altamas Kabir,

J. has a binding effect on the learned Single Judge. The learned Single Judge cannot ignore the aforesaid binding effect of the earlier decisions of the Division Bench affirming the judgment and order of Altamas Kabir, J. in Biswajit Das's case under any circumstances.

23. We cannot allow the learned Single Judge to avoid and/or ignore the binding effect of the earlier decisions of the Division Bench of this Court since the learned Single Judge is bound to follow the precedents laid down by the Division Benches of this Court. The learned Single Judge herein by the impugned judgment and order under appeal decided several writ petitions and dismissed them without granting the relief as was granted earlier by this Hon'ble Court to Shri Biswajit Das under identical circumstances. It is not in dispute that the appellants/writ petitioners herein claimed identical relief which was granted to Shri Biswajit Das pursuant to the earlier decisions of this Hon'ble Court and the learned Single Judge, therefore, should not have refused to grant the said identical relief to the said appellants/writ petitioners herein under the similar circumstances and on identical grounds. In order to observe strict judicial discipline and to avoid judicial anarchy and also to ensure uniformity of decisions we have no other alternative but to disapprove the findings and decisions of the learned Single Judge as mentioned in the judgment and order under appeal.

24. In this connection, the principles laid down by Salmond in the famous treatise on jurisprudence is very pertinent. In paragraph 28, page 158 of the treatise, the learned Author opined:

The general rule is that a Court is bound by the decisions of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords.

25. Following the same principle, we hold that the learned Single Judge cannot question the decision of the Division Bench as having been given per incuriam nor can he refuse to follow the same on the ground of precedents sub silentio. The principle of precedents sub silentio also has been explained by the learned Author in page 153 of the treatise as follows:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

26. The above exposition on precedents sub silentio has been approved by the Supreme Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, .

27. The learned Single Judge, with respect, has not properly appreciated the principle of precedent sub silentio while refusing to follow the judgement of the Division Bench.

28. The findings arrived at by the learned Trial Judge in the impugned judgment and order dated 25th September, 2000 that the earlier decisions of the Hon''ble Division Bench and the Single Bench of this Hon''ble Court were passed sub silentio or rendered per incuriam, are erroneous both on fact and in law inasmuch the argument of the State-respondents about alleged disentitlement of the Librarians in Rural Libraries for the benefit of the higher revised scale of pay in view of issuance of the above referred circular, stood rejected by the previous Division Bench judgment in the case of Biswajit Das which was not interfered with by the Hon''ble Supreme Court in the SLP filed by the State-respondents. Admittedly, the benefit of higher revised scale of pay has already been given to Shri Biswajit Das after dismissal of the SLP by the Hon''ble Supreme Court from the date mentioned in the circular being memorandum No. 33-Edn(B) dated 7th March, 1990 in pursuance of the earlier judgment and order passed by Altamas Kabir, J. in the writ petition filed by Shri Biswajit Das, which was subsequently affirmed by the Division Bench.

29. In our opinion, following the earlier decisions of this Hon''ble Court in Biswajit Das's case, learned Trial Judge should have issued necessary directions to the State-respondents to release the benefit of the higher revised scale of pay to the appellants/writ petitioners herein from the date indicated in the memorandum being No. 33-Edn (B) dated 7th March, 1990 in order to maintain the uniformity in the higher revised scale of pay of the Librarians in Rural Libraries otherwise disparities in the scale of pay of the Librarians would cause a hostile discrimination which would be violative of the doctrine of equality as enshrined in Articles 14 and 16 of the Constitution of India.

30. Admittedly, pursuant to the earlier decisions of this Hon''ble Court, benefit of higher revised scale of pay of the Librarians in the Rural Libraries has been granted to Shri Biswajit Das and the similar benefit of higher revised scale of pay to the other Librarians in Rural Libraries like the appellants/writ petitioners herein cannot be denied afterwards by the same authority as the earlier decisions of this Hon''ble Court had already become final and binding on the State-respondents.

31. The decision of the Supreme Court referred to and relied upon by Mr. L. K. Gupta, learned Senior Counsel of the appellants in the case of Union of India (UOI) and Others Vs. E.S. Soundara Rajan and Others, is very much relevant in this regard. In the aforesaid judgment, Hon''ble Supreme Court while considering two conflicting decisions of the Andhra Pradesh High Court and Madras High Court came to the conclusion that the High Court of Madras has declared the law correctly and, therefore, the law laid down by the Andhra Pradesh High Court will stand set aside although the net result of the Andhra Pradesh decision will prevail since the decision of the Andhra Pradesh High Court had become final and

binding on the Union of India. The relevant paragraphs 6 and 7 of the aforesaid judgment are quoted hereunder:

6. Having heard Counsel on both sides on this aspect, we direct that while the law had been declared by us and it in effect reverses the position taken by the Andhra Pradesh High Court, the emoluments that the respondents in the appeals as well as the Special Leave Petitions will draw will not be affected, subject of course to our observations regarding the second point urged by the learned Additional Solicitor General.

7. We thus made it clear that the net result of the Andhra Pradesh decision will prevail while the law laid down by the said decision will stand set aside.

32. The learned Counsel of the State-respondents, however, referred to and relied upon an unreported decision of this Court in M.A.T. No. 1465 of 2000 (State of West Bengal and Ors. v. Sulagna Santra and Ors.) In the said unreported decision, the Hon''ble Division Bench did not go into the merits of the case nor decided anything contrary to the decision of the Division Bench of this Court in Biswajit Das's case.

33. For the reasons mentioned hereinabove, the impugned judgment and order under appeal passed by the learned Single Judge cannot be sustained and we hold that the appellants/writ petitioners herein are also entitled to the benefits of higher revised scale of pay as has already been given to Shri Biswajit Das after dismissal of the SLP by the Supreme Court in compliance with the order passed by Altamas Kabir, J. in CO. No. 9580 (W) of 1996.

34. The impugned judgment and order under appeal is, therefore, set aside.

35. The concerned respondents are directed to release and pay to the appellants/writ petitioners salary at the revised scale of pay of Rs. 1,390-2,970/- in terms of the memorandum being No. 33-Edn(B) dated 7th March, 1990 issued by the Secretary, Education Department, Government of West Bengal with arrears and with effect from the date as indicated in the said memorandum dated 7th March, 1990 without any further delay but positively within a period of three weeks from the date of communication of this order.

36. These appeals thus stand allowed without any order as to costs.

37. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.

LATER:

38. After pronouncement of the judgment, the learned Counsel of the State-respondents prays for stay of the operation of the judgment and order. We find no reason to grant such stay. Accordingly, the prayer for stay is refused.