

M/S. HANU MOTEL PVT. LTD. & ORS.

v.

U.P. FINANCIAL CORPORATION LTD. & ANR.

(Civil Appeal No. 6280-6281 of 2008 etc.)

OCTOBER 24, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Natural Justice – Non-observance of – In legal proceedings – Suit by Company through Director – Appeal against interlocutory order in the suit – During pendency of appeal, Director was removed and new Director authorized to pursue legal proceedings – New Director impleaded in the appeal as well as in suit – Old Director filing application denying having filed the suit and alleging fraud – High Court without hearing the Company and the new Director observed that the old Director did not file the suit – CBI inquiry directed – Review petition dismissed by High Court holding that the new Director was wrongly impleaded – CBI report stated that no fraud was played and the old Director had filed the suit – Initiation of criminal proceedings against old Director by Registrar General of High Court – Proceedings quashed by High Court – On appeal, held: High Court order not sustainable on the ground of non-observance of natural justice – The appeal was decided on the basis of one sided version without hearing the Company and the new Director, despite the fact that he was impleaded as party – Recalling of impleadment order at the stage of Review was wrong – Matters remitted to High Court for fresh consideration on merit.

Appellant No.1-Company and respondent No.1-Financial Corporation entered into a loan agreement and cancelled the agreement and issued demand notice to the company seeking payment of balance amount.

Appellant-Company filed a suit against the cancellation of loan and the demand notice through respondent

- A No. 2 who was the then Director of the Company. The court granted interim injunction. The Corporation filed appeal against the interlocutory order. During pendency of the appeal, the Company passed a resolution to remove respondent No.2 as Director of the Company and authorized appellant No.2 to prosecute the suit and other proceedings.
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- C Respondent No. 2 filed an application seeking to delete his name from the array of parties. He denied that he had filed the suit and alleged fraud having been committed. Applications of appellant No. 2 for impleadment in the suit and the appeal were allowed.

- D High Court finally disposed of the appeal by order dated 6.5.2003 by hearing only the respondents and held that respondent No. 2 did not file the suit and fraud had been played to abuse the process of law. It directed CBI to investigate into the matter.

- E Company filed Review Petition against the order in the appeal. High Court dismissed the same by order dated 28.5.2003, observing that since the Court held that respondent No.2 did not file the suit, thus no suit existed in the eyes of law and hence the appeal also did not survive. It also held that the court should not have impleaded appellant No. 2. Hence the appeal Nos. 6280-81 of 2008.

- F Pursuant to direction of the Court, CBI took up the investigation. In its Report it stated that the evidence proved that respondent No. 2 had filed the suit as the Director of the appellant-Company. In the light of the findings of CBI, Registrar General of High Court filed a complaint against respondent No. 2 u/s. 193 IPC. Respondent
- G No. 2 filed an application in the appeal and sought quashing of the criminal proceedings. High Court quashed the same. Hence the appeal No. 6282 of 2008.

- H Allowing the appeals and remitting the matter to High Court, the Court

HELD: 1.1 The orders passed by the High Court cannot be sustained. It is clear that the suit was filed by two plaintiffs. Plaintiff No. 1 was the Company and plaintiff No. 2 was shown to be a Director. High Court decided the matter without hearing appellant No. 1-Company and appellant No. 2 whose impleadment application was allowed by the High Court and the High Court was, therefore, aware that he was very much on record. The High Court virtually decided the matter on the basis of one sided version of Plaintiff No. 2 who had alleged that fraud was committed against him. [Para 19] (1215-C to F)

1.2 The High Court followed an easy path unknown to law when it rejected. Review Petition by recalling the order of impleadment of appellant No. 2 virtually rectifying the order passed on May 6, 2003. The High Court ought to have extended an opportunity of hearing before passing order dated May 6, 2003 as also dated May 28, 2003 to appellant No.1- Company as well as to appellant No.2. [Para 23] (1217-C, D)

2. Since this Court has allowed the appeals filed by the appellants in the connected matters and set aside the order passed by the High Court by remitting the matter to the High Court for fresh disposal in accordance with law after affording opportunity of hearing to all the parties, the order of High Court quashing the criminal proceedings is also liable to be set aside. [Para 35] (1219-F, G)

3. In view of the report of CBI and prima facie case found against respondent No. 2, in the investigation undertaken, it would not be appropriate to state anything one way or the other. Since both the orders passed by the High Court are liable to be set aside only on the ground of non- observance of natural justice, the matter should be remanded to the High Court for fresh disposal in accordance with law. [Para 24] (1217-E, F)

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6280-6281 of 2008

From the Judgment and Order dated 6/5/2003 and 28/5/2003 of the High Court of Uttaranchal at Nainital in Appeal Against Order No. 120 of 2002 and Civil Review Application No. 2796 of 2003 in Appeal Against Order No. 120 of 2002 respectively

WITH

C.A. No. 6282 of 2008

C V.A. Mohta, Aniruddha P. Mayee, Sanjeev Kumar Choudhary, Rucha A. Mayee and Sanjay Visen for the Appellants.

D Kailash Vasudev, Sunil Kumar Jain, Ajay Kr. Bhatia, A.K. Soni and Shrish Kumar Misra for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J.

E Civil Appeal No. 6280-6281 of 2008 @ Special Leave Petition (Civil) No. 10554-55 of 2003

1. Leave granted.

F 2. Both these appeals have been instituted by the appellants who are aggrieved and dissatisfied with the order passed by the High Court of Uttaranchal at Nainital dated May 06, 2003 in Appeal against Order No. 120 of 2002 and an order dated May 28, 2003 in Civil Review Application No. 2796 of 2003 in Appeal against Order NO. 120 of 2002.

G 3. Facts in brief of the case are that appellant No. 1 M/s Hanu Motel Pvt. Ltd. is a company registered under the Companies Act, 1956 ('Company' for short) and is engaged in the business of hotel and hospitality and having its Head Office at Lucknow. Appellant No. 2 Avdesh Kumar is a Director of the appellant No. 1-Company. Respondent No. 1, Uttar Pradesh

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Financial Corporation ('Corporation' for short) is a Corporation constituted under the State Financial Corporations Act, 1956. Respondent No. 2, Ram Raj Singh has been joined as contesting respondent who was the Director of appellant No.1-Company, but who had resigned from the said position subsequently. A B

4. From the record it appears that there was an agreement between appellant No.1- Company and respondent No. 1-Corporation dated May 10, 1991 whereunder loan was given by the Corporation to the Company for the purpose of its business. It was the case of the Corporation that though substantial amount was paid by the Corporation, the Company did not abide by the terms and conditions and the Corporation was constrained to cancel agreement on October 31, 1991. The Corporation also issued demand notice on August 29, 2000. Under the said notice, a demand was made by the Corporation from the appellant No. 1-Company to pay an amount of Rs.185.20 lakhs. The appellant No.1-Company, therefore, filed a suit being Civil Suit No. 111 of 2001 in the Court of Civil Judge (Senior Division), Haridwar on April 28, 2001. It was a suit for declaration that the recovery sought by the Corporation was barred by time since cause of action had arisen in 1991 and proceedings were not initiated for a long time. It was also the case of the Company that cancellation of loan agreement by the Corporation was ex parte, unilateral and hence illegal. C D E

5. It may be stated that the suit was filed by two plaintiffs. Plaintiff No. 1 was the Company (appellant No. 1 herein) and plaintiff No. 2 was Ram Raj Singh (respondent No. 2 herein) who is a practising Advocate. It was stated in the plaint that plaintiff No. 1 was a Company and plaintiff No. 2 was a Director who was authorized to file a suit on behalf of the Company-plaintiff No.1. On January 19, 2002 an application was filed by the plaintiffs under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for interim injunction restraining the Corporation from selling hotel or property of plaintiff No. 1-Company. On February 20, 2002, F G H

- A application was allowed and the defendants were restrained from selling the land and building of the plaintiffs.

- B 6. Being aggrieved by the order of injunction passed by the trial Court, the Corporation preferred an appeal being Appeal against Order No. 120 of 2002 under Order XLIII Rule 1 of the Code on May 31, 2002. On June 01, 2002, the High Court after hearing the parties directed the Company to deposit an amount of Rs. Fifty lakhs in the Court within 45 days. The matter was ordered to be listed on July 26, 2002. The company filed Miscellaneous Application No. 4347 of 2002 on July 10, 2002
- C contending that the appeal filed by the Corporation was barred by limitation. The High Court directed the Corporation to file reply.

- D 7. On August 02, 2002, according to the appellants, Board of Directors of Company passed a resolution to remove respondent No. 2 - Ram Raj Singh as Director of the Company. By the same resolution, it authorized appellant No. 2 Avdesh Kumar to prosecute the suit and other proceedings.

- E 8. Immediately thereafter on August 05, 2002, respondent No. 2 Ram Raj Singh instituted Miscellaneous Application No. 4839 of 2002 in Appeal against Order No. 120 of 2002 in the High Court of Uttranchal to delete his name from the array of parties in the appeal alleging therein that he was not aware of any suit being filed through him and he had not signed the plaint.
- F It was alleged by him that fraud was committed by showing him as plaintiff No. 2 and filing suit for and on behalf of the Company. It was a case of impersonation. He, therefore, prayed for deletion of his name and to take appropriate proceedings for unpardonable fraud committed by the persons responsible.

- G 9. On August 09, 2002, an impleadment application was made by appellant No. 2 Avdesh Kumar to be joined as plaintiff in the suit. Likewise, on December 11, 2002, he made a similar application for impleadment in Appeal against Order No. 120 of 2002 being Director of the Company as also guarantor
- H for payment of loan. The application was allowed on Decem-

ber 14, 2002 by the High Court and he was ordered to be impleaded. A

10. The High Court then heard the Appeal against Order and by the impugned order dated May 06, 2003 disposed of the appeal after hearing the learned counsel for the Corporation and the learned counsel for Ram Raj Singh. It observed that according to Ram Raj Singh, he had not signed the plaint and yet he was shown as plaintiff No.2. Thus, the suit was filed by resorting to impersonation. The Court, therefore, held that since Ram Raj Singh did not sign the plaint, he could not be said to be plaintiff No. 2. As such the plaint could not be said to be signed by an Authorized Officer and suit by plaintiff No. 1. Company also did not survive and was liable to be dismissed. The High Court held that the appeal was liable to be dismissed. Even the suit had become infructuous. According to the High Court, no such suit could have been instituted. B
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11. The High Court also observed that fraud had been played to abuse the process of law. Central Bureau of Investigation (CBI) was, therefore, ordered to register a case against the Company and its Directors and to investigate the matter as to who had played fraud and to prosecute the persons as found guilty in investigation. E

12. It was the case of the Company that no hearing was afforded either to the Company or to Avdesh Kumar who was already impleaded in the appeal. The order of the High Court was in violation of principles of natural justice and fair play. Review application was, therefore, filed by the appellants herein. The High Court, however, dismissed the Review Application by the second impugned order dated May 28, 2003 inter alia observing that when the Court held that no suit could have been instituted by the Company-plaintiff No. 1 in view of the case of the plaintiff No. 2 Ram Raj Singh that he had not signed the plaint and was never plaintiff No. 2. There was thus no suit in the eye of law and the appeal also did not survive. According to the Court, therefore, no order of impleadment of Avdesh Kumar F
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A could have been passed on December 14, 2002. Hence, that order was also set aside by the High Court dismissing review petition.

B 13. Both the above orders of the High Court of Uttaranchal have been challenged by the appellant in the present appeals.

14. Notice was issued pursuant to which the parties appeared. Affidavits and further affidavits were also filed.

15. We have heard the learned counsel for the parties.

C 16. The learned counsel for the appellants strenuously contended that the orders passed by the High Court are totally illegal, unlawful and violative of basic principles of natural justice. It was submitted that order dated May 06, 2003 was passed without hearing the affected parties, i.e. appellant No. 1-Company and appellant No. 2 Avdesh Kumar whose impleadment application was allowed as early as in December, 2002. Though the impugned order was passed after about five months of impleadment of appellant No.2, no hearing was afforded to any of the appellants. It was also submitted that the High Court was wholly wrong in recalling the order of impleadment of Avdesh Kumar passed in December, 2002. It was submitted that when the Appeal against Order was heard and decided on May 06, 2003, Avdesh Kumar was very much a party-respondent and yet the High Court did not think it fit to give an opportunity of hearing to him and decided the appeal which had caused serious prejudice to the appellants. It was strenuously urged that certain observations were made by the High Court only on the basis of ipse dixit allegations of Ram Raj Singh that fraud was committed against him and he had not signed the plaint. The counsel submitted that CBI has investigated the matter and has submitted the report wherein it was expressly observed that Ram Raj Singh had signed the plaint and had filed a suit. It was, therefore, submitted that the orders passed by the High Court deserve to be set aside by remitting the matter for fresh disposal in accordance with law.

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17. The learned counsel for respondent No. 2 Ram Raj Singh stated that the High Court had passed the order and there is no infirmity therein. A

18. The learned counsel for the Corporation submitted that substantial amount is due and payable by the Company and in the fight between two groups, the Corporation is deprived of its legitimate dues. B

19. Having heard the learned counsel for the parties, in our opinion, the orders passed by the High Court cannot be sustained. It is clear that the suit was filed by two plaintiffs as early as in April, 2001. Plaintiff No. 1 was the Company and plaintiff No. 2 - Ram Raj Singh was shown to be a Director. An application under Order XXXIX of the Code was filed wherein interim relief was granted. Appeal against Order was filed by the Corporation and only in August, 2002, a Miscellaneous Application was filed by Ram Raj Singh to delete his name alleging that he had not signed the plaint and he was fraudulently described and shown as plaintiff No. 2 in the suit. It is unfortunate that the High Court decided the matter without hearing the present appellants, i.e. appellant No. 1-Company and appellant No. 2-Avdesb Kumar whose impleadment application was allowed on December 14, 2002 by the High Court and the High Court was, therefore, aware that he was very much on record. The learned counsel for the appellants is also right in contending that the High Court virtually decided the matter on the basis of one sided version of Ram Raj Singh who had alleged that fraud was committed against him. This is clear from what is stated by the High Court. C
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20. The High Court while disposing of the appeal inter alia observed; G

"The plaintiff No.2 in the suit is practicing advocate of the Lucknow Courts and is present in the Court. He made statement at Bar that he did not file any suit. The suit was filed by resorting to impersonation. He did not make signatures on the plaint and the affidavit. The plaintiff No.1 H

A has not been arrayed through any of its Directors. The
plaintiff No.2 has also not been mentioned in the array of
parties to be the Director of the Company. In view of the
statement made by Sri Ram Raj that he has not filed the
B suit in question and he is not prosecuting the suit, the suit
is liable to be dismissed on behalf of plaintiff No.2 and the
suit also cannot proceed on behalf of plaintiff No.1, as the
Company has not been arrayed as party through any
Director. Therefore, the suit is liable to be dismissed.
C Consequently the impugned order has merged in the order
of dismissal of suit, which has rendered the appeal as
infructuous. The appeal is dismissed accordingly as having
become infructuous”.

21. Granting liberty to Ram Raj Singh to take legal recourse
against those persons who had played fraud upon him, the Court
D proceeded to state;

“However, Shri Ram Raj, advocate is at liberty to take
legal recourse against those persons who have played
fraud upon him. Sri Ram Raj, advocate and learned counsel
for the appellant have submitted that a fraud has been
E played to abuse the process of law, therefore, this Court
may order the CBI to register a case against company
and its Directors and investigate as to who has played
fraud. Having regard to the seriousness of the fraud
played, we direct the S.P., CBI to investigate the matter
F personally and prosecute the person who is found guilty in
investigation. Record of the Civil Suit No.111 of 2001 shall
be kept in sealed cover and shall be handed over during
the course of investigation to S.P., CBI”.

22. The counsel submitted that had an opportunity been
afforded to the appellants, they could have shown that it was
not correct that Ram Raj Singh had not signed the plaint or fraud
had been committed by the Company or any officer of the
Company. According to the learned counsel, on the contrary,
G CBI made the inquiry and submitted the report wherein it was
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specifically observed that Ram Raj Singh was not right when he asserted that he had not signed the plaint and that fraud was committed. According to CBI, it was Ram Raj Singh who had filed the suit, was shown as plaintiff No. 2 and it was his signature in the proceedings. A

23. In our opinion, the learned counsel for the appellants is also right in contending that when present appellant No. 2 Avdesh Kumar was impleaded in December, 2002 as party and was very much on record in Appeal against Order, opportunity ought to have been afforded to him as to whether the Appeal from Order had become infructuous and whether the suit would not survive. To us, it appears that the High Court followed an easy path unknown to law when it rejected Review Petition on May 28, 2003 by recalling the order passed on December 11, 2002 virtually rectifying the order passed on May 6, 2003. In our considered opinion, the High Court ought to have extended an opportunity of hearing before passing order dated May 6, 2003 as also dated May 28, 2003 to appellant No.1-Company as well as to appellant No.2-Avdesh Kumar. B C D

24. As to the report of CBI and prima facie case found against Ram Raj Singh in the investigation undertaken, it would not be appropriate to state anything one way or the other. Since we are of the view that both the orders passed by the High Court are liable to be set aside only on the ground of non-observance of natural justice, the matter should be remanded to the High Court for fresh disposal in accordance with law. Observations made by this Court may adversely affect one or the other party and it is not appropriate to express any such opinion. We are, however, convinced that both the orders dated May 06, 2003 and May 28, 2003 passed by the High Court are liable to be set aside. E F G

25. In the result, both the appeals are allowed. Orders dated May 06, 2003 and May 28, 2003 are hereby set aside. The matters are remanded to the High Court for fresh decision in accordance with law after giving opportunity of hearing to all H

A the parties.

26. Before parting with the matter, we may clarify that we may not be understood to have expressed any opinion on the merits of the matter, one way or the other. As and when the matter will be placed before the High Court, it will be decided on its own merits without being influenced by any observations made by it in the impugned orders or by us in this judgment.

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27. Ordered accordingly. On the facts and in the circumstances of the case, there shall be no order as to costs.

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CIVIL APPEAL NO. 6282 OF 2008 @ SPECIAL LEAVE PETITION (CIVIL) NO.5593 OF 2007

28. Leave granted.

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29. The present appeal is an offshoot of appeals arising out of Special Leave Petition (Civil) Nos. 10554-55 of 2002 titled M/s Hanu Motels Pvt. Ltd. v. U.P. Financial Corporation Ltd. & Anr.

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30. So far as the facts of the case are concerned, we have stated them in detail in the above appeals and it is not necessary to reiterate them here. It may, however, be stated that in the light of the directions issued by the High Court in the order dated May 06, 2003 in Appeal against Order No. 120 of 2002 that the Central Bureau of Investigation (CBI) should take appropriate steps against the persons who had played serious fraud by investigating the matter and by prosecuting the persons found guilty in investigation that CBI made the inquiry and submitted the report.

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31. In the report, CBI collected documentary and oral evidence which established that Ram Raj Singh had filed Declaratory Suit No. 111 of 2001 in the Court of Civil Judge (Senior Division), Haridwar. He signed the plaint, vakalatnama and affidavit in the suit. Oral and documentary evidence collected by CBI also revealed and the investigation established that Ram Raj Singh was a Director of M/s Hanu Motels Pvt. Ltd.

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32. In the light of the findings of CBI, the Registrar General of the High Court filed a Complaint No. 297 of 2005 against Ram Raj Singh that he intentionally and deliberately made a false statement before the High Court to the effect that he did not file any suit in the Court of Civil Judge (Senior Division), Haridwar, he did not put signatures on plaint and affidavit and was not prosecuting a suit nor he had been a Director of M/s Hanu Motel Pvt. Ltd. and the suit was filed by resorting to impersonation. According to Registrar General by doing so, Ram Raj Singh had committed an offence punishable under Section 193, Indian Penal Code, 1860. He, therefore, prayed that accused Ram Raj Singh be summoned and tried in accordance with law.

33. Accused Ram Raj Singh in view of the complaint filed by Registrar General of the High Court made an Application for Direction No. 11659 of 2006 in Appeal against Order No. 120 of 2002 praying therein that no cognizance should be taken of the investigation by Inspector, CBI and for quashing of proceedings.

34. The High Court by the impugned order dated December 22, 2006 quashed the proceedings inter alia observing that proceedings initiated by the Registrar General were without jurisdiction and not maintainable. They were, therefore, liable to be quashed. Accordingly, the proceedings were quashed by the High Court by granting liberty to pass fresh order in accordance with law.

35. Since we have allowed the appeals filed by the appellants in the connected matters and set aside the order passed by the High Court by remitting the matter to the High Court for fresh disposal in accordance with law after affording opportunity of hearing to all the parties, in our opinion, this order also is liable to be set aside. Since the High Court will consider the entire material on record including report of CBI, it is obvious that the High Court will pass appropriate order in the light of materials placed before the Court.

- A 36. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order dated December 22, 2006 passed by the High Court in Application for Direction No. 11659 of 2006 in Appeal against Order No. 120 of 2002 is set aside and the matter is remitted to the High Court for fresh decision in accordance with law after affording opportunity of hearing to all the parties.
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37. Ordered accordingly. On the facts and in the circumstances of the case, there shall be no order as to costs.

C K.K.T.

Appeals allowed.