

**Appellant Vs. Respondent**

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**SooperKanoon Citation :** [sooperkanoon.com/1061596](http://sooperkanoon.com/1061596)

**Court :** Kolkata

**Decided On :** Nov-29-2012

**Judge :** Nadira Patherya

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

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ORDER

SHEET G.A.No.3111 of 2012 C.S.No.379 of 2012 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction SAHARA India FINANCIAL CORPORATION LTD .Petitioner Versus ALLAHABAD BANK & ORS .Respondents BEFORE: The Hon'ble JUSTICE PATHERYA Date :

29. h November, 2012.

Mr.Anindya Kumar Mitra, Sr.Advocate, Mr.Abhrajit Mitra, Advocate, Mr.Sabrapriya Mukherjee, Advocate, Mr.S.Mukherjee, Advocate, Mr.Soumava Ghosh, Advocate, Ms.Rajshree Kajaria, Advocate, Mr.S.Bhattacharjee, Advocate and Ms.Sonia Sharma, Advocate for the Petitioner The Court : In a suit for cancellation of notice dated 29th October, 2012 this application has been filed for interim relief.

The case of the petitioner is that it is a company distinct from Sahara India Real Estate Corporation LTD. and Sahara Housing Investment Corporation LTD. both of which companies were directed by order dated 31st August, 2012 to carry out some of its directives.

It is on the basis of the order dated 31st August, 2012 and under sections 11(1) and 11(2)(la) of the 1992 Act that the notice dated 29th October, 2012 has been issued.

The petitioner was not a party to the Supreme Court proceedings, and therefore, cannot be bound by the orders passed by the Supreme Court.

Sections 11(1) and 11(2)(la) of the 1992 Act casts a duty on the Board to protect the interest of the investors in securities.

The petitioner does not deal in securities.

Therefore, sections 11(1) and 11(2)(la) of the 1992 Act will not be attracted.

Therefore, the information sought from the respondent No.1, namely, the bankers of the petitioner, is contrary to the powers of respondent No.28, SEBI, under 1992 Act.

Hence, the instant application has been filed and order sought.

The letter dated 29th October, 2012 is a communication to the bankers of the petitioner, who is required to furnish details to respondent No.28.

No such communication has been sent to the petitioner.

No notice of this application has been given to the respondents as furnishing of notice is likely to prejudice the interest of the petitioner.

Having considered the facts of the case, the letter dated 29th October, 2012 has been written by SEBI to the bankers of the petitioner whereby certain details and information have been sought.

From a reading of the said letter, it appears that such details have been sought as per directions of the Hon'ble Supreme Court.

A reference is made to order dated 31st August, 2012 in the said notice dated 29th October, 2012.

On a perusal of the said order dated 31st August, 2012 it appears that the said order is restricted to two companies of the Sahara Group viz.

Sahara India Real Estate Corporation LTD. and Sahara Housing Investment Corporation LTD. The petitioner was not a party to the proceedings before the Hon'ble Supreme Court and therefore there cannot be non-compliance of any directions by the petitioner.

If at all, the respondent No.28 could have invoked its powers under the 1992 Act and it has done so under sections 11(1) and 11(2)(a) of the 1992 Act.

Section 11(1) of the 1992 Act casts a duty on SEBI to protect the interest of investors in securities and to regulate the securities market.

The petitioner does not deal in securities and therefore the question of SEBI regulating or protecting the interest of the investors of the petitioner prima facie does not arise.

As a consequence of the aforesaid, section 11(2)(a) of the 1992 Act would also prima facie not come into play.

Therefore, the issuance of the notice dated 29th October, 2012 on the bankers of the petitioner prima facie appears to be not only contrary to the order dated 31st August, 2012 but is based on invoking sections which may not be applicable to the petitioner and for the aforesaid reasonings, the notice dated 29th October, 2012 is stayed as an interim measure till 4th December, 2012.

Matter is made returnable on 3rd December, 2012.

The petitioner is directed to serve a copy of this order on the respondents.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

km AR(CR) (PATHERYA, J.)

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