(2002) 03 CAL CK 0026

In the Calcutta High Court

Case No : A.P.O. No''s. 992 and 1082 of 1993

Andhra Bank APPELLANT

Vs

Official Liquidator and Another RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Companies Act, 1956 — Section 529A
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(19)

Citation : (2002) 2 CALLT 359 : (2002) 2 CHN 412

Hon'ble Judges : Tarun Chatterjee, J;Asit Kumar Bisi, J

Bench : Division Bench

Advocate : Dipak Kumar Basu, M. Rajsekhar and M. Rajeswara Rao, for the Appellant; S.N. Mukherjee, Amitesh Banerjee, Abhijeet Mitra and Ranjit Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Andhra Bank Vs. Official Liquidator and Another, AIR 2005 SC 1814 : (2005) 2 BC 425 : (2005) 124 CompCas 453 : (2005) 4 CompLJ 33 : (2005) 3 JT 506 : (2005) 5 SCC 75 : (2005) 59 SCL 239 : (2005) 2 SCR 776 : (2005) AIRSCW 1608 : (2005) 2 Supreme 721

A.K. Bisi, J.—A.P.O. No. 1082 of 1993 arises out of the Judgment and or order passed by a learned Judge of this Court on 12th October, 1993 in Company Petition No. 621 of 1987. The impugned order challenged in the instant appeal runs as under :

"Andhra Bank is directed to pay a sum of Rs. 38 lakhs to the Official Liquidator for the purpose of disbursing forthwith the salary to the officers, staff and workers of New Tobacco Co. Ltd., both at Calcutta and Durgapur, before the ensuing Puja. The Official Liquidator will disburse such salary to the officers, staff and workers of New Tobacco Co. Ltd. as aforesaid, before the ensuing Puja."

2. By subsequent order passed on 23rd November, 1993 it was clarified by the

learned Judge that the Joint Receivers would draw a sum of Rs. 38 lakhs from the Fixed Deposit made with the appellant-bank and pay the amount to the Official Liquidator in terms of the order dated 12th October, 1993 for disbursing of one month''s salary to the officers, staff and workers of New Tobacco Co. Ltd. certain other directions were also given to the Joint Receivers with which we are not presently concerned.

3. The basic facts in a nutshell relevant for the purpose of the instant appeal are as follows :-

"The appellant Andhra Bank is a secured creditor of New Tobacco Co. Ltd. (in liquidation). New Tobacco Co. Ltd. (hereinafter referred to as the said company) enjoyed diverse credit facilities from the appellant-bank in various accounts since 1985. Ultimately there were huge outstanding liabilities against the said company in favour of the appellant-bank and under such circumstances the appellant-bank instituted a suit being Suit No. 1035 of 1987 against the said company and its directors in this Court claiming a decree for Rs. 2,69,54,228.15p and other reliefs. After institution of the suit the appellant-bank moved an application for appointment of a Receiver over the hypothecated goods. The Joint Receivers were appointed in suit and there was a direction of the learned Judge upon the Joint Receivers to sell only the Tobacco lying in the godown at Guntur and also in the godown at Biccavolu, in the State of Andhra Pradesh by public auction. The highest offer was given by the said company for a sum of Rs. 1.35 lakhs before the Joint Receivers and the sale of hypothecated goods of raw Tobacco lying at Guntur godown in favour of the said company was confirmed by Sachikanta Hazari, J. (as His Lordship then was) on 4th July, 1988 and direction was given to one of the Joint Receivers to deliver the goods at a time or by instalment with a further direction to the Joint Receivers to sell other stocks of raw Tobacco and keep the money in fixed Deposits. In terms of the said order dated 4.7.1988 and pursuant to the minutes of the meeting held by the Joint Receivers dated 28.8.1988 the said company paid the entire consideration money of the sale of raw Tobacco at Guntur godown to the Joint Receivers and took delivery of such raw Tobacco from Guntur godown. The said company enjoyed diverse credit facilities in various accounts from the appellant-bank and to secure its liabilities the said company from time to time executed several documents in favour of the appellant-bank in which the said company hypothecated all its stocks, raw-materials and goods including immovable properties of any kind belonging to the said company by way of first and paramount charge for payment of the dues of the Bank."

4. By an order dated 25th November, 1991 passed by the Company Court in connection with the Company Petition No. 621 of 1987, the said Company was directed to be wound up and the Official Liquidator was directed to take possession of all the assets of the said Company and accordingly the Official Liquidator took possession of all the assets of the said company.

5. Three Worker Unions with one M/s. Dialogue Research and Appliances Pvt. Co.

decided to take over the unit for operation and by an order dated 19.6.1992, Suhas Chandra Sen, J. (as His Lordship then was) passed an order of staying the winding up of the company and appointed a Committee of Management headed by the said M/s. Dialogue Research and Appliances Pvt. Co. to operate the production of the said company for a period of one year with a direction to Canara Bank, Andhra Bank and United Bank of India to send one nominee each in the said committee, but the committee could not operate the business satisfactorily and as such by an order dated 30.9.93 Suhas Chandra Sen, J. (as His Lordship then was) directed the committee of the Management to discontinue the operation of the business of the said company.

6. By the impugned order, the learned Judge directed the present appellant Andhra Bank to pay a sum of Rs. 38 lakhs to the Official Liquidator for the purpose of disbursing forthwith the salary to the officers, staff and workers of the said company both at Calcutta and Durgapur before the ensuing Puja and subsequently, as already referred to, by the order dated 23.11.1993 passed by the learned single Judge it was clarified that the joint receivers would draw a sum of Rs. 38 lakhs from the Fixed Deposit made with the appellant-bank and pay the amount to the Official Liquidator in terms of the order dated 12.10.93 for disbursing of one month''s salary to the officers, staff and workers of the said company.

7. Being aggrieved by and dissatisfied with the impugned order the appellant-bank preferred this appeal questioning inter alia that the learned Company Judge had failed to consider that once the hypothecated and/or pledged goods of the secured creditors had been sold prior to the liquidation of the Company the same could not be treated as the assets of the company after the liquidation of the said company and that the learned company. Judge ought to have held that the sale proceeds lying in the hands of the Joint Receivers appointed in that suit filed by the appellant-bank were not connected with the liquidation proceedings of the said company and that the learned Company Judge had failed to appreciate the rights and interest of the secured creditors of the said company (in liquidation) in respect of all the hypothecated stocks which had already been sold in the suit filed by appellant-bank prior to the liquidation.

8. Admittedly the said company had gone into liquidation and the same is now represented by the Official Liquidator. Respondent No. 2 Shib Nath Ghosal representing the workers of the said company was added as party to the appeal in view of the order passed by this Court on 8.9.98. It was contended by the learned counsel appearing for the appellant that the suit instituted by his client for recovery of the dues is now pending before the Debt Recovery Tribunal and no order for disbursement of the sale proceeds of the said company can be made unless a certificate for recovery is issued against the said company in terms of Section 19(19) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the RDB Act). He had also drawn our attention to Section 529A of the Companies Act, 1956 which reads as follows :

"529A. Overriding preferential payments -- (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company, -

(a) workmen''s dues; and

(b) debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pari passu with such dues, shall be paid in priority to all other debts.

(2) The debts payable under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

The learned counsel for the appellant relied on the decision of the Supreme Court in the case of The Bank of Bihar Vs. The State of Bihar and Others, in which it has been held that the pawnor has special property and a lien on the goods and so long his claim is not satisfied, no other creditor or pawnor has any right to take away the goods or its price.

10. The learned counsel for the contesting respondent cited the case of Allahabad Bank Vs. Canara Bank and Another, wherein the Supreme Court held as follows :-

"The next question is whether the amounts realised under the RDB Act at the instance of the appellant can be straight away released in its favour. Now, even if Section 19(19) read with Section 529A of the Companies Act does not help the respondent Canara Bank, the said provisions can still have an impact on the appellant Allahabad Bank which has no doubt a decree in its favour passed by the Tribunal. Its dues are unsecured. The "workmen''s dues" have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a). There is no material before us to hold that the workmen''s dues of the defendant company have all been paid. In view of the general principles laid down in National Textile Workers'' Union v. P. R. Ramakrishnan there is an obligation resting on this Court to see that no secured or unsecured creditors including banks or financial institutions, are paid before the workmen''s dues are paid. We are, therefore, unable to release any amounts in favour of the appellant Bank straight away."

11. We have carefully considered the rival contentions raised by the learned counsel for the parties. As already referred to, by the impugned order dated 12th October, 1993 the learned Company Judge directed the appellant-bank to pay a sum of Rs. 38 lakhs to the Official Liquidator for the purpose of disbursing the salary to the officers, staff and workers of the said Company both at Calcutta and Durgapur. By the subsequent order passed on 23.11.1993 the learned company Judge clarified that the Joint Receivers would draw a sum of Rs. 38 lakhs from the Fixed Deposit made with Andhra Bank and pay the amount to the Official Liquidator in terms of the order dated 12th October, 1993 for disbursement of

one months''s salary to the officers, staff and workers to the said company and the Official Liquidator would start disbursing the money as directed by the order dated 12th October, 1993. In view of the ratio of the decision of the Supreme Court in that case of Allahabad Bank (supra) as noted above the workmen''s dues have priority over all other creditors, secured and unsecured in view of Section 529A(1)(a) of the Companies Act. The suit instituted by the appellant bank is admittedly pending before the Debt Recovery Tribunal and in such context, as aforementioned, the learned counsel for the appellant contended that no order for disbursement of the sale proceeds of the said Company can be made unless a certificate for recovery is issued against the said company in terms of Section 19(19) of the RDB Act. He further contended that the appellant-bank is one of the secured creditors of the said company which had gone in liquidation and the claim of the appellant in respect of the said company would not be less than Rs. 5.50 crores and as such no order can be passed at this stage directing the appellant-bank to pay the sum of Rs. 38 lakhs for the purpose of disbursement of the salary by the Official Liquidator to the officers, staff and workers of the said company. But such contention as raised by the learned Advocate for the appellant can in no way be countenanced in view of the decision of the Supreme Court in the case of Allahabad Bank (supra) wherein it has been specially laid down that there is an obligation resting on the Court to see that no secured or unsecured creditors including Banks and Financial Institutions are paid before the workmen''s dues are paid. The impugned order relating to payment of Rs. 38 lakhs for the purpose of disbursement of one month''s salary to the officers, staff and workers of the said company was passed by the learned Judge of the company Court in Company Petition No. 621 of 1987. So in our view, pendency of the suit instituted by the Bank before the Debt Recovery Tribunal cannot operate as bar to disbursement of salary to the workmen of the said company since in view of the decision of Allahabad Bank (supra) the workmen''s dues have priority over all secured and unsecured creditors. Section 19(19) of the RDB Act read with Section 29A of the Companies Act cannot help the appellant-bank so far as the workmen''s dues of the said company are concerned. No dispute has been raised by the appellant with regard to the sum of Rs. 38 lakhs, which the learned Judge by the impugned order directed the Official Liquidator to disburse towards one month''s salary to the officers, staff and workers of the said company. In other words the amount of workmen''s dues ordered to be disbursed for the period in question has not been disputed by the appellant.

12. Having regard to the above facts, circumstances, materials on record and the legal aspects as discussed above we find no infirmity in the impugned order passed by the learned Company Judge. There is no merit in the appeal. The appeal is accordingly dismissed. The order under appeal is affirmed subject to the following directions. We direct the Joint Receivers to draw the sum of Rs. 38 lakhs from the Fixed Deposit made with the appellant Andhra Bank and pay the amount to the Joint Special Officer in terms of the order dated 12th October,

1993 passed by the learned single Judge for disbursement of salary to the officers, staff and workers of New Tobacco Co. Ltd. The Joint Receivers are directed to encash the Fixed Deposit receipts only after their maturity, if the same have not already matured and will continue to hold the balance amount with interest in further short term deposit account until further orders to be obtained from any appropriate forum. The Joint Special Officers are directed to disburse the money within one month from the date of receipt of the money from the Joint Receivers in terms of the direction contained in the order dated 12th October, 1993. No order as to costs.

13. So far as A.P.O. No. 992 of 1993 is concerned we find that the said appeal has been preferred against the order passed by the learned single Judge on 30.9.93 in Suit No. 1035 of 1987. Mr. Rao appearing one behalf of the appellant bank on receiving instructions from the bank submitted before us that since a proceeding has already been initiated before the Debt Recovery Tribunal, the bank does not want to proceed with this appeal. Such being the stand taken by the appellant bank, we dismiss this appeal for non-prosecution. Interim order if there be any shall stand vacated. We however make it clear that whatever question that has been raised in the said appeal being A.P.O. No. 992 of 1993 by the parties are kept open to be decided by the Debt Recovery Tribunal. We also make it clear that we have not gone into the merits of this appeal and as noted herein earlier such merit shall be considered by the said Tribunal. There will be no order as to costs.

As prayed for learned Advocate for the bank, the operation of this Judgment and/ or Order shall remain stayed for a period of one month from this date.

All parties are to act on a xerox certified copy of this judgment on the usual undertakings.

T. Chatterjee, J.

14. I agree.

