

(1991) 01 DEL CK 0064

In the Delhi High Court

Case No : Letter Patent Appeal No. 1043 of 1989 and Suit No. 311 of 1988

Bank of India

APPELLANT

Vs

Technocrat Chemicals and Others

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Citation : (1991) 43 DLT 550

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Sonia Mehta, H.L. Tikku and B.L. Wali, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This application has been filed by the plaintiff bank under Order 40 Rule 1 read with Section 151 of the CPC (Code for short) to appoint a Receiver to take possession and control of the hypothecated plant and machinery owned by defendant No. 1, detailed in Annexure A and lying at plot No. 27, Gurgaon Industrial Estate, Gurgaon Haryana as well as the book debt of the defendant. The application also seeks interim injunction to restrain the defendant from parting with the aforesaid plant and machinery or from selling the stock and raw materials and finished goods etc. It is alleged in this application that -the plaintiff bank has filed a suit for recovery of Rs. 12,15,706/30 p. outstanding under term loan facility against hypothecation of Plant and Machinery, together with pending and future interest at the rate of 13.5%[^] per annum with quarterly rests. The plaintiff also seeks declaration that there is a valid and subsisting charge in favor of the plaintiff on the hypothecated plant and machinery. The bank has serious apprehensions of the defendant surreptitiously and illegally alienate the aforesaid hypothecated goods by way of sale or otherwise as it has come to the knowledge of the bank that the defendants are heavily indebted and are facing serious financial stringency, so that under the terms it has become necessary for the bank to seek appointment of a Receiver or otherwise there was every likelihood of the plaintiff bank losing the valuable security. It may become

impossible for the plaintiff bank to recover from the defendants the amount claimed in the suit in case of a decree.

(2) In reply to this application on behalf of defendants 1 and 2 it is stated that the plaintiff's suit is liable to be dismissed and there is every likelihood of a counter claim being decreed in favor of the defendants. No declaration was liable to be passed in favor of the plaintiff regarding the alleged hypothecated goods because there was no subsisting charge.

(3) In brief the case of the plaintiff is that in or about February, 1973, defendants 2, 3 and 4 as partners of defendant No. 1 approached the plaintiff bank for grant of a term loan facility against hypothecation of plant and machinery for a sum of Rs. 1,15,000.00. The loan was granted and by way of security defendants executed demand promissory note for Rs. 1,15,000.00 payable with interest at 4j[^] over the bank rate with a minimum of 10[^] with quarterly rests, a continuing security letter, a deed of hypothecation hypothecating plant and machinery lying at defendant No. 1's factory at plot No. 27, Gurgaon Industrial Estate and other documents. The deceased B.S. Aneja husband of defendant No. 4 and father of the remaining defendants executed and delivered a letter of guarantee for that amount. In October, 1975, at the request of defendants 2 to 4, additional loan against hypothecation of plant and machinery for Rs. 45,000.00 was granted, thus increasing the total loan to Rs. 1,60,000.00. Usual additional documents were executed on 3rd October, 1975. In April, 1980 it was discovered that defendant No. 1 had over drawn the loan by a sum of Rs. 33,000.00. Therefore, defendants 1 to 4 were requested to execute further documents creating further security for the exceeded amount of Rs. 33,000.00, which was done on 1.4.1980. An undertaking was also executed to repay the enhanced loan of Rs. 1,93,000 in Installments of Rs. 5000.00 per month from June, 1980 onwards. The defendants, however, failed to fulfill their obligations with regard to repayment and continuously defaulted. The account became highly irregular. Defendants 2 to 4 acknowledged their liability by executing various letters of acknowledgement of debts and security on deferent dates between 31.3.1975 and 28.1.1985 by which time the liability increased to the suit amount.

(4) In their written statement defendants 1 and 2 raised various pleas like that the suit is barred by time, that this Court has no jurisdiction, that the plaint was not signed, verified or instituted by a duly authorised person, that the bank had allegedly charged and/or debited interest, both penal or otherwise without any jurisdiction. It further alleged that the defendants were induced on the express and implied undertaking that it will be allowed to grow with the aid of financial facility but impediments were created in the working of the defendants by filing the present suit and the suit was liable to be dismissed on this ground alone. The correctness of the statement of account filed by the plaintiff is also challenged. The defendants also understand that the bank has already been paid and/or has lodged claims with the Credit Guarantee Corporation of India and Reserve Bank of India and as such was not entitled in law to recover the amount once over

again from the defendants. On merits, it is alleged that the plaintiff bank did not disburse the fund as was required of it. It disbursed small payments though it got the documents signed for the full amount. The documents relied upon by the plaintiff were allegedly got executed blank and without consideration. The acknowledgement letters are alleged to be forged and fabricated and also without consideration. It is then alleged that on account of deliberate breaches committed by the plaintiff bank by not granting the promised and assured value for their Project, defendants suffered heavy losses. The plaintiff's claim, if any, stood adjusted against the claims of the defendants and in fact the plaintiff was liable to pay Rs. 5,27,000.00 as damages to the defendants. Even if the suit claim was assumed to be correct, the defendants after adjustment of damages suffered by them were entitled to a sum of Rs. 1,52,293.70 p.

(5) By replication claim set up by the defendants was denied and the allegations made in the plaint were reiterated. The bank also denied if it "had lodged any claim with the Credit Guarantee Corporation of India or Reserve Bank of India. Rather such contentions of the defendants all the more reveal the malafide intention of the defendants to evade liability.

(6) I have heard arguments advanced by learned counsel for the plaintiff and learned counsel for defendants 1 and 2. The principles governing the appointment of a Receiver have been laid down in various authorities. It was held in the case of S.B. Industries, Freegunj and Another Vs. United Bank of India and Others, ,

"In order to justify the appointment of receiver, the plaintiff must establish a reasonable possibility that the plaintiff will ultimately succeed in obtaining the relief claimed in the suit. The requirement thus is that he must establish a good prima facie case. It may further be remembered that the appointment of receiver is, as a general rule, discretionary, and not a matter of right. A court will make an appointment of a receiver with great caution and circumspection. In a case where the remedy of the appointment of a receiver seems necessary to prevent fraud, to protect and preserve the property against an imminent danger of loss or diminution in value, destruction, squandering, wastage or removal from jurisdiction, the court may appoint a receiver. A court in exercise of its discretion to appoint or refuse a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, ends of justice, the rights of all the parties interested in the subject matter and the adequacy of other remedies."

(7) I am in respectful agreement with the observations" made in the S.B. Industries's case (supra).

(8) After carefully weighing all the circumstances of this case, I am of the opinion that it is a fit case where it is just and convenient to appoint a Receiver. The defendants in this case have denied their liability completely and rather have made a counter claim on account of some losses/damages suffered by them.

Particulars of any such losses or "damages have not at all been given in the written statement. On the other hand prima facie the plaintiff seems to have a good case because there are duly executed documents by defendants 1 to 4 in favor of the plaintiff bank after obtaining/utilizing various credit facilities from the plaintiff bank in order to push their business. Special mention may be made of the hypothecation of tangible moveable property comprising of plant and machinery in "their plot No. 27, Gurgaon Industrial Estate, Gurgaon. Clause 12 of this agreement clearly states that if, after execution hereof, any circumstance shall occur which in the sole judgment of the Bank is prejudicial to or imperils or is likely to prejudice or imperils the security, then the Bank, if it thinks fit, shall be entitled at the risk and expense of the Borrower without any notice at any time or time after such occurrence and such sole judgment to enter any place where the said goods may be and to inspect, value, insure and/or take charge and/or possession of all or any part of the hypothecated goods. And if there shall be any default of the Borrower in payment of any money hereby secured or the performance of any obligation to the Bank hereunder or if any circumstance shall occur which in the opinion of the Bank shall be prejudicial to or shall endanger or be likely to endanger this security, the bank shall be entitled to seize, recover, receive, appoint receivers of or remove and/or sell by public auction or private contract or otherwise dispose of or deal with any part of the hypothecated goods.

(9) The plaintiff prima facie has a good case to succeed because there are duly executed documents by defendants 2 to 4 on behalf of defendant No. 1. There are also balance confirmation acknowledgements of the dues claimed by the plaintiff bank which bring the claim of the plaintiff prima facie within limitation. The objection that this Court has no jurisdiction also prima facie seems to be ill-conceived because u/s 151 of the Code, a suit can be filed within the local limits of a court within whose jurisdiction the cause of action, wholly or in part arises. All the various documents including the hypothecation deed were executed at New Delhi. Clause 5 of this document says that the amount is repayable on demand at New Delhi with interest. These recitals prima facie bring the case within the jurisdiction of this Court also. The intention of the defendants prima facie seems to be mala fide because without giving any particulars of the damages/loss claimed by them, they are trying to set off the suit claim with such undisclosed damages/ losses and rather are making a counter claim. Therefore, the apprehension of the plaintiff that the defendants have mala fide intention to wriggle out of their liability are prima facie correct. The submission that the plaintiff has yet to be granted a declaration that the Plant and Machinery are hypothecated and, Therefore, a Receiver should not be appointed also has no merit. The hypothecation deed referred above clearly recites in clause 2 that the Plant and Machinery including stocks, raw or manufactured goods etc. were hypothecated. The Court at this stage is to judge whether there is a strong prima facie case in favor of the plaintiff. This condition is fully satisfied in this case.

(10) Therefore, I am of the view that it is a fit case for appointment of a Receiver who should take into possession the hypothecated plant and machinery including

therein the stocks, raw and/or manufactured goods or in process of manufacture. I, Therefore, appoint Shri Chetan Sharma, Advocate as a Receiver who will take into possession the Plant and Machinery and other goods as directed above into his custody. He shall give suggestions for the disposal of the aforesaid articles for the realisation of the dues of the plaintiff within four weeks. His remuneration is fixed at Rs. 5,000.00 tentatively to be borne by the plaintiff. is stands disposed off.

(11) May be listed before Deputy Registrar on 15th February, 1991, the date already fixed.