

(1991) 01 DEL CK 0033
In the Delhi High Court

Bank of India

APPELLANT

Vs

Technocrat Chemicals and others

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Citation : (1993) 76 CompCas 664

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

Bench : Single Bench

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

Judgement

R.L. Gupta, J.—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 debts of the defendant. The application also seeks an interim injunction to restrain the defendant from parting with the aforesaid plant and machinery or from selling the stock, raw materials, 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 outstanding under the term-loan facility against hypothecation of plant and machinery, together with pending and future interest at the rate of 13.5 per cent. per annum with quarterly rests. The plaintiff also seeks a 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 alienating the aforesaid hypothecated goods by way of sale or otherwise as it has 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, for 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 Nos. 1 and 2, it is stated that the plaintiff's suit is liable to be dismissed and there is every likelihoods 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 Nos. 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. The loan was granted and, by way of security, the defendants executed a demand promissory note for Rs. 1,15,000 payable with interest at 4 1/2 per cent. over the bank rate with a minimum of 10 1/2 per cent. 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, had executed and delivered a letter of guarantee for that amount. In October, 1975, at the request of defendants Nos. 2 to 4, an additional loan against hypothecation of plant and machinery for Rs. 45,000 was granted, thus increasing the total loan to Rs. 1,60,000. The usual additional documents were executed on October 3, 1975. In April, 1980, it was discovered that defendant No. 1 had overdrawn the loan by a sum of Rs. 33,000. Therefore, defendants Nos. 1 to 4 were requested to execute further documents pledging further security for the excess amount of Rs. 33,000 which was done on April 1, 1980. An undertaking was also executed to repay the enhanced loan of Rs. 1,93,000 in Installments of Rs. 5,000 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 Nos. 2 to 4 acknowledged their liability by executing various letters of acknowledgment of the debts and security on different dates between March 32, 1975, and January 28, 1985, by which time the liability increased to the suit amount.

4. In their written statement, defendants Nos. 1 and 2 raised various pleas such as 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 justification etc. 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 that 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 acknowledgment letters are alleged to be forged that on account of deliberate breaches committed by the plaintiff-bank by not granting the promised and assured value for their project, the 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 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.

5. By replication the claim set up the defendants was denied and the allegations made in the plaint were reiterated. The bank also denied that it had lodged any claim with the Credit Guarantee Corporation of India or the Reserve Bank of India. Rather such contentions of the defendants all the mire reveal the mala fide intention of the defendants to evade liability.

6. I have heard the arguments advanced by learned counsel for the plaintiff and learned counsel for defendants Nos. 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, (headnote) :

"In order to justify the appointment of receiver, the plaintiff must establish a reasonable possibility that the plaintiff will ultimately succeed in containing 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 a 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 S.B. Industries, Freegunj and Another Vs. United Bank of India and Others, .

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. In the other hand, prima facie, the plaintiff seems to have a

good case because there are duly executed documents by defendants Nos. 1 to 4 in favor of the plaintiff-bank after containing/utilizing various credit facilities from the plaintiff-bank in order to improve their business. Special mention may be made of the hypothecation of tangible movable property comprising plant and machinery in their plot No. 27, Gurgaon Industrial Estate, Gurgaon. Clause 12 of this agreement clearly states that if, after the execution thereof, any circumstances shall occur which in the sole judgment of the bank, is prejudicial to or imperials ,or is likely to prejudice or imperil 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 kept 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 by the borrower in payment of any money hereby secured or of 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, the security, the bank shall be entitled to seize recover, receive, appoint receivers 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 documents duly executed by defendants Nos. 2 to 4 on behalf of defendant No. 1. There are also confirmation acknowledgments 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 20(c) 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 document says that the amount is repayable on demand at New Delhi with interest. These recitals prima facie being 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 a mala fide intention to wriggle out of their liability is 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 to 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 tentatively to be borne by the plaintiff. is stands disposed off.

11. May be listed before the Deputy Registrar on February 15, 1991, the dare already fixed.