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(1978) 12 DEL CK 0010

In the Delhi High Court

Case No : Company Application Appeal No. 218 of 1977

Central Bank of India — APPELLANT

Vs

India Mica Grinders (P) Ltd. — RESPONDENT

Date of Decision : 06-12-1978

Acts Referred:

Citation : (1979) 15 DLT 53

Hon'ble Judges : S. Ranganathan, J

Bench : Single Bench

Advocate : S.D. Sharma, Madan Bhatia and S. Jain, for the Appellant;

Judgement

S. Ranganathan, J.

(1) This is an application by the Central Bank of India (hereinafter referred to as the ''Bank'') u/s 446 of the Companies Act seeking permission to institute a suit against the respondents No. 1 to 5, the first respondents India Mica Grinders Pvt. Ltd., being a company which is being wound up by the order of this Court dated 24-5-1976 in Company Petion No. 48 of 1968. Respondents 2 and 3 are the directors of the company. Respondents 4 and 5 appear to be related to the directors. According to the applicant the bank had advanced money by way of loan to the company on the basis of promissory notes, letters of hypothecations and pledge of goods as well as letters of guarantee and mortgage by way of deposit of title deeps created in its favor, by respondents No. 1 to 5, the details of which it is unnecessary to reproduce here. One of the pieces of land on title deeds of which are alleged to be deposited by way of security in favor of the bank is situated in Moja Sudkhrali in Gurgaon Tehsil. According to the bank a sum of Rs. 2,20,417.78 is due and payable to it by the five respondents as on 28-2-1977. It is stated that this is the balance that remained due and payable to the bank after setting out the amounts credited to the accounts by way of the sale-proceeds of certain goods and stocks pledged by the company with the bank. Respondents 2 to 5 are stated to bs liable as co-obligants, and guarantors. Respondents No. 6 has been added as a party because it has purchased,

according to the applicant, a part of the land secured in favor of the bank by the deposit of title deeds. The circumstances the applicant prays for permission to sue the six respondents in the Court of competent jurisdiction at Gurgaon for the recovery of Rs. 2,20,417,78 with costs and further interest, against the respondents I to 5 on the basis of equitable mortgage and against their other properties and assets and against respondent No. 6 in respect of the mortgaged property purchased by him. The application has been opposed by respondent No. 2 to 6 on various grounds which it is unnecessary to set out at this stage. So for as the official liquidator is concerned he has stated in his reply that he has no objection to the bank being granted leave to file a suit subject to the following conditions :-

(1)that no......will be obtained against the company in liquidation and no execution will be levied against the company with the leave of this court and;

(2)that for the balance of the decree amount remaining outstanding the bank may only file a claim before the Official Liquidator in due course.

(2) On behalf of the applicant a rejoinder was filed on 2-11-1978. In this rejoinder it has been mentioned that in order to save limitation the suit had been filed in the court at Gurgaon subsequent to the institution of th; present application. It has further been stated in paragraph 8 of the reply rejoinder that the bank undertakes not to paced against the company in liquidation or the official liquidator in the execution of any decree it may obtain in the suit without the leave of this Court.

(3) After having heard the arguments of the learned counsel for the bank, for respondents 2 to 5 and for the Official Liquidator I am of opinion that leave should be granted to the applicant to proceed with the suit which has since been filed in the civil court at Gurgaon. From the details given in the application it is seen that so far as the company is concerned it is stated to have obtained advance from the bank on the basis of hypothecation of railway receipts, and shipping documents and pledge of goods. The mortgage is appear to have been made by way of deposit of title deeds only by the second respondent and the third respondent. From paragraph 17 and 18 of the application it appears that the outstanding balance against the pledge stocks in June 1968 was Rs. 6,691.37. After intimating and in consultation with the Official Liquidator it is stated that the pledged stocks were sold for a sum of Rs. 14,291.04. Virtually Therefore it appears that the bank has realised its security so far as the company is concerned and will be only an unsecured creditor of the company in respect of any balance that may be due to it under the various promissory notes, agreements etc. It is not necessary to express any final opinion on these questions as the full details and amounts are not available but this broadly appears to be the case. The company being in liquidation and at present there being no substantial assets with the Official Liquidator the real litigation is only between the bank and respondents 2 to 6. So far as the company is concerned as has been stated by the Official Liquidator perhaps the only recourse oF the

applicant will be to file a claim before the Official Liquidator in due course for the unrealised balance of any decree amount.

(4) Having regard to the above circumstances I see no reason why leave should not be granted to the bank not only for the filing of the suit but also to continue the suit which has already been filed at Gurgaon. There was some discussion before roe as to whether the suit should be transferred from the Gurgaon court to this Court but I do not think that any such transfer order is justified in the circumstances of this case. As I have already stated the principal contests is between the bank and respondents 2 to 6, and there is no justification for transferring that litigation to this Court merely because the company is also a party thereto. Respondents 2 and 3 being the directors, of the company who are stated to have obtained the over-draft facilities, the defense of the suit will be mainly in their hands and so far as the official liquidator is concerned he will have almost nothing to do except to sail Along with these respondents. The company is only a formal party in the circumstances and Therefore the fact that the winding up order has been passed by this Court is by itself not be sufficient to justify a transfer of this suit to this Court. That apart Gurgaon in very close to Delhi and I do not see any great inconvenience or hardship that will be counsel to the company or the Official Liquidator in defending the suit at Gurgaon particularly as the Official Liquidator has a lot of other litigation to be attended to in the Court at Gurgaon in relation to some of the companies under his charge. Actual the plea for having the suit transferred to Delhi comes mainly from respondents 2 to 6 but as I have already stated there would be no justification for transferring the proceedings to this Court unless it is really in the interests of the company to do so and for the reasons I have already stated I do not think that this is not so. Apart from that there is also the practical consideration that the transfer of the suit to this Court may only lead to delay in its disposal and it will really be conducive to the interests of the company to have the suit disposed of as early as possible. For these reasons I am unable to see any reasons for directing the transfer of the suit to this Court.

(5) On behalf of respondents 2 to 5 it was urged that they were residents of Delhi and that the suit was filed at Gurgaon only to harass them. The question whether the suit has been properly filed at Gurgaon or not and whether the court as Gurgaon has jurisdiction to entertain the suit will not doubt be considered by that court if raised before it. lam also not called upon to express any opinion on that point. I am also not called upon to express any opinion regarding the merits of the claim of the bank or of the various defenses to the suit which have been put forward on behalf of the company, and the other respondents in this application.

(6) For the above reasons this application is allowed and the applicant bank is permitted to continue the suit instituted by it against the company in liquidation and represents 2 to 6 in the court at Gurgaon. There will however be no order as to costs.

