(1984) 07 CAL CK 0019

In the Calcutta High Court

Case No : Appeal No. 122 of 1983

Central Bank of India APPELLANT

Vs

Tauras Foundry Pvt. Ltd. and Others RESPONDENT

Date of Decision : 27-07-1984

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1985 Cal 35

Hon'ble Judges : Suhas Chandra Sen, J;Dipak Kumar Sen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.K. Sen, J.—The Central Bank of India instituted the above suit against Tauras Foundry (sic) Limited and three of its directors on 2-12-1982 claiming, inter alia, a decree for Rs. 33,25,206.78 p; a declaration, if necessary, that the goods specified in the plaint are charged or hypothecated for payment of the plaintiff''s claim and a decree for sale of the same with liberty to the plaintiff to appropriate the balance proceeds of the same in pro tanto satisfaction of the plaintiff''s claim.

2. The claim of the plaintiff is alleged to have arisen in respect of three accounts of the defendant company with the former, namely, current (over-draft) account where a sum of Rs. 17,45,4171p. is stated to be due; a Packing Credit account where a sum of Rs. 12,03,156.15p. is stated to be due and Export Bill Discounting account where a sum of Rs. 3,76.732.26p. is stated to be due.

3. The plaintiff alleges that the defendants executed, inter alia, a letter of hypothecation dated 12-12-1979 to secure the dues of the plaintiff in the Packing Credit account by which defendant 1 hypothecated all its tangible moveable properties including stock in trade and cast iron goods, such as manhole covers and frames, water meters, pig iron and scraps, patterns, moveable plant and machinery.

4. On a Notice of motion dated 3-12-1982 the plaintiff applied for the following

interim orders : --

a) Appointment of a receiver over the securities of the plaintiff Bank as mentioned in the petition with direction to the receiver to take possession thereof forthwith ;

b) Direction upon the receiver to sell the said securities taking possession thereof and to hold the net sale proceeds thereof until further orders ;

c) Alternatively, the receiver be directed to sell the securities and to pay the net sale proceeds thereof to the plaintiff Bank in pro tanto satisfaction of its claim in the suit ;

d) An injunction restraining the, defendants from selling, disposing of or encumbering or realising or in any way dealing with the said securities till the disposal of the application.

5. By an ad interim order passed in this application on 3-12-1982 a receiver was appointed and was directed to make an inventory of the hypothecated goods. The inventory was made on 16-12-1982.

6. An affidavit affirmed by Nanuram Beriwala, defendant 2, on 1-3-1982 was filed in opposition to the petition. In this affidavit the claim of the plaintiff was generally denied and the correctness of the accounts was not admitted. It was alleged that the letter of hypothecation had no connection with the Packing Credit account and that large sums of money due to the defendant company had become blocked by reason of non-payment by one of its foreign customers. It was alleged further that the defendant company had sufficient assets to meet the claim of the plaintiff, that the defendant company receives orders for supply of Rs. 50 lakhs annually and that it was a regular supplier to various Government of India Undertakings.

7. Diptendu Kumar Banerjee. the Chief Officer of the plaintiff Bank, affirmed an affidavit on 9-2-1983 which was filed in reply. It was, inter alia, alleged in this affidavit that the admitted dues of the plaintiff Bank had not been paid. Disputes had since arisen in the management of the defendant company and a Special Officer had been appointed by this Court over the company.

8. The application was disposed of by a judgment and order dated 11-3-1983. (Reported in 1983 Tax LR 138). The material part of the judgment is as follows : --

"..... for the purpose of preservation of the securities, this Court thinks it fit to appoint Mr. Harashit Ghose, Advocate as Receiver over the hypothecated goods as prayed for in prayer (a) of the petition. The Receiver will take formal or symbolic possession of the hypothecated goods as mentioned in Annexure ''F'' and in para 25 of the petition but he will not interfere with the running of the business. The defendant will forward to the Receiver statements giving full particulars of the consumption of raw materials for production and the stocks of finished goods as well as the amount spent for the production of the said goods. The plaintiff''s prayer for sale of the securities as mentioned in para 25 and Annexure ''F'' to the petition is not granted at this stage. Liberty is given to the plaintiff Bank to apply. Costs costs in the cause. The monthly remuneration of the Receiver is fixed at 60 gms."

The present appeal is from the said judgment and order.

9. It appears that the plaintiff has a substantial claim and could make a sufficient case before the trial court for appointment of a receiver. From the judgment it is seen that the trial court intended to preserve the securities.

10. But the actual relief granted to the plaintiff by the judgment and order is illusory. Though a receiver has been appointed, the defendants have been left free to deal with the hypothecated goods as they like. The only obligation imposed on the defendants is to send a statement of consumption of stocks without even liberty to the plaintiff to inspect the same. The receiver remains only in symbolic possession of the assets while he receives monthly remuneration from the plaintiff.

11. On a statement of stock dated the 26th July 1980 the particulars of the goods hypothecated at the time of the institution of the suit were alleged to be as follows : --

a) Manhole covers and frames 158.065 mt.

b) Pig Iron and Scrap 20 mt.

c) General stores & spares 2775 mt.

d) Stores and spares including patterns Rs. 23,000/-

12. On 16-12-1982. it was found that about 100 mt. of manhole covers and frames had been disposed of leaving a balance of about 50 mt. showing considerable depletion of the hypothecated goods.

13. For the reasons above, this appeal is allowed. The judgment and order dated 11-3-1983 are set aside. The receiver appointed to make inventory is directed to take possession of the hypothecated assets forthwith and sell the same. The terms and conditions of the sale are directed to be settled at a meeting of the parties and confirmed by the trial court.

14. After meeting the costs, charges and expenses of the sale, the receiver will keep the balance amount in a separate deposit account with the plaintiff subject to further orders in this suit.

15. The remuneration of the receiver to be fixed by the trial court after the safe is completed.

16. All parties and the receiver to act on a signed copy of the minutes of this order on the usual undertaking.

S.C. Sen, J.

17. I agree.

