(1977) 06 CAL CK 0027

In the Calcutta High Court

Case No : Suit No. 29 of 1977

Dhanrajmal Govindram and Co. and Another — APPELLANT

Vs

Sri Durga Cotton Spinning and Weaving Mills Ltd. and Another — RESPONDENT

Date of Decision : 16-06-1977

Acts Referred:

Contract Act, 1872 — Section 128
West Bengal Relief Undertakings (special Provisions) Act, 1972 — Section 3, 4, 6

Citation : 82 CWN 266

Hon'ble Judges : Sabyasachi Mukherji, J

Bench : Single Bench

Advocate : T. Banerjee and C.R. Dutta, for the Appellant;P.K. Roy and A.N. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukherji, J.—This is an application on behalf of the Industrial Reconstruction Corporation of India Limited. In this application the petitioner has asked for stay of the suit No. 29 of 1977 and of the pending applications under Chapter 13A of the Original Side Rules in that suit. It appears that the plaintiff Dhanrajmal Govindram & Co. Pvt. Ltd. had instituted a suit being suit No. 29 of 1977 in this High Court against Sri Durga Cotton Spinning & Weaving Mills Ltd., as the defendant No. 1 and the applicant Industrial Reconstruction Corporation of India Ltd. as the defendant No. 2. In that suit the plaintiff company has claimed for certain supplies made to the defendant No. 1. The plaintiff has further alleged that the plaintiff had sold and delivered to the defendant No. 1 certain goods worth Rs. 65,83,478.45 and after giving credit for all sums paid by or on account of the defendant No. 1 and other credits allowed to the defendant, it was alleged, a net balance of Rs. 2,99,286,52 had remained due and owing to the plaintiff on account of principal and after adding interest the total amount was Rs. 3,90,506,46. The Industrial Reconstruction Corporation of India Ltd., is a company promoted for the purpose of rendering assistance to the industries requiring reconstruction and to stimulate the industrial growth in the country. Its economic programme covers a large number of industries and undertakings. Various Cotton Mills including the defendant No. 1 Sri Durga Cotton Spinning & Weaving Mills Ltd. are aided and assisted by the petitioner. The petitioner had guaranteed repayment of the alleged dues arising in this case out of the transaction between the plaintiff and the defendant No. 1. The guarantee of the petitioner was given by a letter dated the 9th March, 1974. That letter contained the following statement :

In continuation of our letter IRCI|21289|74 dated the 23rd February, 1974, we advise that the selection of 11,000 bales purchased for IRCI against textile units has been completed. Now, we request you to arrange for quick delivery of the cotton to respective mills. The mills will make arrangement for payment, failing which we undertake to make payment for the cotton which has been purchased for our assisted textile units.

The applicant asks for stay of the suit on the ground that by the Notification dated the 25th April, 1977, under the West Bengal Relief Undertakings (Special Provisions) Act, 1972, the cause of action against the defendant No. 2, being the applicant herein, could not be proceeded with.

2. The defendant No. 1 has been declared to be a Relief Undertaking. The West Bengal Relief Undertakings (Special Provisions) Act, 1972 is an Act passed to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against, unemployment, Sections 4 and 6 of the said Act provides as follows :

4. The State Government may if it is satisfied that it is necessary or expedient so to do for the purposes specified in section 3, direct, by notification :-

(a) that in relation to any relief undertaking all or any of the enactments specified in the Schedule to this Act shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments), as may be specified in such notification ; or

(b) that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which any relief undertaking is a party or which may be applicable to any relief undertaking) immediately before the date on which the said industrial undertaking is declared to be a relief undertaking, shall remain suspended or that all or any of the rights privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification.

6. Any remedy for the enforcement of any right, privilege obligation or liability referred to in clause (b) of section 4 and suspended or modified by a notification under that section shall in accordance with the terms of the notification be suspended or modified, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall accordingly be stayed or be continued subject to such modification, so, however, that on the notification ceasing to have effect:-

(a) any right, privilege, obligation or liability to suspended or modified shall revive and be enforceable as if the notification had never been issued; and

(b) any proceeding so stayed shall be proceeded with subject to the provisions of any law which may then be in force from the state which had been reached when the proceeding was stayed.

Under the aforesaid Act, the notification dated 25th April, 1977 was issued which was to the following effect:

WHEREAS by this department notification No. 1174-CSI dated the 25th April, 1077, issued u/s 3 of the West Bengal Relief Undertakings (Special Provisions) Act, 1972 (West Bengal Act XIII of 1972), the Unit known as Messrs. Sri Durga Cotton Spinning and Weaving Mills Limited, having its registered office at 135, Biplabi Rash Behari Bose Road, Calcutta-1, has been declared to be a relief undertaking (hereinafter referred to as the said relief undertaking);

AND WHEREAS the State Government is satisfied that it is necessary and expedient so to do in the public interest, with a view to enabling the continued running of the said relief undertaking as a measure of preventing unemployment;

NOW, THEREFORE, in exercise of the power conferred by section 4 of the West Bengal Relief Undertakings (Special Provisions) Act, 1972 (West Bengal Act. XIII of 1972), the Governor is pleased hereby to direct that in relation to the said relief undertaking, all the enactments specified in the Schedule to the said Act shall not apply and that the operation of all contract, assurances of property, agreements, settlements, awards standing orders or other instruments in force (to which the said relief undertaking is a party or which may be applicable to the said relief undertaking) immediately before the date on which the said relief undertaking was declared as such together with all the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, but excluding contracts, assurances of property and agreements entered into immediately before the date on which the said relief undertaking was declared as such, by the said relief undertaking with the Government, the Industrial Reconstruction of India Limited any bank or any other financing institution, shall remain suspended, provided however, that this will not prevent the said relief undertaking to exercise in any way its right to realise or receive any outstanding dues or property or documents, etc. realisable or receivable from any person or organisation under any such contract, assurance of property, agreement, settlement, award, standing order or other instrument.

3. On behalf of the petitioner it was contended that as all contracts in force which might be applicable to the Relief Undertakings had been suspended as a result of the said notification, the cause of action against the defendant No. 2 had also remained suspended. The cause of action, as it is well-settled, against a guarantor, is, though Co-existent with the cause of action against the principal debtor, independent and separate. Reliance for this may be placed on the observations of the Supreme Court in the case of Bank of Bihar Ltd. Vs. Dr. Damodar Prasad and Another, where the Supreme Court observed that u/s 128 of the Contract Act the liability of the surety was co-extensive with that of the principal debtor. The liability was immediate and it was not deferred until the creditor exhausted his remedies against the principal debtor. Similarly, in the case of The Bank of India, Ltd. Vs. Rustom Fakirji Cowasjee, , the Bombay High Court observed that a discharge of the principal debtor by operation of law did not discharge the surety and the remedy of the creditor against the guarantor should not be restricted to the amount that the debtor might by operation of law be compelled to pay. The discharge of the principal debtor by operation of law does not discharge a surety. Therefore, when a new statutory provision (Like Madras Agiculturists Relief Act) had the effect of granting a partial discharge to the principal debtor and the creditor had taken no part in releasing the principal debtor from his liability, the remedy of the creditor against the guarantor could not be affected--(see the observation in Al. Sp. S. Rm. Subramanian Chettiar Vs. Chinnamuthu Batcha Rowther and Another,). In this case the liability of the guarantor, being the petitioner herein, had arisen on the failure of the principal debtor to pay the amount to the plaintiff. That liability of the guarantor, which had accrued before the notification, had not been suspended by the impugned notification. On behalf of the petitioner it was contended that the notification related to contracts or obligations which might be applicable to Relief Undertakings directly or indirectly. Therefore, it was submitted that as this liability related to the Relief Undertakings indirectly, in the sense that if the petitioner paid the amount to the plaintiff, then the petitioner would be entitled by way of subrogation to claim the amount so paid from the defendant No. 1. Therefore, this was, according to the petitioner, related to the undertakings which have been declared to be Relief Undertakings indirectly. I am however unable to accept this contention. When the notification spoke of contract or obligation of Relief Undertakings, directly or indirectly, in my opinion the notification spoke of obligations which arose directly or indirectly of the Undertakings, which have been declared as relief undertakings. The obligations that would arise to a Relief Undertakings by the process of any pressure being put for payment of its dues are not the land of obligations arising indirectly against Relief Undertakings of which the notification in question spoke. This view is also in consonance with the purpose of the Act. In the premises, in my opinion as a result of this notification it cannot be said that the suit against the petitioner has to be stayed by virtue of the notification. The application, therefore, fails and is accordingly dismissed. There will however be no order as to costs.

