
(1992) 05 CAL CK 0033
In the Calcutta High Court

Drawings and Metals and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 14-05-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Constitution of India, 1950 — Article 227

Citation : (1992) 2 CALLT 289 : 96 CWN 978 : (1992) 2 ILR (Cal) 1

Hon'ble Judges : Samir Kumar Mookherjee, J; Abani Mohan Sinha, J

Bench : Division Bench

Advocate : M.K. Saha and A. Majumdar, for the Appellant; H.K. Mitra and P.N. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Samir Kumar Mookherjee, J.—This is an application under Article 227 of the Constitution of India, challenging Order No. 40, dated 20.1.92, passed by the Learned Assistant District Judge, 7th Court, Alipore in Title Suit No. 206 of 1989. By the said order, the Learned Assistant District Judge had appointed a Receiver over the suit properties, mentioned in the schedules 1 and 2 of the plaint, and directed him to take possession, make inventory and submit a report by one month from the date of receipt of the writ.

2. In short the relevant facts are that the defendants were indebted to the plaintiff bank for a total sum of Rs. 52,32,347.41 p. and the bank had to institute the present suit for enforcement of the mortgage for declaration that the suit properties mentioned in schedules 1 and 2 of the plaint remained pledged and mortgaged to the bank as security for payment of Bank's claim, for a decree for sale and realisation of the suit properties mentioned in schedule 1 ; that in the said suit the bank filed an application for appointment of a Receiver. The defendant/petitioner contested the prayer for appointment of Receiver by filing a written objection, contending, inter alia that-

(i) Pravabati Roychowdhury, one of the defendant, having died long before the

institution of the suit. The suit was a nullity and as such no interlocutory application could be maintained in such a suit;

(ii) Non-joinder of heirs and legal representatives of Pravabati Roychowdhury, who were necessary parties, rendered the suit not maintainable;

(iii) Annexures "F2" and "F3", which were relied on by the bank for avoiding limitation, were admitted acts of forgery and as such without disposal of the application made by the defendants u/s 340 of the Code of Criminal Procedure, the application for appointment of Receiver could not be adjudicated ;

(iv) Appointment of Receiver will affect the running business of the firm and there was no immediate reason for appointment of such Receiver.

3. The Learned Trial Judge, in the impugned order, came to the findings that-

(a) there was no denial of the amount of claim of the bank by the defendants. On the contrary by different acknowledgements the amount due had been confirmed from time to time ;

(b) even in the absence of Pravabati Roychowdhury the entire suit could not be said to be not maintainable or a nullity, as, against the rest of the defendants, it could proceed;

(c) the fact of non-payment showed that the income derived from the business was dissipated by the defendants and the claim of the bank would get swollen by few lakhs by the time the suit could be disposed of.

On the aforesaid, the learned Trial Judge allowed the application for appointment of a Receiver, which, according to him, was just and convenient within the meaning of Order 40 Rule 1 of the Code of Civil procedure.

4. Although an order under Order 40 Rule 1 of the CPC is ordinarily appealable under Order 43 Rule 1(S) of said Code, the present revisional application under Article 227 of the Constitution of India had been preferred, inter alia, alleging that the procedural illegalities and irregularities mentioned above vitiated the impugned appealable order of appointment of Receiver and Article 227 alone could provide a comprehensive relief but not the appeal.

5. We have heard Mr. Saha in details in support of the revisional application. We have also heard Mr. Mitra on behalf of the bank/opposite party. No doubt there is no absolute bar in entertaining an application under Article 227 of the Constitution of India even in a case where an appeal lies but it is well settled by authorities that such interference should be made only in very very exceptional cases and that too only where there has been manifest injustice, resulting from patent and flagrant error of procedure, perversity of findings, arbitrary or capricious exercise of jurisdiction. In the present case, in view of the specific findings made by the Learned Trial Judge and the reasons given by him on which such findings are based, it cannot be said that it is one of the exceptional cases calling for an interference by invocation of extra ordinary revisional powers of the

Court under Article 227 of the Constitution of India. Mere errors of law or procedure, without more, does not attract the said Article. For an authority reference may be made to the case of Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, where Bhagabati, J, inter alia, observed-

"the respondent had clearly a legal remedy available to him by way of an appeal against the decree of City Civil Court and this remedy was not only adequate but more comprehensive than the one under Article 227 of the Constitution.....It is true that this principle is not rigid and inflexible and there could be extra ordinary circumstances where despite the existence of alternative legal remedy, the High Court may interfere in favour of an applicant, but this was certainly not one of such extra ordinary cases It must be realised that the jurisdiction under Article 227 of the Constitution is an extra ordinary jurisdiction which is to be exercised sparingly and in appropriate cases and it is not to be exercised as if it was an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked".

6. In the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, it was held that-

"a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 227. The supervisory jurisdiction; conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior court or tribunal functions within the limit of its authority and not to correct an error apparent on the face of the record, much less error of law".

7. Again, in the case of Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, , the Supreme Court clearly laid down that in the absence of perversity or misdirection in appreciation of facts powers under Article 227 of the Constitution could not be invoked.

8. Upon consideration of the respective submissions about the effect and consequence of pendency of the application u/s 340 of the Code of Criminal Procedure preferred by the defendants, we are of view that there is substance in Mr. Mitra's submission that the documents, which constitute the basis of allegations of the defendants in their said application, even if excluded from consideration, the order appointing the Receiver would stand.

9. For the aforesaid reasons, we are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 227 of the Constitution of India but we make it clear that we have not adjudicated the merits of the findings of the impugned order as an Appellate Court and, as such, for an appeal the present order will not operate as a bar. 10. In the result, the revisional application fails and is dismissed. There will be no order as to cost.

11. On behalf of the Revisional petitioners, a prayer is made for stay of operation of the order passed by us today and the same is refused.

12. If an application for urgent certified copy of the order is made by any of the

parties, the department is directed to deliver the same within two weeks from the date of deposit of the requisite stamps and folios.

Abani Mohan Sinha, J.

13. I agree.