
(1939) 04 AHC CK 0001
In the Allahabad High Court

Govind Ram and Another

APPELLANT

Vs

Major A.U. John

RESPONDENT

Date of Decision : 27-04-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : AIR 1939 All 668 : (1939) 9 AWR 489

Hon'ble Judges : Thom, C.J

Bench : Division Bench

Judgement

Thom, C.J.—This is an application in civil revision u/s 115, Civil P.C., The applicants Govind Ram Gordhandass and Ramnath Gordhandass are the proprietors of Messrs. Govindram Ramnath & Co. On 5th July 1934 the applicants entered into a contract with Major A.U. John and Mr. G.A. John who are owners of certain mills at Agra. This contract took the form of a mortgage deed and a finance agreement both of which were executed on the same day. Under the mortgage deed the mortgagees agreed to advance the sum of seven lakhs upon the mills belonging to Major A.U. John and Mr. G.A. John (now deceased). The applicants, under the finance agreement undertook to finance the mills up to a figure of four lakhs. The negotiations which culminated in the execution of the mortgage deed and the finance agreement were conducted in Bombay and the mortgagors, under the terms of the mortgage deed, were taken bound to repay the amount due under the mortgage at Bombay. The mortgage deed included the following provision:

And it is hereby further agreed and declared that no suit or proceeding arising out of and in relation to this indenture shall be instituted in any Court other than the High Court of Judicature at Bombay.

2. It is alleged on behalf of the applicants that the mortgagors defaulted in regard to the payment of an instalment due under the aforesaid mortgage. Following upon this default a suit was instituted in the High Court of Judicature at Bombay. Subsequent to the institution of this suit the mortgagors made an

application under the U.P. Encumbered Estates Act. The matter was referred to the Special Judge who has passed an order of injunction restraining the applicants from proceeding with their suit in the Bombay High Court. This order of the Special Judge has been upheld by the learned District Judge of Agra in his order of 17th May 1937. Against this order the applicants have preferred this application in civil revision. The learned District Judge appears to have taken the view that the contract entered into between the applicants on the one hand and Major A.U. John and Mr. G.A. John on the other was an illegal contract and mainly upon that ground he has declined to interfere with, the order of the Special Judge restraining the applicants from prosecuting their suit in the High Court at Bombay.

3. When the mortgage was executed in 1934 the parties to the contract had in view the Impending debt legislation of the Government of the United Provinces. It was with the object of avoiding the restrictions which were likely to be imposed by that legislation that the aforementioned clause to the effect that no suit or proceeding arising out of and in relation to the indenture should be instituted in any Court other than the High Court of Judicature at Bombay was inserted. We may take it that the applicants would never have agreed to the terms of the hypothecation bond and the finance agreement had not this clause been inserted. When the mortgagors had defaulted and when thereupon the mortgagees filed a suit in the Bombay High Court the mortgagors proceeded to do what they in effect had solemnly undertaken not to do under the mortgage deed; they applied for the benefits of the Encumbered Estates Act and secured an order of injunction against the applicants. They broke their contract. They refuse to honour their signatures. Judged even by the lowest standards of commercial morality their conduct appears to us to be utterly inexcusable. We do not consider it necessary in disposing of this application to say anything as to what the rights of the mortgagors are under the Encumbered Estates Act in the special circumstances of this case. We are only concerned with the question as to whether the order restraining the applicants from prosecuting their suit in the Bombay High Court is an order which should be allowed to stand.

4. It was contended by learned Counsel for the mortgagors that inasmuch as this was an application in civil revision this Court could not interfere unless it was held that the order against which the application in revision is preferred was passed without jurisdiction. The terms of Section 115 do not warrant this contention. u/s 115 this Court has jurisdiction to interfere where the lower Court has acted in the exercise of its jurisdiction illegally or with material irregularity. The Courts below purported to have acted u/s 151, Civil P.C. Section 151, Civil P.C., it is well established, does not confer upon the Courts any powers with which they were not vested before the passing of the Civil Procedure Code. There are certain well recognized principles which guide the Court³ in the exercise of their jurisdiction u/s 151, Civil P.C.

5. It was contended for the opposite parties that the High Court should not

interfere in revision where the order challenged purports to be passed u/s 151. We have no hesitation in repelling this contention. No Court has unrestricted jurisdiction to pass orders u/s 151. The Courts must proceed according to the principles of equity, justice and good conscience. Now there is nothing whatever illegal in the contract which was entered into by the John Brothers on the one hand and the applicants upon the other. The former took certain benefits under the contract which they would not have obtained had they not agreed to the provision that no suit arising out of the agreement should be instituted in any Court other than the High Court of Judicature at Bombay. Such a provision is quite usual and was in the circumstances eminently reasonable. It was suggested that there are other creditors of Messrs. John and that their rights would be jeopardized if the case in the Bombay High Court were allowed to proceed. These creditors however are not parties to this application. They are not represented in these proceedings. Their interests do not fall to be considered in the disposal of this application. They have no locus to oppose the application. It was further suggested that if the applicants obtained a decree in the Bombay High Court they might proceed to sell the property mortgaged at a price much lower than its real value. This is a difficulty which, in our judgment, does not appear to be insurmountable. Sir Tej Bahadur Sapru who appears for the applicants has given an undertaking that if a decree is passed in favour of his clients by the Bombay High Court, before there is any attempt to put that decree into execution by sale of the mortgaged property, three months' notice will be given to Major A.U. John, the heirs of G.A. John, the Special Judge charged with the proceedings under the Encumbered Estates Act and to the Collector at Agra. Counsel appearing for the heirs of Mr. G.A. John in the lower Court has undertaken to-day to furnish Sir Tej Bahadur Sapru with the names and addresses of the heirs of Mr. G.A. John.

6. We are satisfied that in granting the injunction the learned Special Judge has not acted consonantly with the spirit of Section 151, Civil P.C. In restraining, in the circumstances, the plaintiffs from doing something which the mortgagors Major A.U. John and Mr. G.A. John agreed that they should be permitted to do in a solemn contract the Courts below have not acted in accordance with the principles of equity, justice and good conscience. It is not in accordance with these principles to permit a party to repudiate his contractual obligations, as the opposite parties have done in the present instance. Their obligations are not illegal. There is nothing in the Encumbered Estates Act which forbids parties to a contract agreeing on a forum for the decision of their disputes. Further the learned Special Judge and the learned District Judge have not taken into consideration the legitimate legal rights of the applicants. In failing to take into consideration these rights the Courts below have acted with material irregularity. In the result, we allow this application, we set aside the order of the learned District Judge and recall the order of injunction. The applicants are entitled to their costs.