(1987) 01 BOM CK 0024

In the Bombay High Court

Gupta Engineering Co., (India) and others APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:

Citation : (1989) 66 CompCas 116

Hon'ble Judges : N.K. Parekh, J;Desai, J

Bench : Division Bench

Judgement

Desai, J.—Although the order appealed from, viz., appointment of the court receiver in a mortgage suit is the proper order to be made in the motion, it is to be accepted that it is an incomplete order inasmuch as no direction has been given to the court receiver as to what is to be done in respect of the items of which he is to take charge. If proper directions are not given, the court receiver''s office does nothing and the appointment of the court receiver, instead of protecting the security, adds to the waste thereof. To that extent, certain directions will have to be given to the court receiver and when these directions are given, the order will be complete and no substance will be left in the appellants'' complaint.

2. Accordingly, the court receiver is directed to take possession of the properties forthwith and in the first instance offer to the defendants the facility of running the factory, as the court receiver''s agents, on suitable terms an on compensation which shall not be less than Rs.10,000 (rupees ten thousand) per month. The court receiver will make the offer at the very first meeting and if that offer is not accepted, the court receiver will seek appropriate directions from the Chamber Judge as to whether the factory is to be permitted to be run by any outsider or third party as the court receiver''s agent and if so, on what terms. If the offers received from third parties are less than the specified amount, then the first option to run the factory at the lesser amount is to be given once again to the defendants.

3. As far as the book debts are concerned, the court receiver is to attempt to

recover the same from the debtors but if the court receiver is not able to recover any such book debts, within a period of six months from the date of the first meeting, the court receiver is to make a report to the Chamber Judge and seek directions as to what steps are to be taken for recovery of the book debts. The court receiver is to act on the certified copes of the minutes dated August 1, 1985, and of our order.

4. Subject to these directions, we find no substance in the appeal as appointment of the court receiver is the usual order in mortgage suit and the fact that the loans have been given by a bank or even by a nationalised bank to a sick undertaking or one which is required to be nursed does not change the legal position. Accordingly, subject to the directions given earlier, which must be carried out by the court receiver, the apple will stand dismissed. The respondents (original plaintiffs) to take stamps to move the court receiver and the first meeting must be held by the court receiver and offer made to the appellants not later than February 28, 1987. If there is any default on the part of the respondents in moving the court receiver, liberty to the appellants to move the Chamber Judge for vacating the order of appointment of the court receiver.

