
(1976) 04 PAT CK 0003

In the Patna High Court

Case No : Company Petition No. 2 of 1975

In Re: Maksudpur Refrigeration Industries Pvt. Ltd. (In Liquidation)

Date of Decision : 12-04-1976

Acts Referred:

Companies Act, 1956 — Section 446, 529
Provincial Insolvency Act, 1920 — Section 28

Citation : (1976) 04 PAT CK 0003

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : J.C. Sinha, for United Bank of India, for the Appellant;

Judgement

H.L. Agrawal, J.—The United Bank of India has again filed an application u/s 446 of the Companies Act, 1956, for leave of this court to proceed with its Title Mortgage Suit No. 258 of 1972, pending in the court of the Subordinate Judge, First Court, Gaya. An application of somewhat similar nature was filed by the petitioner-bank at an earlier stage when the winding-up application was not even admitted by this court, and by order dated October 31, 1975, this court rejected the application with an observation that the application was premature.

2. Mr. J. C. Sinha appearing in support of his application with reference to the provisions contained u/s 529 of the Companies Act and Section 28 of the Provincial Insolvency Act contends that the petitioner-bank being a secured creditor can stand outside the winding-up proceeding and prosecute its remedy against the mortgage security independently by a suit. In support of his contention he placed reliance upon the decision of the Supreme Court in M.K. Ranganathan and Another Vs. Government of Madras and Others, . That was a case under the old Companies Act, but the provisions are similar. It was observed in that case that a secured creditor can remain outside the winding-up proceeding and can realise his security without the intervention of the court. The intervention of the court is needed only when the actual stage for effecting sale, etc., is reached. It is apparent, therefore, that for the prosecution of the aforesaid suit under the scheme of the Companies Act itself, no application for

leave is required.

3. Mr. Sinha, however, contends that inasmuch as leave of this court will be necessary ultimately when the petitioner bank obtains a decree in the aforesaid suit and put the same in execution, leave should be granted at this very stage. In my considered view, this will not be a proper order to grant leave at this early stage, when only the suit is pending, for which according to his own contention, no leave is necessary.

4. For the above reasons, I would again reject the application filed by the petitioner-bank.