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In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 127 of 2000

Kinetic Engineering Ltd. APPELLANT

Vs

Madhya Pradesh Finance Corporation and Others RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 29(5)

Citation : (2001) ILR (MP) 1744 : (2001) 1 JLJ 357 : (2001) 1 MPLJ 321

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : S.N. Kohli, for the Appellant; S. Bhargava, for Respondent No. 1, S.C. Bagadia and Namjoshi, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.

The plaintiff has felt aggrieved by an order rejecting their injunction application made under Order 39, Rules 1 and 2 of the Civil Procedure Code, 1908, in a suit filed by the plaintiff. The impugned order is dated October 15, 1999, passed by the learned District Judge, Indore, in Suit No. 122-A of 1999. The facts necessary for the disposal of the appeal have been in detail stated by the learned trial judge in the impugned order. Nevertheless, a few facts need mention infra.

The appellant is the plaintiff whereas the respondents are the defendants.

The appellant (plaintiff) is a limited company duly registered as such under the Companies Act. It is engaged in the business of manufacture and sale of two-wheeled motor vehicle (mopeds) which are sold in the market by and under a brand name "Kinetic". It has their manufacturing plant at Ahmednagar in the State of Maharashtra.

The appellant (plaintiff) in its manufacturing process of mopeds is required to get castings of certain parts before they fitted in the moped as one of its spare on a

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regular basis.

Respondent No. 2 (defendant No. 2) is a company at Pithampur in district Dewas which was at the relevant time engaged in casting business. This company approached the appellant and offered to do the casting job for the appellant of their parts. Accordingly, the appellant (plaintiff) started sending their raw material together with the specifications/drawings to respondent No. 2 for doing the job work of casting. Respondent No. 2 used to do casting job on receipt of raw materials from the appellant as per their specifications and then used to charge their labour charges.

It appears that respondent No. 2 had financed their unit by taking a loan from respondent No. 1, the M. P. F. C., an instrumentality created under the State Financial Corporations Act. It further appears that since respondent No. 2 defaulted in repaying the loan instalments in terms of several loan agreements, that were entered into inter se respondents Nos. 1 and 2, respondent No. 1, in exercise of the powers conferred u/s 29 of the State Financial Corporations Act, 1951, took possession of the entire unit of respondent No. 2.

It is this action of respondent No. 1 against respondent No. 2, which led to the filing of the civil suit being C. S. No. 122-A of 1999, out of which this appeal arises by the appellant (plaintiff) against the respondents, claiming the following reliefs :

"(a) It be declared that the goods specified in the schedule attached to the plaint were owned by the plaintiff/appellant-company and defendants have no right, title or interest over the goods specified in the said schedule,

(b) It be declared that defendant/respondent No. 1 are holding these goods in trust in favour of the plaintiff-company and have no right, title or interest to sell the goods specified in the said schedule or any part thereof.

(c) It be declared that defendant/respondent No. 1 are liable to account for the goods specified in the said schedule if any shortage has occurred due to theft or otherwise.

(d) A permanent injunction be granted restraining the defendants/ respondents from selling the goods detailed in the said schedule or any part thereof.

(e) Costs of the suit be awarded to the plaintiff-company."

The suit was essentially founded on the allegations which are referred supra. In substance, the case of the appellant (plaintiff) as set up in the plaint was that goods mentioned in the schedule appended to the plaint belong to plaintiff and that defendants have no right, title and interest over these goods. It was alleged, inter alia, that these goods (suit property) were entrusted to respondent No. 2 (defendant No. 2) by the appellant (plaintiff) for casting in the course of their day-to-day business activity and hence they have a right to take back their goods (raw material) or in any event, respondent No. 1 has no right to deal with

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those goods and these goods have to be retained by respondent No. 1 (defendant No. 1) in trust. It was alleged that in no way the appellant (plaintiff) is concerned with the action taken by respondent No. \\ as against respondent No. 2 u/s 29 ibid as the action taken u/s 29 does not in any way bind the appellant (plaintiff)--they not being parties to the said action. The appellant (plaintiff) also then made an application under Order 39, Rules 1 and 2 of the Civil Procedure Code, 1908, claiming a temporary injunction restraining defendant No. 1 (respondent No. 1) from selling or transferring or handing over possession of the materials as detailed in the schedule to any intending purchaser till the rights of the parties are fully determined.

Respondent No. 1 (defendant No. 1) contested the application and contended, inter alia, that the suit itself is not maintainable in view of Section 29(5) of the State Financial Corporations Act. A plea of collusiveness between the plaintiff and defendant No. 2 was also raised. It was also denied that the plaintiffs are the owners of material/equipment mentioned in the schedule. In substance therefore, defendant No. 1 denied that any relief is permissible in favour of the plaintiff both on the facts as also in law.

So far as defendant No. 2 (respondent No. 2) was concerned, their reply was that goods of the plaintiff can be returned only when the plaintiff pays their outstanding dues which according to them were about Rs. 25,000.

By the impugned order, the learned trial judge dismissed the injunction application. Relying upon 29 (3) and (5) of the Act, the learned trial judge was of the view that the plaintiff has failed to make out a case much less prima facie. This is what the learned trial judge held in para. 8 while deciding the issue against the plaintiff:

"It is seen that on M. P. F. C. taking action u/s 29 of the Act against any concern, all the manufactured goods or products wholly or in part, found in premises of that concern, are taken possession of which become the property of M. P. F. C. in the capacity of original owner and it is for this reason that under Sub-section (5) the person having any grievance on the aforesaid action of or any one who claims any right or title in the property, of which the possession is taken u/s 29 of the Act, is required to proceed against the person, with which there exists privity of contract or which is under an obligation to return and deliver the property to the claimant, under any agreement."

After recording the finding on the issue of prima facie case against the plaintiff, the learned judge did not consider in detail the other two ingredients namely balance of convenience and irreparable loss/injury except what he observed in para. 10. It is this order which is impugned in this appeal by the plaintiff.

Heard Shri S. N. Kohli, learned counsel, for the appellant, Shri S. Bhargava, learned counsel for respondent No. 1, Shri S. C. Bagadia, learned counsel for respondent No. 2 and Shri Naamjoshi, learned counsel for respondent No. 3.

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I have heard the submissions of learned counsel for the parties at length. If the submissions of learned counsel for the appellant were for upsetting of the impugned order, then the submission of learned counsel for respondent No. 1 in particular was for upholding of the impugned order. In substance, the submission of learned counsel for the appellant was that the trial court erred in firstly relying upon Section 29 (3) and (5) ibid for holding that no prima facie case is made out. Learned counsel urged that to hold whether a prima facie case is made out by the plaintiff on and of Section 29 was not required to be taken, in any event, the submission was that interpretation made by the learned trial judge in non-suiting the plaintiff on the strength of Section 29 is misplaced and is not discernible when one reads Section 29 ibid. In effect therefore, the submission was for holding a prima facie case to be made out, resulting in equally making out a case of balance of convenience and injury to safeguard the suit property belonging to the plaintiff.

In reply, learned counsel for respondent No. 1 (M. P. F. C.) urged for upholding of the impugned order. In his submission, the approach as also the finding based on Section 29 (3) and (5) is proper and does not call for any interference.

Having analysed the respective submissions of learned counsel for the parties, I have come to a conclusion that the impugned order is not sus-tainable and hence it has to be upturned.

Most of the debate centred round the interpretation of Section 29 of the State Financial Corporations Act, 1951, It reads as follows :

"Rights of financial corporation in case of default.--(1) Where any industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof (or in meeting its obligations in relation to any guarantee given by the corporation) or otherwise fails to comply with the terms of its agreement with the financial corporation, the financial corporation shall have the (right to take over the management or possession or both of the industrial concern), as well as the (right to transfer by way of lease or sale) and realise the property pledged, mortgaged, hypothecated or assigned to the financial corporation.

(2) Any transfer of property made by the financial corporation, in exercise of its powers under Sub-section (1), shall vest in the transferee all rights in or to the property transferred (as if the transfer) had been made by the owner of the property.

(3) The financial corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) [Where any action has been taken against an industrial concern] under the provisions of Sub-section (1), all costs (charges and expenses which in the

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opinion of the financial corporation have been properly incurred) by it (as incidental thereto) shall be recoverable from the industrial concern and the money which is received by it (* * *) shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the financial corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) [Where the financial corporation has taken any action against an industrial concern] under the provision''s of Sub-section (1), the financial corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern, and shall sue and be sued in the name of (the concern)."

A perusal of the aforequoted section shows that it is essentially enacted to decide the rights and obligations arising between the financial corporation (respondent No. 1) and the industrial concern (respondent No. 2). Sub-section (1) itself provides that where any industrial concern (as in this case respondent No. 2) which is under a liability to the financial corporation under an agreement makes any default in repayment of any loan or advance or any instalment thereof or fails to meet any obligation in relation to any guarantee given by the financial corporation or even fails to ensure compliance with any term of agreement with the financial corporation, then in that eventuality, the financial corporation shall have the right to take over the management or possession or both of the industrial concern as well as they will have a right to transfer by way of lease or sale and realise the money out of property pledged, mortgaged, hypothecated or assigned to the financial corporation. The right to recover the outstanding dues is statutorily given to the financial corporation and the same has to be enforced or enforceable qua i.e., as against the property pledged, mortgaged, hypothecated or assigned by the industrial concern with the financial corporation. This right obviously emanates from an agreement inter se entered into by these two and the same has been statutorily recognised u/s 29 ibid. Sub-section (2) of Section 29 provides that if after the unit taken over by the financial corporation is sold then the sale would be deemed to be a sale as if it is made by the owner of the property, i.e., defaulter (industrial concern). Sub-section (3) recognises the right of the financial corporation as against those goods which are manufactured partly by using those properties which are held by the financial corporation as security. In other words even if some goods are found to be manufactured by partial use of goods forming security even then, such finished goods will be like the original goods for the purpose of rights and powers and no distinction will be made between such manufactured goods and the original goods only because they are manufactured by partial use of security. Sub-section (4) empowers the financial corporation to adjust/recover all incidental charges that they have incurred in taking action u/s 29(1) in addition to the debt due. This sub-section also suggests as to how and in what manner the money which is received after the action is taken shall be adjusted in discharge of the debt due and balance/ residue shall be refunded to the industrial concern. Since after the action is taken

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u/s 29(1), the financial corporation steps into the shoes of the industrial concern and acquires all the rights of ownership of such concern any person by virtue of Sub-section (5) of Section 29 becomes entitled to sue the financial corporation in the name of the industrial concern and simultaneously, the financial corporation is entitled to sue any body in the name of the industrial concern in the court of law.

In my opinion, Section 29 ibid nowhere jeopardises the rights of any third person who was not subjected to the action taken by the financial corporation against the industrial concern. Indeed, the very object of Section 29 ibid is to confer powers with the financial corporation as against their defaulter (industrial concern) who had taken loan and did not repay. Even this right is confined to being exercised with respect to that property which is pledged, mortgaged, hypothecated or assigned to the financial corporation. Sub-section (3) brings all goods on one platform and does not allow the industrial concern to contend that since some finished goods are manufactured by part use of raw material (goods) held as security and hence they cannot be acquired. By enacting Sub-section (3), all goods have been brought at par for the purpose of exercise of rights and powers by the financial corporation. The same intention is discernible when one reads Section 31 (a) and (c) ibid where an additional or an independent right is conferred on the financial corporation to proceed against the industrial concern for realisation of their dues by sale of that property which was pledged, mortgaged, hypothecated or assigned to the financial corporation as security for loan or advance.

I am, therefore, unable to notice anything in Section 29 which can be used against the third party for non-suiting them for adjudicating of their legal rights qua the industrial concern which had accrued prior to action being taken u/s 29 by the financial concern against the indus trial concern. On the other hand, such third parties who had a legitimate claim against the industrial concern and which was otherwise subsisting on the date when the action u/s 29 ibid was taken by the finan cial concern against the industrial concern, then by virtue of Sub-section (5) of Section 29, such third person has become entitled to file a suit only against the financial concern, they being held to be the owner of the pro perty of the industrial concern.

In view of the aforesaid discussion, if one analyses the facts of the case, then it is clear that admittedly the plaintiff-company being a total stranger to the inter se agreement that might have been entered into by the industrial concern (respondent No. 2) with the financial corporation (respondent No. 1) for advancing the loan to their unit. The plaintiff was only claiming that whatever goods that belonged to them and were entrusted to the industrial concern (respondent No. 1) before taking action u/s 29 by the financial corporation pursuant to some business agreement, be either returned to the plaintiff or they be retained as it is and that those goods may not be made the subject-matter of Section 29 proceedings for realisation of dues--they not being part of any

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security within the meaning of Section 29. Undoubtedly, therefore, in my opinion, the plaintiff had made out a prima facie case as the plaintiff being a third party has every right to file a suit to claim declaration of ownership of their property as against financial corporation and industrial concern with whom the plaintiff had a privity of contract.

In my opinion, therefore, the learned trial judge was not right when he returned the finding relying upon Section 29 (3) and (5) ibid.

Now the next question is the course of action to be taken in view of what I have held supra. In my opinion, it will not be proper for me to go into the factual aspect of the case for the reason that the learned trial judge did not apply his mind rather in detail once he came to a conclusion against the plaintiff that they do not have any prima facie case. In other words, the other two prerequisites of injunction namely irreparable loss/ injury and balance of convenience were not gone into in much detail after the plaintiff was non-suited on the first prerequisite.

In a situation like this, it is but proper to remand the case to the learned trial judge and request him to examine the factual aspect of the case for giving finding one way or other whether the other two prerequisites namely, balance of convenience and irreparable loss1 and injury can be held to be in favour of the plaintiff and if so what form of order then can be passed to safeguard the rights of the plaintiff in the suit property ? This inquiry will obviously be in the context of factual pleadings and the reports of the Commissioner and the documents filed by the parties. Needless to observe, in order to get an injunction the plaintiff has to succeed on all the three prerequisites namely prima facie case, balance of convenience and irreparable loss and injury. As on date, the plaintiff has succeeded only on proving one prerequisite namely prima facie case.

Consequently the appeal succeeds and is accordingly allowed, the impugned order rejecting an application for grant of temporary injunction is set aside. Instead the case is remanded to the learned trial judge to decide the injunction application made by the appellant (plaintiff) on the basis of observations made supra and taking into consideration the law applicable to. grant of injunction in so far as it relates to other two prerequisites. It is really unfortunate that the injunction application filed in the year 1995 along with the suit has not seen the light of the day. It still has to be decided one way or the other on its merits. The very object of claiming temporary injunction involves an immediate relief for a litigant for preservation of their property rights and to avoid alteration of status to their detriment. Delay in disposal of such interim application does result in frustration of parties'' rights. Keeping in view, the long passage of time that has crept in, the parties are bound to take advantage of their respective stand by relying upon the several subsequent events which must have taken place from the date of filing of suit till date which have a bearing over the issue involved in the suit. Both the parties cannot be now deprived of this opportunity. Accordingly, the parties are given liberty to file any additional material/

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documents that they may feel relevant and bearing over the issue to safeguard their rights and which may have come into existence pending suit for the proper disposal of the injunction application. Needless to say, if such material is filed by either party, the same will be taken note of for moulding the relief on the merits by the trial judge.

Let the record of case be sent back forthwith and matter be decided within two months. Parties to appear before the trial judge on October 3, 2000.

No costs.

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