

(1999) 02 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 18335 of 1996

Manager, Vijaya Bank, Padubidri, Dakshina Kannada

APPELLANT

Vs

Regional Provident Fund Commissioner, Sub-Regional Office,
Balmatta, Mangalore and Others

RESPONDENT

Date of Decision : 01-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Contract Act, 1872 — Section 172

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 11 (2), 8
F

Citation : (1999) 5 KarLJ 459

Hon'ble Judges : G. Patri Basavana Goud, J

Bench : Single Bench

**Advocate : Sri P.S Sundar Murkal, for the Appellant; Sri Hari Krishna S. Holla,
for the Respondent**

Judgement

1. The third respondent-Sri Akshaya Cashew Industries (hereinafter referred to as "the employer") was provided by petitioner Vijaya Bank ("Bank", for short) with credit facility up to a certain limit. Employer also hypothecated the goods, machinery, etc., belonging to it to the Bank. The hypothecated property had been duly insured. Though hypothecated, the hypothecated property as such remained in the premises of the employer's factory. Employer availed of the cash credit facility and became due to the Bank several lakhs of rupees. Employer was also due to the first respondent-Regional Provident Fund Commissioner a sum of Rs. 30,217.75 being the contributions which the employer was liable to pay under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act", for short).

2. In the above background, the property hypothecated by the employer to Bank and that remained in the premises of the factory of the employer was involved in a fire accident on 9-1-1990. The property had been insured with the United India Insurance Company. There was a dispute with regard to actual loss involved on

account of the fire accident insofar as cashew stored in the godown was concerned. Eventually, the employer approached the Karnataka State Consumer Disputes Redressal Commission, Bangalore, with a complaint against the United India Insurance Company wherein the Bank also was made the second respondent, and in which proceeding, the Bank fully supported the claim of the complainant-employer. By its order dated 23-1-1995, the Commission awarded a sum of Rs. 9,49,168.60 which the Insurance Company was directed to pay to the petitioner to the account of the employer. On 15-3-1995, the Insurance Company credited a sum of Rs. 13,77,624.25 in pursuance of the said order of the Commission, communication in respect of which was received by the Bank on 17-3-1995. The said sum included the award amount of Rs. 9,49,168.60 and interest at 15 per cent per annum from 19-3-1992 to 15-3-1995 amounting to Rs. 4,25,955.65 and costs of Rs. 2,500-00. While this amount was received by the Bank on 17-3-1995 as at Annexure-M, the first respondent-Regional Provident Fund Commissioner, as per Annexure-B, on 2-3-1995 itself, passed a prohibitory order u/s 8-F of the Act, against the Bank, bringing to its notice that the employer was due in a sum of Rs. 30,217.75 by way of contribution for the period from June 1991 to December 1993, that the information had been available with the Provident Fund Commissioner with regard to the employer having a Bank account with the Bank, and that, from out of the amount to the credit of the employer, the sum of Rs. 30,217.75 should be sent to the Provident Fund Commissioner by demand draft. It was also specified in Annexure-B that even in respect of future receipts, no payments should be made to the employer. The said prohibitory order was received by the concerned Branch of the petitioner-Bank on 7-3-1995 as the seal of the Bank at Annexure-B would indicate. Thus, on 17-3-1995 as per Annexure-M dated 15-3-1995, when the Bank received on account of the employer Rs. 13,77,624.25, there was the above said prohibitory order in respect of a sum of Rs. 30,217.75. When the Bank did not meet the demands of the Regional Provident Fund Commissioner, notice of demand prior to attachment of moveable properties was issued to the Bank as at Annexure-A and a notice of demand was also sent to the Bank as per Annexure-C on 5-6-1996. In this writ petition under Articles 226 and 227 of the Constitution, petitioner-Bank seeks quashing of the said Annexure-A to C.

3. Before going to the merits of the case, it also needs to be mentioned that on the day the Bank received a sum of Rs. 13,77,624.25 on account of the employer, the employer was due to the Bank several lakhs more than the said sum of Rs. 13,77,624.25 in respect of the above said cash credit facility availed by the employer. In the light of the above facts, Sri Sundar Murkal, learned Counsel for the petitioner, would submit thus: The provisions contained in Sections 8-A to 8-F of the Act would relate to recovery of property or the assets of the employer. Section 8-F would relate to recovery of any amount due from any person to any employer who is in arrears. In the present case, if the amount of the employer is with the Bank, then, respondent 1-the Provident Fund Commissioner could certainly ask the Bank to remit that amount in respect of the

contributions payable by the employer. Employer having availed cash credit facility and himself being due to the Bank to an extent of more than Rs. 15 lakhs, not only on the day the prohibitory order was received by the Bank not a single paise of the employer was with the Bank to be sent to the Provident Fund Commissioner, but also that even the subsequent amount of Rs. 13 lakhs and odd received in terms of the award of Consumer Redressal Commission was also being liable to be adjusted towards the amount that the employer was due to the Bank. Therefore, at no point of time was any amount of the employer there with the Bank so as to comply with the demands of the Provident Fund Commissioner. Even the amount of Rs. 13 lakhs and odd since related to the amount paid in respect of the loss of goods in the fire accident which goods had been hypothecated to the Bank, the said amount needed to be applied towards the liabilities due from the employer to the Bank. Therefore, when there was no amount in the name of the employer at all with the Bank, the Provident Fund Commissioner could not have enforced his claim for Rs. 30,217.75 by taking recourse to Section 8 of the Act.

4. Sri Hari Krishna S. Holla, learned Counsel for the first respondent-Regional Provident Fund Commissioner, would submit thus:

It may be that the day on which the prohibitory order was passed and the day on which it was received by the Bank, the Bank might not have had any amount of the employer with it. But the prohibitory order also stipulated with regard to the future receipts to be covered by the said order. It was nearly 15 days after the said prohibitory order that the above said amount of Rs. 13 lakhs and odd was received by the Bank in terms of the award of the Commissioner. Even though the said amount might have been paid in respect of the loss of goods in the fire accident, it was not the price of the goods that the Bank could be said to be entitled thereto in lieu of the hypothecated property. What is granted by the Commission is compensation for loss of service by the insurance company. It cannot be equated with the price of goods that had been hypothecated. Even otherwise, while the exact value of the goods covered under the award could be equated with the property that had been hypothecated by the employer to the Bank, the interest that the Redressal Commission has awarded on the said value of the property lost in the fire accident, which can only be the property of the employer and not the property of the Bank, the said interest itself being more than Rs. 4,25,000/-, it was sufficient, to meet the demand of the Provident Fund Commissioner which was just more than Rs. 30 thousand. Even with regard to the property lost in the fire accident, it is only if the property had been there that could be said to have been hypothecated to the Bank but not when it is lost in a fire accident.

5. A perusal of the hypothecation deed as made available in the course of arguments would show that 592 bags of cashew in the godown and also the other properties in the factory premises had been hypothecated by the employer to the Bank. Insurance had been taken in respect of the entire property. The

Bank, as the one to whom property had been hypothecated, had also taken necessary care and caution to see that the property stood insured. It was in these circumstances that on 9-9-1990, the said property was destroyed in the fire accident. As to what would have been the position had the property been still there in existence, I have referred to similar situation in an earlier case in the State Bank of Mysore, B.H. Road, Shimoga Vs. Provident Fund Commissioner, Bangalore and Others, , Referring to the decision of the Full Bench of this Court in Chief Controlling Revenue Authority Vs. Manager, State Bank of Mysore and Others, , that was dealing with the effect of pledge though in a different context, I had extracted the following observations which are material for the present purpose also.

"40. Similarly, by deed of hypothecation, the NGEF has pledged its machinery and plant with the Bank while retaining possession of the same. But then, at law, the owner in possession is only as bailee as the pledge and pledgee is the real owner. This becomes clear having regard to Section 172 of the Contract Act. A passage from Puget on the "Law of Banking" (Eighth Edition at page 566) which is as follows:

"This difficulty in the way of the owner's being in a position to pledge goods in his own possession has been circumvented by the institution of letters of lien or letters of hypothecation.

The distinction seems a narrow one, but it is clear that an owner, though he cannot himself pledge, may, by agreement, change his possession into that of bailee for the pledgee, and that the instrument constituting him such as one used in the ordinary course of business as proof of the possession or control of goods within the exception to the Bills of Sale Act, and takes the goods out of his order and disposition".

Thus, the Bank very much was in the position of owner of the property on 9-9-1990 when the hypothecated property was lost in the fire accident. Therefore, for whatever amount that was ordered by the Consumer Disputes Redressal Commission to be paid by the Insurance Company in respect of the goods destroyed in the fire accident, the said amount shall have to be taken as equivalent to the property hypothecated to the Bank. On 17-3-1995 when the Bank received from the Insurance Company a sum of Rs. 9,49,168.60, the award amount being the value of the goods destroyed by the fire accident, it was just like the Bank was holding the hypothecated property in its possession in spite of the employer himself being in possession of the hypothecated property. It was nothing more or nothing less than that. Submission of Sri Hari Krishna Holla, learned Counsel for the Provident Fund Commissioner, making out a distinction between the value of goods and the compensation awarded by the Consumer Disputes Redressal Commission, therefore, cannot be accepted".

6. On the day on which Rs. 9,49,168.60 was received by the Bank as being the value of the property that had been hypothecated to the Bank and which was

destroyed in the fire accident, if the debt that the employer owed to the Bank in respect of the cash credit facility, was less than this particular sum of Rs. 9 lakhs and odd, then, anything over and above what was due from the employer was certainly covered by the prohibitory order that had been earlier issued by the Regional Provident Fund Commissioner. If what the employer owed to the Bank as on that date exceeded more than this amount of Rs. 9 lakhs and odd, then, it cannot be said that this sum of Rs. 9 lakhs and odd was received by the Bank for the first time after passing of the prohibitory order. As said earlier, the property had been hypothecated much earlier, and all that happened on receipt of the award amount on 17-3-1995 was that instead of the hypothecated property, the said amount was in the Bank to be credited to the account of the employer. As we noticed earlier, even after so crediting, the employer was still due to the petitioner much a larger sum.

7. Same thing however cannot be said in respect of the interest amount of Rs. 4,25,955.65 and costs of Rs. 2,500.00. The amount of costs was awarded by the Consumer Disputes Redressal Commissioner to the employer who was the complainant before the Commission. The said amount of costs had nothing to do with the hypothecated property over which the Bank has priority. Same is the position with regard to interest amount of over Rs. 4 lakhs and odd. It could be seen that for the amount withdrawn by the employer by availing the cash credit facility and for the amount due by the employer to the Bank in respect of the principal and interest concerning the said cash credit facility, Bank would be continuing to levy interest so long as the amount did not stand credited. For example, interest is awarded by the Commission for the period from 19-3-1992 to 15-3-1995 on the award amount of Rs. 9 lakhs odd. When the amount of Rs. 9 lakhs and odd was received by the Bank, it was not as though the Bank had not charged interest at all for the relevant period from 19-3-1992 to 15-3-1995 in respect of what the employer owed to the Bank. Whatever was due from the employer, the Bank had been levying interest. It was by the addition of interest only that the total amount due from the employer to Bank is found to be exceeding Rs. 15 lakhs. If this interest of Rs. 4 lakhs and odd awarded by the Commission, in addition to the value of the goods to an extent of Rs. 9 lakhs and odd, is also held related to hypothecated property, then it amounts to the employer paying to the Bank double interest i.e., interest that the Bank was charging him in respect of cash credit facility, as also the amount of interest awarded to him by the Commission. There could not be, therefore, any scope to interpret this amount of interest over Rs. 4 lakhs, as also the costs of Rs. 2,500/-, as the property of the Bank by virtue of the prior claim over anything concerning the hypothecated property. Bank's claim to the hypothecated property or any sum received on account of the said hypothecated property will no doubt have prior claim. But, that claim does not extend to something that is totally unrelated to the hypothecated property. Costs of Rs. 2,500/- and the interest of Rs. 4,25,955.65 therefore, did not have any concern with the hypothecated property over which the Bank had the prior claim. These were the

amounts exclusively awarded by the Commission to the employer who was the complainant before the Commission. When the said two amounts were also received by the Bank on 17-3-1995, there was already prohibitory order passed u/s 8-A of the Act by the Regional Provident Fund Commissioner by virtue of Section 11(2) of the Act, whereby, the Regional Provident Fund Commissioner had priority over the claim of the bank in respect of cash credit facility. Therefore, to meet the demands of the Regional Provident Fund Commissioner to an extent of Rs. 30,217.75, the petitioner-Bank was duty bound to meet such an obligation from out of the above said costs and interest amount that was in excess of Rs. 4 lakhs. In view of Section 11(2) of the Act, the said sum of over Rs. 4 lakhs could not be adjusted by the Bank towards liabilities of the employer in respect of cash credit facility because the first respondent-Regional Provident Fund Commissioner had priority over that sum to the extent the employer owed to the Regional Provident Fund Commissioner. Sri Sundar Murkal, learned Counsel for the petitioner-Bank, submits that Section 11(2) of the Act would apply only to the company that is being wound up and not the case like the present one. He also refers to the statement of objections and reasons. Sri Sundar Murkal is right only if Section 11(1) is referred to. What is being referred to herein is sub-section (2) of Section 11. It does not refer to winding up of a company, but it provides that without prejudice to the provisions of Section 11(1), if any amount is due from the employer whether in respect of employees' contributions or the employer's contributions, the amount shall be deemed to be the first charge on the assets of the establishment. Therefore, on 17-3-1995 when the sum of over Rs. 4 lakhs was received by the Bank on account of interest and costs, as between the claim of the Bank in respect of the cash credit facility and the claim of the Regional Provident Fund Commissioner in respect of arrears of contributions, it was the claim of the Regional Provident Fund Commissioner that gained priority by virtue of Section 11(2) of the Act.

8. Sri Sundar Murkal, learned Counsel for the Bank refers to the statement furnished by the Bank that would show that no amount of the employer was there at any time with the petitioner. The said statement is at Annexure-Q1. That does not serve any purpose because, as on 17-3-1995, we have found that a sum of more than Rs. 4 lakhs was received on account of the employer over which, as compared to the bank's claim in respect of cash credit facility, the claim of the Regional Provident Fund Commissioner had priority by virtue of Section 11(2) of the Act.

9. In view of the above, I have to conclude that the petitioner-Bank is duty bound to remit a sum of Rs. 30,217.75 to the first respondent-Regional Provident Fund Commissioner in respect of arrears of contributions due from the third respondent-M/s. Akshaya Cashew Industries.

10. Petition dismissed.