
(1996) 03 AHC CK 0085

In the Allahabad High Court

Case No : F.A.F.O. No. 419 of 1995 and Civil Revision No. 325 of 1995

Manoj Kumar Singhal and Another

APPELLANT

Vs

Bank of India, Branch Office and Others

RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1

Citation : (1996) 03 AHC CK 0085

Hon'ble Judges : T.P. Garg, J;R. Dayal, J

Bench : Division Bench

Advocate : N.K. Chaturvedi and R.S. Misra, for the Appellant; P.K. Bisaria, for the Respondent

Final Decision : Disposed Of

Judgement

T.P. Garg, J.—Both the aforesaid First Appeal from Order No. 419 of 1995 and Civil Revision No. 325 of 1995 have been filed against the order dated 8.2.1995 passed by Sri Prem Chandra, Civil Judge. Firozabad, We, therefore, propose to dispose of both by this common judgment.

2. Briefly, the facts of the case are as under:

In May, 1992 Bank of India through its Branch Manager, Firozabad, filed a suit being Civil Suit No. 63 for the recovery of Rs. 80,22,381.43 against Manoj Kumar Singhal and Ors. Defendants-Appellants, and Respondent Nos. 2 to 12. The Plaintiff-Bank sanctioned cash credit limits in favour of the Defendants for various amounts from time to time, initially, the cash credit (hypothecation of stock) limit was sanctioned for a sum of Rs. 24,00,000. Thereafter, a limit to the tune of Rs. 20,00,000 was sanctioned for the purchase of bills, a sum of Rs. 5,00,000 for D. P. limit and a sum of Rs. 30,00,000 for inland letter credit were sanctioned. The Defendants executed various documents including Demand Promissory Notes and agreement of hypothecation in favour of the Bank for the aforesaid credit limits/ advances on 30.5.1990. The Defendants also mortgaged various movable and

immovable properties in favour of the Bank as shown in the list filed along with the plaint. The Defendants Appellants did not make payment towards the outstanding dues and hence the suit for recovery of Rs. 80,22,381.43.

3. During the pendency of the suit, the Plaintiff filed an application 49-Ga under Order XXXIX, Rules 1 and 2 of the CPC for temporary injunction to restrain the Defendants from transferring or alienating the properties detailed in the list filed along with the application to any person during the pendency of the suit. Another application 50-Ga under Order XL, Rule 1 of the Code was also filed, which is still pending consideration by the trial court. Another application 205-Ga was filed by the Plaintiff-bank under Order XXXVIII, Rule 5, CPC for attachment of properties, detailed in Schedule A, filed along with the application for attachment before judgment. It is alleged in this application that lire Defendants, in order to obstruct or delay the execution of any decree that may be passed against them, were about to dispose of the properties shown in the schedule, and if they succeed in doing so, it would result in various complications with regard to the recovery of the amount qua which the decree may be passed.

4. Notices of both the applications were given to the Defendants and after hearing the learned counsel for the parties, learned Civil Judge allowed the application 49-Ga under Order XXXIX, Rules 1 and 2, CPC and restrained the Defendants from transferring, removing or creating any charge on the properties detailed in the list as shown in the Schedules A, B, D and E. The application 205-Ga under Order XXXVIII, Rule 5, CPC was, however, rejected.

5. Manoj Kumar Singhal and Rameshwar Prasad Sharma, two of the Defendants, have filed an appeal against the aforesaid order so far as it pertains to grant of temporary injunction restraining mem from transferring or alienating the properties shown in the Schedule. The Plaintiff-Bank has, however, preferred a Civil Revision against the impugned order so far as it pertains to the rejection of its application under Order XXXVIII, Rule 5, Code of Civil Procedure

6. Counter-affidavit and rejoinder affidavit have been exchanged between the parties. We have heard the learned counsel for the parties and also gone through the record of the case.

7. Taking first of all, the appeal filed by the Defendants, challenging the impugned order so far as it relates to the grant of temporary injunction in favour of the Bank restraining them (Defendants) from alienating or transferring or creating any charge on the properly in dispute, the principles governing the grant of temporary injunction and exercise of discretion conferred by Order XXXIX, Rule 1, CPC are to the effect that a person seeking a temporary injunction must satisfy the Court as to the existence of the following conditions:

(i) first, that there is a serious question to be tried in the suit and that on the facts before the Court, there is a probability of his being entitled to the relief asked for by him,

(ii) secondly, that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right can be established on trial, and

(iii) thirdly, that the comparative mischief of inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it.

8. As regards the existence of a prima facie case in favour of the Plaintiff, the lower court has found that the factum of grant of loan to the tune of more than Rs. 80,00,000 is not disputed by the Defendants. Even in this Court, the said observation has not been disputed. From a perusal of the record, it is prima facie made out that not only the various amounts of loan were advanced to the Defendants by the Plaintiff-Bank from time to time in various forms, but also that the Defendants mortgaged and hypothecated various properties, detailed in the Schedule attached with the plaint and the application for grant of temporary injunction. It is also not disputed before us that the Defendants have defaulted in repayment of loan amount on various occasions, which forced the Plaintiff-Bank to file a suit for the recovery of a huge amount, viz.. more than Rs. Eighty lacs from the Defendants. The apprehension of the Plaintiff- Bank that the movable and immovable properties detailed in the Schedules are exposed to manifest peril when the Defendants committed default in repayment of the loan amount is perfectly just and cannot be bypassed by suggesting that the property involved will not be dissipated. The balance of convenience has also thus rightly been held to be in favour of the Plaintiff-Bank, because in case the Defendants are allowed to transfer, alienate or create some charge on the hypothecated property, that would cause an irreparable loss to the Plaintiff-Bank. There is, of late, a trend and experience also indicates that huge amounts are secured from the Banks and financial institutions and re-payment is refused or not made for no valid reasons. The institution of the suit and pendency of the suit enable the Defendants to create more encumbrances on the properties. Various liabilities so created further complicate the situation when it comes to the recovery of the amount qua which a decree may be passed on conclusion of the trial. The economic policy of the Government and centralised banks have opened new vistas and require the Bank and financial institutions to advance loans in many areas which were earlier unknown. The benefit available to the citizens of securing loan from the Banks and financial institutions cannot be mis-used by refusal to repay the amount of loan and then Indulge in time-consuming litigation. It would not be difficult to imagine how much public money is involved in these suits and how long the centralised banks and financial institutions are deprived of their dues. In the instant case, a lawful and enforceable decree is likely to be passed in favour of the Plaintiff-Bank and in this view of the matter, the lower court has held that the Plaintiff has a prima facie case, balance of convenience in its favour and it will certainly be put to an irreparable loss if the Defendants are allowed to dispose of, transfer or alienate the property in question in any manner with a view to defraud their creditor, i.e., Bank.

9. During the course of hearing of the suit, the lower court appointed two Commissioners in order to inspect the property in dispute and prepare inventories thereof. A reference to the report of Sri R. N. Gupta, appointed as Commissioner, has been referred to in the impugned order whereby certain bags of Red Lead were found to be short in stock. It has been alleged by the Plaintiff that the Defendants prevented the Commissioner from inspecting the factory premises and so it could not be found out as to how much movable property was removed from the premises of the factory.

10. Having regard to these facts and circumstances of the case, the trial court found all the requirements to grant temporary injunction in favour of the Plaintiff and consequently, allowed its application for grant of temporary injunction. The discretion, while granting temporary injunction in favour of the Plaintiff in the instant case, has been exercised by the trial court in accordance with the reason and on sound judicial principles and calls for no interference by this Court.

11. As regards, the rejection of the application of the Plaintiff under Order XXXVIII, Rule 5, Code of Civil Procedure, suffice will it be to say that the order passed by the trial court in this respect is just and proper and calls for no interference by this Court. Order XXXVIII, Rule 5 of the Code says that where at any stage of the suit, the court is satisfied by affidavit or otherwise that the Defendant with the intent to obstruct and/or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the court may direct the Defendant either to furnish security or to make appropriate orders in this regard. It has been observed in the impugned order that there was no material on record from which it could be inferred that the Defendants were about to dispose of the whole or any part of their property or were about to remove the whole or any part of the property from the local limits of the Jurisdiction of the court so as to attract the provisions of Order XXXVIII, Rule 5 of the Code. Admittedly, the property qua which an order under Order XXXVIII, Rule 5 of Code was sought by the Plaintiff is already mortgaged and hypothecated with it and the Plaintiff can, therefore, have no apprehension that the Defendants would be able to dispose it of in any manner. Moreover, the Plaintiff-Bank has not placed any material on record nor any reference was made by its learned counsel that the Defendants were about to dispose of or remove the whole or any part of the property with intent to obstruct or delay the execution of any decree, that may be passed against them in order to attract the provisions of Order XXXVIII, Rule 5, CPC. The ingredients required to attract the provisions of Order XXXVIII, Rule 5 were found lacking by the lower court in the instant case and, in our opinion, rightly so. The order passed by the learned trial Judge in this respect is based on sound Judicial principles and calls for no interference.

12. In the result, both the F.A.F.O. No. 419 of 1995 and Civil Revision No. 325 of 1995 are dismissed and impugned order is maintained. Under the circumstances,

the parties are left to bear their own costs.