

**(2013) 10 BOM CK 0080**

**In the Bombay High Court**

**Case No :** Company Appeal No. 424 of 2013 and Notice of Motion (Lodging) No. 1613 of 2013 in Appeal (L) No. 336 of 2013 in Company Application No. 96 of 2013 in Company Application No. 653 of 2012 in Company Petition No. 20 of 1984

Mr. Shashikant Pasari and M/s. Nagindas K. and Bros.

APPELLANT

Vs

The Official Liquidator and Others

RESPONDENT

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**Date of Decision :** 08-10-2013

**Acts Referred:**

**Citation :** (2013) 10 BOM CK 0080

**Hon'ble Judges :** M.S. Sonak, J;D.Y. Chandrachud, J

**Bench :** Division Bench

**Advocate :** Rajni Iyer, Mr. Chirag Balsara, Mr. Luann Crasto and Mr. Rushin Kapadia, instructed by K. Ashar and Co, for the Appellant; R.V. Desai, Mr. V.K. Nair for Respondent No. 2, Mr. Cyrus Ardeshir for Official Liquidator for Respondent No. 1, Mr. A.Y. Sakhare and Mr. Rupesh Bobde, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

D.Y. Chandrachud, J.—The appeal arises from a judgment and order of a learned Single Judge in a company application that was moved by the Appellant for recalling an earlier order dated 12 February 2013 of the Company court. M/s. Rajen Textile Private Limited, a company which is now in liquidation, mortgaged its leasehold rights in respect of the land bearing block Nos. 399 to 403, 405 and 427 situated at village Barshi, District Solapur in favour of the Central Bank of India. The company went into liquidation on 27 June 1984. Central Bank of India, which was one of the secured creditors, instituted a suit in 1986 before this Court for the recovery of its dues. A decree was passed in favour of the Central Bank on 30 November 1996. Amongst the securities furnished to the Central Bank was a mortgage of the leasehold rights held by the company. On 11 August 2000, the erstwhile owners of the land, including one R.R. Deshpande entered into a sale deed in respect of block No. 427 in favour of Vishwas Barbole, the Third Respondent. On 11 June 2003 another sale deed was executed by the owner of

block Nos. 400 to 403 and 405 in favour of Vishwas Barbole.

2. On 1 August 2003, the Official Liquidator submitted a report seeking sanction for the sale of the properties of the company in liquidation. By an order dated 16 December 2004, the learned Company Judge rejected the report of the Official Liquidator with the following observations:

In the present case it is an admitted position that the recovery proceedings are pending before the D.R.T. The said recovery proceedings are instituted by various banks and financial institutions. In view of the pendency of the said recovery proceedings which is initiated by the secured creditors, it is not possible to sanction the sale of the properties at the instance of Official Liquidator in the present winding-up proceedings. In my view the properties which are the subject of security of the banks and financial institutions will have to be sold and disposed of by the recovery officer in pursuance of the recovery certificate issued by the D.R.T. under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In view thereof, I reject the present report made by the Official Liquidator. However, I direct the Official Liquidator to hold the properties subject to the orders passed by the D.R.T. in the said recovery proceedings which are pending before it. It is made clear that the Official Liquidator will hand over the possession of the premises as per the direction of the D.R.T. subject to recovery of necessary security charges and other expenses incurred by the Official Liquidator for protecting the said property.

The learned Company Judge was hence of the view that having regard to the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, it was not open to the Liquidator to conduct a sale independently on his own and that he must hold the properties subject to the orders passed by the D.R.T. in the proceedings which were pending before it. Moreover, the Liquidator was directed to hand over possession of the premises in accordance with the directions of the D.R.T. subject to the recovery of his charges and expenses.

3. On 23 June 2005, the learned Company Judge disposed of a company application filed by Barbole, by holding that the remedy would lie before the D.R.T. as the Liquidator had been directed to hold the properties subject to the orders passed by the D.R.T. in terms of the order dated 16 December 2004.

4. Central Bank of India filed an application on 26 April 2012 before the D.R.T. Pune seeking permission to settle a part of its claim by accepting an amount of Rs. 1.40 Crores from Barbole and to release its claim in regard to the leasehold rights, which had been mortgaged in favour of the bank. The Appellant was a party to the application. The application was allowed by the D.R.T. by an order dated 10 August 2012. Central Bank of India, in its application, stated that after the passing of the decree in the suit of 1986, neither the bank nor the Liquidator has generated any income from the mortgaged leased lands and on the contrary expenses had been incurred towards meeting the security charges in respect of the lands. Central Bank stated that after obtaining a valuation from a

Government approved valuer, it considered it beneficial to accept the proposal for surrender of its mortgage security for a consideration of Rs. 140 Lakhs. Central Bank further stated that it was ready to abide by the orders passed by the Tribunal in regard to the portion to be paid over to the Liquidator to meet the claim *pari passu*, for the wages of the workmen. While allowing the application, the D.R.T., Pune permitted the bank to settle its dues in accordance with the agreement which had been arrived at.

5. The Appellant filed an appeal against the order of the D.R.T. before the Debt Recovery Appellate Tribunal (D.R.A.T.). The appeal has been dismissed in default on 26 July 2013, on the ground that though the appeal was pending for removal of office objections since March 2013, the Appellant had consistently remained absent despite the grant of six opportunities to remove the objections. The Appellant has filed an application for restoration, which is to shortly come up for hearing before the D.R.A.T.

6. A company application was filed before the Company Court by the Central Bank on 31 October 2012 seeking permission of the Liquidator to release its claim on the leasehold rights in respect of the plots bearing Block Nos. 400 to 403, 405 and 427 on the bank accepting an amount of Rs. 1.40 Crores. The application was, with the consent of the Liquidator, allowed by the learned Company Judge on 12 February 2013. While doing so, the Company Court recorded the undertaking of the bank to deposit a proportionate amount, if any, due to the workers of the company in liquidation in terms of Section 529A of the Companies Act, 1956 as and when required or directed by the Court.

7. The Appellant, who claims to be a former Director of the company in liquidation and a guarantor filed a company application for recall of the earlier order dated 12 February 2013. The learned Company Judge has dismissed the application by the impugned order dated 30 July 2013.

8. The learned company Judge has held that:

(i) By the order dated 16 December 2004 passed by the Company court, the leasehold rights, which constituted a security of the Central Bank of India had to be sold by the orders of the D.R.T. in the recovery proceedings and the Liquidator had a limited role. The Liquidator was directed to hold the properties subject to the orders that may be passed by the DRT and to hand over the possession of the properties in accordance with the directions of the Tribunal;

(ii) Well over 45 years earlier, the company in liquidation was closed without any business activity. No income has been fetched from the properties which were in the hands of the Liquidator and the Central Bank, as a secured creditor had been paying the security charges and incurring expenses for several years;

(iii) In view of the overriding provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 the D.R.T. has exclusive jurisdiction in respect of the subject matter of the recovery proceedings. It was not open to the

Company Court to dispose of the immovable property of the company in liquidation;

(iv) The D.R.T. had already passed an order permitting Central Bank to settle its claim in terms of the proposed settlement and the order had not been stayed by the D.R.A.T. It was not open to the Company court to sit in appeal against the order passed by the DRT and the validity of that order could not be questioned in the proceedings before the Company court;

(v) The rights of the Appellant, if any, was to challenge the order passed by the D.R.T. and the Appellant had already taken recourse to that remedy;

(vi) The reliefs claimed by Central Bank in proceedings before the Company court were only consequential to the orders passed by the D.R.T., which have not been stayed or set aside;

(vii) Central Bank in whose favour the leasehold rights of the company in liquidation were mortgaged and which was required to spend substantial amounts towards security charges and towards other expenses was entitled to execute the decree and recover its dues by appropriating the sale proceeds. No order restraining the decree holder from selling the property and appropriating the sale proceeds towards its dues in satisfaction of the decree could be passed by the Company Court;

(viii) The Appellant had not made a bona fide proposal. The Appellant proposed to deposit an amount of Rs. 1.75 Crores in 2012 subject to the condition that the bank shall give up all its claims not only in respect of the leasehold properties, but also in respect of free hold properties, though the claim of the bank was in excess of Rs. 25 Crores. The Appellant had not taken any steps to clear the liabilities of the company in liquidation and the offer made before the Company court was not bonafide.

On these grounds, the company application came to be dismissed.

9. Learned Senior Counsel appearing on behalf of the Appellant submits that the Official Liquidator could not have given his consent to the proposed settlement by which Central Bank accepted an amount of Rs. 1.40 Crores towards satisfaction of its mortgage debt, without any enquiry into the valuation of the leasehold rights. The Official Liquidator, it was urged, was duty bound to realize the best price and cannot agree to a slump sale. The Appellant has executed a personal guarantee and is therefore interested in ensuring that the best possible price for the sale of the assets of the company in liquidation is realised.

10. Central Bank holds a decree in its favour which was passed as far back as on 30 November 1996. The leasehold rights of the company in liquidation constitute the mortgage security of the bank. In the order of the Company Court dated 16 December 2004, the learned Company Judge had made it clear that the properties which formed the subject of the security in favour of the bank would have to be sold and disposed of by the recovery officer in the proceedings before

the D.R.T. and hence, it was not open to the Liquidator to seek sanction for the sale of the secured assets. The Liquidator was directed to hold the properties subject to the orders that may be passed by the D.R.T. This order was consistent with the scheme of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and having due regard to the judgment of the Supreme Court in Allahabad Bank Vs. Canara Bank and Another, . The Central Bank's application has been allowed by the D.R.T. The Appellant has sought to question the correctness of the order passed by the D.R.T. before the D.R.A.T. The Appeal was dismissed for non-removal of objections and an application for restoration is now pending.

11. The Company application, which the Liquidator moved before the Company Judge and which resulted in the passing of the order dated 12 February 2013 was merely consequential to the order passed by the D.R.T. The learned Company Judge was in our view right in coming to the conclusion that it would lie outside the jurisdiction of the Company court to sit in appeal over the order passed by the D.R.T., particularly having regard to the position that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides for a self contained remedy for challenging orders passed by the Debt Recovery Tribunal. In that appeal, it is open to the Appellant to question the order of the Tribunal on all counts as may be available in law, including the grounds which were sought to be raised in regard to valuation. The appeal was dismissed as the Appellant failed to remain present on more than six occasions. But, we do not make any observations in regard to the application for restoration and which will be disposed of on merits. The learned Company Judge was, in our view, justified in coming to the conclusion that the remedy of the Appellant must lie before the DRAT where the Appellant has invoked its remedy. The Appellant had no bona fide offer to make before the Company Judge, even assuming that such an offer could have been made before the Company Court. Central Bank has dues exceeding Rs. 25 Crores and it was called upon by the Appellant to settle the entirety of its claim and to release even its free hold properties against the amount of Rs. 1.75 Crores which was unacceptable.

12. For all these reasons, we find no error in the order of the learned Single Judge. The appeal shall accordingly stand dismissed. There shall be no order as to costs. In view of the dismissal of the appeal, Notice of Motion (L) No. 1613 of 2013 in the Appeal will not survive and is accordingly disposed of.