(1991) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Company Application No. 21 of 1988

Official Liquidator of Jaipur Spinning and Weaving Mills Ltd. (In Liquidation) — APPELLANT

Vs

Podar Mills Ltd. and Others — RESPONDENT

Date of Decision : 05-07-1991

Acts Referred:
Companies Act, 1956 — Section 456, 457, 460(4)

Citation : (1991) 72 CompCas 551 : (1991) 2 WLC 134

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : G.K. Garg, for the Appellant; Paras Kuhad and G.S. Bafna, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—This order will dispose of a preliminary objection raised by non-petitioner No. 3, State Bank of India, Sanganeri Gate Branch, Jaipur, in additional pleas (para 1) that a court receiver has been appointed in the suit by the Bombay High Court and leave of the Bombay High Court has not been obtained for initiating the proceedings by the petitioner, official liquidator, against the receiver and the proceedings, therefore, are liable to be dismissed on this ground.

2. In Company Petition No. 10 of 1980, this court had made an order that the company, Jaipur Spinning and Weaving Mills Pvt. Ltd. (In Liquidation), be wound up. The said order was made on December 2, 1983, and the official liquidator attached to this court was appointed as official liquidator of the company in liquidation. A vast chunk of land described in Schedules 1 and 2 to the annexures to the present application which is owned by the company in liquidation has been leased out to respondent No. 1, Podar Mills Ltd., Bombay, under two registered lease deeds on December 30, 1964, and August 23, 1964. It is the case of the official liquidator, the petitioner, that there has been breach of the condition of the aforesaid lease and that he is entitled to take into his possession the entire

demised premises and the grounds are contained in paras 10 (from 10.1 to 10.6), 11 and 12 of the application. When the application under Sections 456, 457, 460(4) of the Companies Act, 1956 (for short, "the Act"), read with Rules 232 and 233 of the Companies (Court) Rules, 1959 (for short, "the Rules"), was filed on April 27, 1988, the official liquidator had arrayed (1) Podar Mills Ltd., (2) Shri Vinay R. Podar, and (3) the State Bank of India, Jaipur, as the respondents to the petition. When the summonses were served on the aforesaid respondents, a reply was filed in which it was stated that, in a suit filed by the State Bank of India in the Bombay High Court against Podar Mills, a court receiver has been appointed and, therefore, Podar Mills could not be arrayed as one of the respondents and that the application filed by the official liquidator should be dismissed. The State Bank of India, in its reply as said earlier in para 1 of the additional pleas, raised a plea that the application is not maintainable and is liable to be dismissed inasmuch as the leave of the Bombay High Court which has appointed the receiver has not been obtained by the official liquidator for initiating the proceedings.

3. There is no dispute that the Bombay High Court, in Suit No. 3607 of 1988, under its order dated March 7, 1988, has appointed a court receiver so far as Podar Mills Ltd. and more so its Jaipur undertakings are concerned.

4. In the reply, respondents Nos. 1 and 2 have taken a plea that the court receiver appointed by the Bombay High Court was a necessary party. The petitioner filed an application in this court on April 10, 1990, in which this court had directed that the receiver may be impleaded as a party to the application. The said application was filed in pursuance of the order of this court dated March 9, 1990.

5. As said earlier, learned counsel for the respondents contends that the aforesaid application should not be allowed. The ground is that leave of the court to sue the court receiver has not been obtained from the Bombay High Court which has appointed the receiver.

6. From the narration of facts in the earlier part of this order, there can be no dispute and it is not disputed that the property which is in the possession of the court receiver appointed by the Bombay High Court is the property of Jaipur Spinning Mills Pvt. Ltd. in liquidation, the said company in liquidation being the lessor and Podar Mills Ltd. being the lessee. There is also no dispute that the company in liquidation, on an application for winding up being filed on December 15, 1980, has been ordered to be wound up under the orders of this court on December 2, 1983. u/s 456 of the Act, where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled. u/s 456(2) of the Act, all the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for winding up of the company. Thus, there appears to be a bar in the

appointment of a receiver so far as the assets are in the hands of the liquidator and a receiver can be appointed only in respect of the assets in the hands of the liquidator, by or with the leave of the court. As said earlier, when the suit was filed in the Bombay High Court by the State Bank of India against Podar Mills and more so against its Jaipur mill with which we are presently concerned, there was already a winding up order by this court and the official liquidator had been appointed and this fact does not appear to have been brought to the notice of the Bombay High Court. Be that as it may, a court receiver has been appointed by the Bombay High Court so far as the Jaipur mill of Podar Mills Pvt. Ltd. is concerned. As said earlier, the question is as to whether the present application filed in this court by the official liquidator can be continued without the official liquidator obtaining leave of the Bombay High Court which had appointed the court receiver. So far as the application of the petitioner, the official liquidator, that the court receiver should be arrayed as respondent No. 2 is concerned, in my opinion, there cannot be any objection to implead the court receiver as a respondent to the application who can be so arrayed without leave of the court and which leave can be obtained by the official liquidator even hereinafter and, at any rate, before any final order is made in respect of the property in the hands of the court receiver. The Supreme Court, in the case of Everest Coal Company (P) Ltd. Vs. State of Bihar and Others, has examined the question and said that when a court puts a receiver in possession of the property, the property comes under court custody, the receiver being merely an officer or agent of the court. Any obstruction or interference with the court''s possession constitutes contempt of that court. Any legal action in respect of that property is, in a sense, such an interference and invites the contempt of penalty or likely invalidation of the suit or other proceedings. The court further said that, if either before starting the action or during its continuance, the party takes leave of the court, the proceeding may continue up to a conclusion on the merits. Grant of leave is the rule and refusal the exception. The court further said that the jurisdiction to grant leave is undoubted and inherent but not based on black-letter law in the sense of enacted law. Even if leave of the court is sought before the decree has been passed, one has to purge oneself of "contempt of court." In Mohamed Hanif Abdul Hamid and Others and B. Sahib Dittamal and Sons Pvt. Ltd. Vs. Chunilal Ukabhai Padia and Others, the court said that although there is no statutory provision which requires a party to take leave of the court to sue a receiver, the rule regarding obtaining leave is part of the rules of equity and is based on public policy which requires that when the court had assumed possession of the property in the interest of the litigants, the authority of the court was not to be disturbed without first taking its leave. However, a party can apply for leave retrospectively if it has omitted to obtain such leave prior to the filing of the suit or prior to initiating proceedings in execution. It is, therefore, within the competence of the court to grant such leave in retrospect, the only question being whether the granting of such "subsequent leave" would prejudice any party. It can, therefore, be said that despite the fact that there is no specific provision to take leave to sue a receiver, courts have taken a view that in case there is a court receiver, leave of the court to sue him should be obtained, but even if leave at the initial stage has not been obtained and a suit has been filed, leave can be applied for and obtained even before passing of the decree and it will relate back to the filing of the suit or the application, as the case may be. It can, therefore, be said that the application of the petitioner, official liquidator, that the court receiver should be arrayed as respondent No. 4 should be allowed and the official liquidator should be asked to obtain leave of the Bombay High Court which appointed the court receiver to continue the proceedings.

7. Consequently, I allow the application of the official liquidator that the court receiver be impleaded as respondent No. 4 and direct the official liquidator to obtain leave of the Bombay High Court to continue the proceedings against the court receiver.

