(2011) 05 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30355 of 2011

Punjab National Bank APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 171, 172
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 17, 18

Citation : (2011) 8 ADJ 87

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Advocate : Ramesh Singh and K.L. Graver, for the Appellant; C.S.C., Onkar Nath Rai, Y.K. Srivastava, K.N. Tripathi, Ashish Mishra and Ravindra Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri K.L. Graver assisted by Shri Ramesh Singh for the petitioner-bank. Dr. Y.K. Srivastava, Standing Counsel appears for the State respondents. Shri K.N. Tripathi assisted by Shri Ashish Mishra appears for respondent No. 6. Shri Ravindra Singh has filed an impleadment/intervening application on behalf of Co-operative Cane Development Union Padrauna, District Kushi Nagar.

2. The Punjab Nation Bank has approach this Court for the following reliefs:

(i) issue a writ, order or direction in the nature of mandamus commanding the respondents not to auction the goods i.e. (1) buffer stock of sugar (2) levy suger 93) free sale sugar (4) molasses and (5) consumables, which are under lock & key of the petitioner Bank and have been pledged as securities by the respondent No. 6.

(ii) issue a writ, order or direction in the nature of mandamus directing to the respondents not to give effect the auction proceedings initiated in pursuance of the recovery certificate dated 20.4.2011 issued by respondent No. 2.

(iii) issue any other suitable writ, order or direction, as this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

3. It is submitted by Shri K.L. Graver appearing for the Punjab National Bank that under the Deed of Hypothecation dated 29.12.2005 M/s J.H.V. Distilleries & Sugar Mills Ltd has hypothecated the entire stocks of raw material, stock in process finished goods of crystal sugars in bags/brown sugar stored in godown situated at Padrauna (Kushinagar) for a cash credit limit of Rs. 40 crores. He submits that the agreement is still operative and that with the total commitment of Rs. 27.39 crores of the sugar Mill to the Bank, the District Magistrate has no authority to attach the stocks and to sell them for recovery of the sugar-cane dues and other statutory dues, which are to be paid to the farmers and cane unions, as balance of price of sugarcane, commission to cane unions and interest.

4. Shri K.L. Graver submits that the Sub-Divisional Magistrate/Assistant Collector, Padrauna, Kushinagar has gone out of his way to file caveat for opposing the writ petition, where the State should not normally have any interest in such matters between the bank and borrowers. He has relied upon a judgment of Supreme Court in The Bank of Bihar Vs. The State of Bihar and Others, and the judgment of Andhra Pradesh High Court in State of Andhra Pradesh and Another Vs. Andhra Bank Ltd. and Others, and some interim orders passed by this Court, where it was held that the hypothecation of stock, which is a recognised form of mortgage under Sections 171 and 172 of Contract Act is protected from being attachment and sale. Shri Grover submits that the Bank has advanced loans, which have not been repaid and that as a trustee of the public money the bank has a right to protect its interest under the hypothecation agreement from attachment and sale of the hypothecated stocks, for realisation of its dues.

5. Shri Ravindra Singh appearing for Cooperative Cane Development Union Padrauna, District Kushi Nagar has filed an impleadment/intervening application, in which it is stated that during the crushing season 2010-11 and after executing a statutory agreement on Form-C with the respondent No. 6 the intervening applicant has supplied the sugarcane to the respondent sugar mill and accordingly the mill was paying the sugar cane price at the rate of State Advisory Price (SAP) announced by the State Government. The mill committed defaults on which the Cane Commissioner, U.P. in exercise of powers conferred upon him under Sections 17 and 18 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1953 as well as Clause 3 (3-A) of the Sugarcane Control Order, 1956 issued by the Central Government, has issued recovery certificate against J.H.V. Sugar Mill for realisation of the cane price, society commission and the interest @ 15% per annum on the delayed payment of cane price an the commission. A caveat application has also been filed by the Cane Society on 26.4.2011 in respect of the recovery certificate dated 20.4.2011 issued by the Cane Commissioner. The cane society has supplied 16.74 lacs quintal sugarcane

to the respondent No. 5 sugar mill in season 2010-11 for which the mill was liable to pay Rs. 3431.62 lacs for the cane price on the SAP fixed by the State Government. The mill has paid Rs. 3151.90 lacs as on 20.4.2011. There are unpaid outstanding cane price dues of Rs. 279.72 lacs and interest on the aforesaid amount on the delayed payment of Rs. 3.68 lacs. Under Rule 49 of the Rules of 1954 framed u/s 18 of the Act of 1953 the society commission of Rs. 69.21 lacs was payable by the mill. The mill has paid Rs. 22 lacs and Rs. 47.21 is outstanding. The interest of Rs. 62 lacs is also payable by the mill and thus a total amount of Rs. 331.23 lacs is yet to be paid by the mill.

6. It is submitted by Shri Ravindra Singh, that the cane growers have produced the sugarcane by taking loan from the banks for seeds, fertilizers and other inputs, and thus they are the first charge holder. It is further stated that the mill has not pledged the sugar bags produced in the season 2010-11 from the sugarcane supplied by the cane union and therefore the writ petition challenging the recovery certificate is baseless and misconceived. The mill has also intimated to the Chairman of the Society, that the bank has illegally put lock on the godown No. 5, whereas the mill has not pledged sugar bags produced in the crushing season 2010-11, and if the lock is opened, the mill will liquidate the outstanding cane price and society commission. In the monthly progress report dated 21.5.2011 on Form-3 the authorised representative of the sugar mill of its unit at Padrauna has clearly stated in column-6 that the stocks of sugar of 146505 bags is not pledged.

7. Learned Standing Counsel appearing for the State respondents has produced a letter of the authorised representative of the J.H.V. Distilleries and Sugar Mills Limited with its unit at Padrauna stating that the stocks of sugar for the season 2010-11 have not been pledged with the Punjab National Bank. The Bank was only informed with the production of sugar, whereas no transactions were entered into with the bank in respect of the stocks of season 2010-11 and that the Bank has illegally locked godown No. 5 for which several request was made to the bank but the bank is not opening the lock. There are 15555 quintals sugar in the godown. The mill assured the Chairman of the Cane Union Cooperative Development, Padrauna on 2.5.2011 that as soon as the bank will open the locks/ which have been put illegally by it, the balance of the sugar cane price and commission will be paid.

8. There appears to be a serious dispute of question of fact whether the stock of season 2010-11 have been hypothecated with the bank. We have perused the hypothecation deed dated 29.12.2005. The deed is six year''s old and does not specifically pledge any quantity or stocks of sugar. In clause-1 "the hypothecated goods" have been defined as ''all products, goods and movable property of any kind.'' The goods are not sufficiently, with quantity, or price, identified in the contract. We prima facie find that the clauses in the deed are vague and indefinite and do not appear to hypothecate all the goods produced from year to year until the loan is discharged. The loan position has also not been clearly

stated.

9. In view of the clear and unambiguous statement given by the Authorised Officer of the sugar mill, that the stocks of sugar for season 2010-11 have not been hypothecated and that the godown No. 5 containing such stocks has been illegally locked by the bank, we do not propose to interfere in the matter in writ jurisdiction under Article 226 of the Constitution of India, as the decision on the question of fact of the hypothecation of stocks of the year 2010-11 and its extent in these proceedings, will require evidence to be led by the parties to the proceedings.

10. Both the judgments of the Supreme Court and Andhra Pradesh High Court cited above also arose out of the proceedings of the Civil Suit in which a suit for declaration and injunction was filed by the bank against the sugar mill and the concerned State.

11. For the aforesaid reasons the writ petition is dismissed on the ground of alternative remedy with liberty to seek remedies in the Court of competent jurisdiction.

