(1967) 08 MAD CK 0036

In the Madras High Court

Case No : Company Application No. 88 of 1967 in Company Application No. 63 of 1966 in O.P. No. 192 of 1947

S. Muthuswami Iyer APPELLANT

Vs

P.T. Munia Servai and Others RESPONDENT

Date of Decision : 25-08-1967

Acts Referred:
Banking Companies Act, 1949 — Section 45A, 45B

Citation : (1967) 08 MAD CK 0036

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : S. Swaminathan, for the Appellant; K.S. Naidu, for the Respondent

Judgement

Ramaprasada Rao, J.—This is an application by the auction purchaser to enquire into the legality and propriety of the orders passed by Civil

Courts and for necessary directions for the delivery of possession of the property purchased by him in court auction held by the official liquidator in

relation to the liquidation proceedings of a banking company known as The Hanuman Bank Limited. The applicant secured a sale certificate in

respect of the properties purchased onjanuary 19, 1965. In Company Application No. 63 of 1966 he applied for delivery of possession and on

March 17, 1966, this court as company court exercising jurisdiction u/s 45B etc. of the Banking Companies Act (X of 1949), passed an order for

delivery of possession of the properties fully set out in the sale certificate issued to the applicant. As the only machinery through which such

possession could be secured was through the instrumentality of civil courts within whose jurisdiction the properties are situate, this court transmitted

at the request of the applicant, the order for delivery of possession so passed above to the District Munsif''s Court at Kumbakonam, for

implementing the said order. The applicant applied to the District Munsif, Kumbakonam, for implementing the said order and for delivery of

possession. When the amin went to the spot for delivery of possession, he was obstructed. The applicant had to therefore file E. A. No. 307 of

1966 on the file of the court of the District Munsif of Kumbakonam for delivery of possession. As that application was dismissed for default, a

fresh application, E.A. No. 414 of 1966, was filed for removal of obstruction which by then was caused by respondents Nos. 3 and 4 in this

application. The application for removal of such obstruction was enquired into by the District Munsif, Kumbakonam, and ultimately it was

dismissed as regards item No. 2 in the schedule to the sale certificate bearing Survey No. 25/2. An elaborate enquiry was held by the District

Munsif, evidence was let in, documents were marked and ultimately the District Munsif found that the obstructors should be deemed to have a

better title than the judgment-debtor whose right, title and interest was the subject-matter of the public aution and therefore he dismissed the

application. The applicant who was appearing in person appealed against the said order and the appeal was rejected as not maintainable.

Thereafter he filed this application for necessary directions.

2. Inter alia, the applicant contends that the District Munsif, Kumbakonam, did not have any jurisdiction to enquire into the pros and cons of the

order for delivery of possession as that was passed by this court in exercise of its jurisdiction under the Banking Companies Act, 1949, and

therefore the court below which was merely requisitioned as a stop gap arrangement to implement the order for delivery of possession ought not to

have delved into the propriety of the order of this court and ultimately dismiss the application of the applicant for delivery of possession of the

properties purchased by him and found in the sale certificate. The applicant''s case is that the civil court at Kumbakonam had no jurisdiction to

enquire into or entertain any matter relating to the obstruction and it was obliged in law to implement the order of this court for delivery of

possession without further enquiry there into, and in any event, any enquiry or any order passed by the lower court should be deemed to be non

est in the eye of law, as the lower court did not have and could not have jurisdiction to enquire into any matter in relation to the liquidation of a

banking company, and that all orders passed by the court below could have no legal effect and the applicant therefore is entitled to the delivery of

possession of the properties in question free from obstruction.

3. The applicant has also stated in his affidavit the merits of his claim. But at the time when this application was taken up, the parties requested that

the preliminary issue whether this application is maintainable at all at this stage in this court may be gone into and the consideration of the merits of

the application of either party may be postponed till after the decision is rendered by this court on the preliminary issue. I am not, therefore, setting

out in detail the relevant merits of both the applicant and the respondents in this matter as I think it is unnecessary to set them out at this stage.

4. In the counter affidavit filed by the obstructors, respondents Nos. 3 and 4, their main contention is that it is only the lower court that has

jurisdiction to enquire into the matter. The case of the respondents is that this application is misconceived and not sustainable in law. The 3rd

respondent states that he is not a party to the proceedings in which the applicant is said to have purchased the properties and that he does not

claim the properties through the judgment-debtor in question. He also states that when the applicant''s application for removal of obstruction was

dismissed, his only remedy is to file a suit to set aside the summary order, tinder Order XXI, Rule 103, CPC and not to file another application for

removal of obstruction in this court. The respondents'' contention is that the District Munsif of Kumbakonam could entertain the obstruction petition

even though the matter relates to liquidation proceedings under the Banking Companies Act, and the liquidator himself not being a party to the

earlier application for dismissal and he having nothing to do with this application now pending, this cannot be deemed to be a matter or subject

relating to or arising out of the winding-up proceedings.

5. When the case was opened by Mr. Swaminathan, appearing for the applicant as well as for the liquidator, Mr. K.S. Naidu tersely put it that the

bank in liquidation was in no smaller or greater degree interested in the proceedings before the District Munsif, Kumbakonam. Such subsistence of

an interest in the liquidators, according to the learned counsel, is absolutely necessary before Section 45B of the Banking Companies Act (X of

1949), could be invoked. Once the liquidator auctions the properties and realises the dues, there was nothing more for him to do. Only the right,

title and interest of the bank is auctioned and therefore there is no conceivable nexus between the bank or the liquidator and the proceedings

initiated for delivery of possession of the properties auctioned by him.

6. It is necessary to appreciate the legal import of the language in Section 45B of the Banking Companies Act. Though ouster of jurisdiction of a

civil court or any particular court ought not to be lightly inferred, yet the converse of it, namely, vesting of exclusive jurisdiction in one court, can be

spelt if the scope and purpose of the enactment warrants. Section 45B reads as follows :

The High Court shall, save as otherwise expressly provided in Section 45C, have exclusive jurisdiction to entertain and decide any claim made by

or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under

(Section 391 of the Companies Act, 1956), by or in respect of a banking company or any question of priorities or any other question whatsoever,

whether of law or fact, which may relate to or arise in the course of the winding-up of a banking company, whether such claim or question has

arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or

before or after the commencement of the Banking Companies (Amendment) Act, 1953.

7. It is clear that any question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of a banking

company, shall be enquired into by the High Court. Section 45A and 45B are complementary to each other. Section 45A relates to the application

of the provisions of Part III-A of the Act, notwithstanding anything inconsistent therewith contained in the CPC or any other law for the time being

in force. The non-obstante provision is followed up by Section 45B which vests exclusive jurisdiction in the High Court to decide on all claims in

respect of banking companies. Though the marginal note is not quite descriptive of the content of Section 45B, the text of the section makes it

more elucidatory. The High Court shall have exclusive jurisdiction to entertain and decide any question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of a banking company. The expressions ""any question"", "" relating to"", and ""arising in the

course of"" in the section practically give a key to open up the hidden authority statutorily created by this section in the Act. The use of the word

question "" and indeed any question postulates that it need not necessarily be a question to which the liquidator is a party. It excludes any limitation

or qualification excepting for ihe restriction the context might impose. In Section 45B, the context in which the words "" any question "" appear is

also clear. The question should be ""in relation to "" or "" arising in the course of "" the winding up of a banking company. The import of the words ""in

relation to"" is obviously wider than that of ""arising in the course of"". In H. Naik, O.L. Puri Bank Ltd. Vs. Jitendranath Das, the court was of the

view that a debtor to a banking company which has gone into liquidation cannot file an application for his adjudication under the insolvency law in

the District Court as is usually done ; but he should approach the High Court for necessary relief. It is therefore abundantly clear that a party who

wishes to agitate any question of fact or law, which might have a relation to or which might arise in the course of the winding-up of a banking

company, is compelled and obliged to approach the High Court exercising company jurisdiction for relief. I am not therefore convinced with the

argument of the learned counsel for the respondents that the official liquidator should be a party eo nomine to any proceeding and he should be

vitally interested in the said proceeding for the application of the statutory procedural requirement u/s 45B of the Act. So long as the proceeding in

question is one which is brought up in the course of the winding-up of the banking company, it would come within the mischief of the rule

prescribed u/s 45-B. A narrower interpretation of the above section is not possible. The Supreme Court of India, in two of their decisions, has

made this position very clear. In Dhirendra Chandra Pal Vs. Associated Bank of Tripura Ltd. (In Liquidation), , the following passage is very

apposite for purposes of this case :

It is to be remembered that Section 45B is not confined to claims for recovery of money or recovery of property, moveablc or immovable, but

comprehends all sorts of claims which relate to or arise in the course of winding up. Obviously the normal proceeding that the section contemplated must be taken to be a summary proceeding by way of application.

8. In Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, , their Lordships, while considering the rights of a displaced creditor

under the Displaced Persons (Debt Adjustment) Act, 1951, held as follows :

Having regard to the wide and comprehensive language of Sections 45A and 45B, Banking Companies Act, it is clear that a proceeding to

execute the decree obtained by a displaced creditor from the Tribunal under Displaced Persons (Debt Adjustment) Act, against a bank and all

other incidental matters arising therefrom such as attachment are matters within the exclusive jurisdiction of the court that has directed winding up

proceedings of the bank.

9. Our High Court had occasion to consider a similar matter which has arisen in this winding-up petition. In a case where the lower court directed

the removal of obstruction and when the obstructors filed a suit under Order XXI, Rule 103, Civil Procedure Code, this court held that the prayer

of the applicant therein to transmit the suit filed by the obstructors to this court for disposal was proper and was within the purport and intendment

of Section 45B of the Banking Companies Act. This view of Kailasam J., in Company Application No. 256 of 1965, was upheld by

Anantanarayanan, Officiating Chief Justice (as he then was) and Ramakrishnan J. in O.S.A. No. 14 of 1966. The learned judges also added that

this court had jurisdiction, under its administrative powers, to direct transfers of proceedings from mofussil courts to be tried in this court and on

that ground also held that a suit under Order XXI, Rule 103, Civil Procedure Code, can properly and has to be heard and disposed of by the

court. The learned judges of the Division Bench of this court observed :

......the terms of Section 45B are very wide......(and) all (such) proceedings (of the nature involved in this application) should be properly tried

......in the High Court.

10. It is unnecessary for me to multiply authorities as the matter is concluded by the dicta of the Supreme Court and our High Court.

11. The other contention of the learned counsel for the respondents is that the official liquidator cannot be deemed to be a party who is interested

in this case, and it is only in such cases matters could be transferred from the lower court to the High Court. It should not be forgotten that it was this court which transmitted the order for delivery of possession to the lower court for further execution. In fact, the auction was held by the official

liquidator and it was in that auction that the applicant has purchased these properties. Delivery of possession of property purchased by a court

auction purchaser is only a continuation of the proceedings initiated by the official liquidator for a sale of the properties of the bank in liquidation.

Mr. Swami-nathan, therefore, rightly contends that what has been done by the official liquidator when he auctioned the mortgaged properties in

execution of the charge decree was only one phase of execution of a decree and the auction purchaser has undertaken another phase of such

execution by seeking delivery of possession. This is therefore a matter in which the official liquidator cannot be said to be totally disinterested, and,

in any event, this is a problem which arises in the course of the liquidation of a banking company. Removal of obstruction is only a process in

execution and this is one of the proceedings which appear in the Chapter relating to execution in the Code of Civil Procedure. There is, therefore,

considerable force in the contention of Mr. Swaminathan that the official liquidator, though not eo nomine a party, is one who is interested in this

execution and the matter concerned in this application is one which relates to and arises in the course of the winding-up proceedings.

12. I am therefore unable to agree with the contention of the learned counsel for the respondents that the applicant is obliged to file a suit under

Order XXI, Rule 103, CPC in the lower court for further relief. As pointed out by the Supreme Court, Section 45B warrants only a summary

procedure and the present application filed by the applicant for delivery of possession free from obstruction ignoring the orders passed by the

learned District Munsif, Kumbakonam, is well founded and is entertainable in this court. In my view, such an application is equitable to a suit under

Order XXI, Rule 103, Civil Procedure Code. In the absence of any specific and pointed procedure, the nature of pleadings, etc., the entertainment

of the application as filed by the applicant is, in my opinion, not precluded, as the language of Section 45B is wide enough to cover the same.

13. The preliminary objection raised by the respondents is therefore answered against them and the application is further posted for hearing on its

merits to 8-9-67.

