(1995) 03 AP CK 0075

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 409 of 1995

S.K. Nagulu Coal Depot APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 6, 151

Citation : (1996) 1 CivCC 190

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

Advocate : Shankar Rao Bilolkar and Milind G. Gokhole, for the Appellant; K.G. Sastry, for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddi, J.—The Respondent-Bank filed a suit O.S.139 on the file of the III Addl. Judge, City Civil Court, Secunderabad. for recovery of a sum of Rs. 15,09,663/- from the Petitioners in connection with the loan advanced to the Petitioners 1 and 3 by the Bank for business purpose. To secure the loan, certain immovable properties were mortgaged and the stock in trade viz. coal and coke, was hypothecated. The fact that the Respondent (sic Petitioners) committed default in discharge of the loan is not disputed. However, in the written statement, a dispute has been raised that full credit was not given for the amount realised by the cheque issued by the Petitioners for a sum of Rs. 1,60,000/-.

2. Pending the suit, the Respondent-Bank filed an application to pass an order for the sale of the hypothecated items shown in the schedule i.e, entire coal and coke stored in the premises bearing No. 1-8-116/1/3, Mackloguda, Nallagutta, Secunderabad. The said application was filed under Order 39 Rule 6 read with 141 Code of Civil Procedure. The trial Court found that even after taking into account the disputed amount of Rs. 1,60,000/- there is heavy balance due from the Petitioners, that the Petitioners did not filed any stock statement and that the

Petitioners were not carrying on any active business and, therefore, no purpose will be served in keeping the stock with the Petitioners. The trial Court also took note of the fact that the Bank, in terms of the Hypothecation deed, dt.3.5.1991 has got lien over the hypothecated stock and can recover the possession and sell the same and such step can be taken by the Bank with the intervention of the Court. The trial Court also referred to the admission in the counter that the business became sick. The trial Court, therefore, felt that in the interest of both the parties, it is a fit case to appoint a Commissioner to take possession of the hypothecated stock and sell the same in public auction and to deposit a sum of Rs. 1,00,000/- in the Court out of the sale proceeds realised. The petition was allowed accordingly and an Advocate-Commissioner was appointed for the purpose of taking possession of the hypothecated stock and to auction the same. It appears that the Advocate- Commissioner has since taken inventory of the stock, according to which, the value of the stock found in the premises is approximately Rs. 1,60,000/-.

3. The learned Counsel for the Petitioners contended that the application which was filed under Order 39 Rule 6 of CPC is misconceived inasmuch as the said Rule is applicable to perishable goods only and if such application could be filed u/s 151 CPC a combined application both under Order 39 Rule 6 and 151 CPC is not maintainable.

4. I am unable to accept the contention of the learned Counsel for the Petitioners. The learned Counsel for the Petitioners is not right in submitting that Order 39 Rule 6 is only confined to the case of goods which are subject to speedy and natural decay. Such interpretation would amount to ignoring the concluding Rule of Rule 6, which authorises interim sale for any other just and sufficient cause. It is true that the trial Court proceeded on the basis that Order 39 Rule 6 of CPC has no application, still, the application could be filed u/s 151 Code of Civil Procedure. But, notwithstanding the erroneous view taken by the Lower Court on this aspect, the ultimate order need not be upset so long s the power to direct interim sale can be traced to Order 39 Rule 6 or some other relevant provision. Even assuming that Order 39 Rule 6 has strictly no application, Section 151 CPC would then be available to the Respondent-plaintiff. In either view of the matter, the trial Court which is seized of the suit will not be lacking jurisdiction to order interim sale of the hypothecated goods. The mere fact that a combined application is filed mentioning both Order 39 Rule 6 as well as Section 151 CPC hardly matters. It is the substance of the application that the Court has to look into and an application cannot be invalid on the ground that it refers to a wrong provision of law or that it combines two different provisions, one of which has no application.

5. The learned Counsel for the Petitioner then submits that there is no justification in the present case to sell the hypothecated goods, as they are not perishable and there is no harm if they are allowed to remain till the suit is disposed of. It is also pointed out that the immovable property security offered to

the bank is more than sufficient to discharge the loan amount and the Petitioners are prepared to sell the properties and to deposit the sale proceeds. These contentions, in my view, are devoid of merit. It cannot be doubted in view of the Division Bench judgment of this Court in State Bank of India Vs. S.B. Shah Ali (Died) and others, that if the hypothecation deed so provides, the Bank itself can take possession of the hyptohecated property and sell the same; otherwise it will have to take steps for sale through the intervention of the Court. In the present case, the stand of the Respondent is, that there is a stipulation in the hypothecation deed for taking possession and'' selling the goods, in case of default in payment of loan. The existence of such clause is not in dispute. Instead of exercising the power unilaterally, the Bank, by way of abundant caution, filed an application for sale through the Court. Thus, the very contractual terms prima facie raise a presumption that it is just and sufficient to order sale of hypothecated goods. That apart, there are other considerations taken into account by the lower Court for ordering interim sale. Even according to the Petitioners, the business has become sick. The outstanding loan amount is heavy. The Petitioners cannot, in any event, make use of the stocks in respect of which the Bank has got lien. The Petitioners will gain nothing by the stocks being allowed to remain till the suit is over. On the other hand, there is a possibility of prejudice being caused to the Plaintiff by reason of the hypothecated stocks being diverted or dissipated during the pendency of the suit. Keeping all these factors in view, there is nothing wrong in directing the sale of the hypothecated goods. No doubt, despite the sale, substantial portion of loan will still remain undischarged, but that is hardly a consideration which should weigh with the Court. It is stated that the value of the stocks is approximately Rs. 1,60,000/- and such sum cannot be considered to be meager or negligible. The sale of immovable properties is a long drawn process and it cannot be done as an interim measure unless, of course, the Petitioner consents. Thus, viewed from any angle, the order passed by the trial Court directing interim sale of the hypothecated goods is a proper order and in fact as observed by the learned Additional Judge, it would be in the interest of both the parties.

6. I, therefore, see no reason to interfere with the order passed by the lower Court.

7. However, in the facts and circumstances of the case and taking into account the suggestions of learned Counsel for both parties, I consider it just and proper to modify the order of the lower Court to this limited extent, namely that out of the sale proceeds realised, 50% shall be paid over to the Bank for crediting the same to the loan account of the Petitioners and the remaining amount shall be kept in deposit in the Court. The trial Court may invest the same in a fixed deposit with the same Bank.

8. The Civil Revision Petition is dismissed, subject to the above direction. No costs.

