

(1996) 09 AHC CK 0072
In the Allahabad High Court
Case No : Civil Revision No. 124 of 1996

State Bank of India and Another	Vs	APPELLANT
Electra (India) Ltd.and Others		RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 1, 115, 151, 16 Clause(a), 16 Clause(b)

Citation : (1996) 09 AHC CK 0072

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Allowed

Judgement

S. K. Phaujdar, J.—A suit was filed by the State Bank of India and another at Meerut bearing Suit No. 660 of 1995 before the 3rd Addl. Civil Judge, Sr. Division, Meerut, against M/s Electra India Ltd. and others. It was a suit for recovery of certain money advanced by the banks to the defendant No. 1 as also for the sale of the mortgaged property, in case of default, the mortgage having been given by the guarantors, defendant Nos. 1 and 4, namely, Arun Kumar Jain and Smt. Kirti Devi.

2. An application was moved by the plaintiff under Orders XXXVIII, XXXIX and XL read with Section 151, CPC and several prayers were made in the application including one for issuance of warrant of arrest against Arun Jain and Smt. Kirti Devi for bringing them before the court and for asking them to furnish security for their appearance in court through out the pendency of the suit. The matter was heard in the court below and, by the impugned order dated 28/2/1996, the trial court rejected only prayer No. 1 and adjourned the matter for consideration of the other prayers. Against the rejection of that prayer, the present application has been moved.

3. In the revision application, on a prayer made by the revisionistbanks a direction was issued on these two respondents, Arun Kumar Jain and Mrs. Kirti Devi restraining them from leaving the area of territorial jurisdiction of the 3rd

Addl. Civil Judge, Sr. Division, Meerut, before whom the suit was pending. This order continues till date.

4. In the meantime Smt. Kirti Devi expired and her heirs have been brought on record. Although no power has been filed on behalf of the heirs, Sri Vimal Goel, who is appearing for Sri Arun Kumar Jain, indicates that he has been instructed by the heirs of Kirti Devi also to appear in this matter. As such, the matter has been heard today.

5. An objection has been raised by Sri Goel that the revision application was not maintainable as the application was not disposed of by the impugned order. I am unable to accept this contention when one of the prayers has definitely been rejected, the revision application is tenable in respect of that rejection order. Another objection has been raised by the learned counsel for the respondent that the order impugned had rejected only prayer No. 1 made in the application before the court below and against the rejection order, no interim order could have been passed restraining the movement of the respondents. This objection was met by Sri Grover, appearing for the revisionists, stating that the right to issue warrant of arrest and to demand security lay with the trial court and this court was competent to record an order to see that, that right which was vindicated before the court below may not be frustrated. I find sufficient force in the submission of Sri Grover in this respect. The prayer No. 1 in the application of the banks was rejected by the court below on the ground that the suit was one falling under Section 16, clauses (a) to (d), CPC and the power under Order XXXVIII, Rule 1 could not be exercised: This approach, in my view, was not correct as the prayer for sale of the mortgaged property was only in respect of guarantors, but the suit was basically for recovery of the sum advanced as loans to the defendant No. 1 and the whole prayer was not covered by Section 16, clauses (a) to (d) of the CPC. However, in course of arguments, it was submitted by Sri Goel on behalf of his client, Sri Arun Jain, that Sri Jain has no intent to avoid the trial and he was ready to appear before the court and to furnish such security as may be demanded. Under these circumstances, the revision application stands allowed. The order in respect of prayer No. 1 recorded by the court below stands set aside. This aspect may not be reopened by the trial court as Sri Arun Jain undertakes to furnish security before the court below for his appearance. Sri Jain is accordingly directed to appear before the court below by 25th September, 1996 and furnish such security for his regular appearance in the court as may be demanded by the trial court. The trial court will also take up the other prayers in the concerned application of the banks and dispose of the same at the earliest. Till furnishing of the security, Sri Arun Jain may not leave the jurisdiction of the Meerut Court.

6. Sri B. Dayal also appeared on behalf of respondent No. 3 and Sri Dinesh Kumar Goswami has assisted Sri Vimal Goel on behalf of the respondents. Revision allowed.