
(1987) 06 BOM CK 0025

In the Bombay High Court

Case No : Misc. Petition No. 40 of 1984 in A.S.F.A. No. 245 of 1979

State Bank of India

APPELLANT

Vs

Edward Textile Mills Ltd. and Another

RESPONDENT

Date of Decision : 22-06-1987

Acts Referred:

Bombay Money Lenders Act, 1946 — Section 2(9)
Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 20, 21, 5, 5(2), 5(3)
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1988 Bom 313 : (1987) 3 BomCR 396 : (1990) 69 CompCas 693 : (1987) MhLj 735

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : Virag V. Tulzapurkar, instructed by Crawford Bayley and Co, for the Appellant; D.K. Ghaisas, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal from an order passed by the Assistant Commissioner of Payments under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974.

2. Prior to 1st April 1974 the appellant State Bank of India had entered into a cash credit arrangement with Edward Textile Mills Ltd. and had advanced various amounts to Edward Textile Mills Ltd. which were repayable with interest Under the Sick Textile Undertakings (Nationalisation) Act, 1974 the Undertaking, inter alia of Edward Textile Mills Ltd was taken over and became vested in the National Textile Corporation with effect from 1st April 1974. u/s 5 of the said Act "every liability, other than the liability specified in Sub-section (2) of the owner of a sick taxtile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation". Sub-section (2) of Section 5 of the said Act is not relevant for the purpose of the present appeal

The "appointed day" referred to in Section 5 was 1st of April 1974. As a result of this provision every liability incurred by the owner of a sick textile undertaking prior to 1st April 1974 remained the liability of such owner and was enforceable against him and not against the Central Government or the National Textile Corporation. Sub-section (3) of Section 5 made this position abundantly clear by providing that no liability of this nature shall be enforceable against the Central Government or the National Textile Corporation.

3. u/s 8 of the said Act "the owner of every sick textile undertaking shall be given by the Central Government, in cash and in the manner specified in Chap. VI, for the transfer to, and vesting in, it..... of such sick textile undertaking and the right, title and interest of the owner in relation to such sick textile undertaking, an amount equal to the amount specified against it in the corresponding entry in col. (4) of the First Schedule". The amount so payable as compensation to Edward Textile Mills Ltd. was Rs. 66,28,000/- (which has now increased to Rs. 72,87,542/- with the accrual of interest on it as provided u/s 9 Sub-section (2) of the said Act).

4. Under Chap. VI of this Act a Commissioner of Payment was appointed for the purpose of disbursing the amount payable to the owner of each sick-textile undertaking. Under the provisions of Section 20 every person having a claim against the owner of sick textile undertaking was required to prefer such claim before the Commissioner of Payments within 30 days from the specified date. Section 21 read with second schedule laid down priorities for payment of such claims out of the compensation amount Claims under category I, in second schedule have precedence over all other categories and category II claims have precedence over category III claims and so on. Loans advanced by a Bank form a part of category I claims. The claim of the appellants thus fell under category I and had precedence over all other claims for payment out of the compensation amount.

5. u/s 20 of the said Act a notification was issued specifying that all claims should be lodged with the Commissioner for Payments within 30 days from 1st April 1977. Accordingly the appellants lodged their claims with the Commissioner for Payments on 29th April 1977. The appellants filed a total claim for Rs. 64,14,130.51. Out of this a sum of Rs. 37,29,188/- was in respect of the amount outstanding under the cash credit account as on 31st Mar. 1974. This was inclusive of the principal amount advanced and interest calculated as per the agreement between the appellant Bank and Edward Textile Mills Ltd. up to 31st March 1974. The appellants claimed a further sum of Rs. 20,73,691/- by way of interest under the said cash credit account from 1-4-1974 to 31-3-1977. There were some other claims also which are not material here. The Commissioner has allowed the claim of the appellants for Rs. 37,29,188/-. He has however, disallowed the appellants' claim for interest from 1-4-1974 to 31-3-1977 on the ground that liability of the owner of the said sick textile undertaking is determined as on 31-3-1974 and hence no claim can be made against the owner

in respect of the payment of interest from 1-4-1974 to 31-3-1977.

6. Section 5 states that every liability of the owner of a sick textile undertaking prior to 1st April 1974 shall be the liability of such owner. The liability which is incurred by the owner in the present case is the liability to repay to the appellant Bank the amounts advanced under cash credit facility together with interest. This liability had been incurred prior to 1st April 1974. The liability of the owner therefore, includes liability to pay interest on the loan amount until such time as the loan is repaid in full. Since the liability is incurred by the owner prior to 1st April 1974 this liability continues to be the liability of the owner and can be discharged from the compensation amount. The Commissioner was therefore not right when he said that the liability of the owner to pay interest ceases as from 1st April 1974. There is nothing in the Act which terminates the liability of the owner as from 31st Mar. 1974.

7. The next questions of priority. Second Schedule, part A puts in category I, inter alia, "Loans advanced by a bank". This category includes not merely the principal amount lent but also interest on it. The various items in the second Schedule describe the order of priorities for the discharge of liabilities. This is expressly the heading of the second schedule. The liability incurred is of repayment of loan which includes principal amount and interest. The term "loan" therefore in category I of the second schedule covers both principal amount and interest. In this connection Mr. Virag V. Tulzapurkar, learned counsel for the appellants, drew my attention to the provisions of Section 58(a) of the T.P. Act under which the principal money and interest of which payment is secured for the time being are called the mortgage --money". So that mortgage money includes interest also. He also relied upon the definition of "loan" u/s 2(9) of the Bombay Moneylenders Act, 1946 under which loan is defined as "an advance at interest whether of money or in kind...." He submitted that by analogy, the repayment of the loan advanced by the Appellant Bank would include repayment of interest also. This submission must be upheld. "Loan" ordinarily covers repayment of both principal amount and interest. In the present case, when Sections 5, 21 and 2nd schedule are read together, this becomes even more apparent. The claim of the bank both for principal and interest up to 31-3-77 falls under category I of the second schedule under the heading "Loans advanced by a bank". The Bank is therefore entitled to claim interest from out of the amount deposited with the Commissioner of Payments for disbursement under the provisions of the said Act. The appellants are therefore, entitled to recover their claim for Rs. 20,73,691/- from the compensation amount.

8. Unfortunately, looking to the amount which is allotted to Edward Textile Mills Limited under the said Act, nothing remains thereafter for disbursement to other creditors in lower categories, of the said mill who had a right to recover their claims from the compensation amount. One such claim is in respect of the wages, gratuity and provident fund of the staff and employees of the said mill prior to 1st April 1974 which falls under category III in the second schedule. This

claim is approximately of the value of Rs. 2,76,000/- (as allowed by the Commissioner for Payments). In view of the fact that the claim of the appellants will now be realised in full nothing will be left for the claims of other creditors including the staff and workers of the Mill. This is a fit case where the appellants may forego a small part of their claim in favour of the staff and employees. The appellants may therefore consider realising (releasing?) a small part of their claim in favour of the staff and workers if it is permissible for them to do so in law.

Appeal is allowed. No order as to costs in the circumstances of the case.