
(1988) 03 BOM CK 0055

In the Bombay High Court

Case No : Notice of Motion No. 337 of 1987 (In Suit No. 3607 of 1986)

State Bank of India

APPELLANT

Vs

The Podar Mills Ltd. and Others

RESPONDENT

Date of Decision : 07-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Companies Act, 1956 — Section 443, 448

Transfer of Property Act, 1882 — Section 60, 69A

Citation : AIR 1989 Bom 21 : (1988) 2 BomCR 189 : (1990) 69 CompCas 779

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : Anil Diwan and N.G. Thakkar, S.A. Diwan, instructed by Little and Co, for the Appellant; Aspy Chinoi and T.K. Cooper, instructed by Mehta and Girdharlal, Anup Shan, instructed by Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

1. Two questions arise in this Notice of Motion - firstly, whether in view of S. 8(I) (c) of the Textile Undertakings (Taking Over of Management) Act , 1983, hereinafter referred to as "the Act ", where a textile company owns more than one textile undertaking, out of which the management of one of the undertakings vests in the Central Government, while the other undertaking/undertakings are not so vested, a receiver can be appointed in a suit filed by a creditor, in respect of the undertaking/undertakings not so vested? Secondly, whether in a suit for enforcement of an equitable mortgage, receiver cannot be appointed on the ground that the mortgagee has no right to possession of the property so mortgaged?

2. Now, to the first question; S.(*) (I) and (2) of the Act , which are relevant, are as follows.

"8.(I) So long as the management of the textile undertaking of a textile company remains vested in the Central Government under This Act notwithstanding

anything contained in the Companies Act , 1956 or in the memorandum or articles of association of such company-

(a) it shall not be lawful for the shareholders of the textile company or nay other person to nominate or appoint any person to be Director of such textile company in relation to such undertaking;

(b) no resolution affecting (whether directly or indirectly) such undertaking which is passed at any meeting of the shareholders of the textile company on or after the appointed day shall be given effect to unless approved by the Central Government.

(c) No proceeding for the winding up of the textile company or for the appointment of a liquidator or receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-sec, (I),and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitation if any, as the Central Government may by notification, specify in this behalf, the companies Act , 1956, shall continue to apply to the textile companies in the same manner as it applied thereto before the appointed day".

We are mainly concerned with S. 8(I)(c) of the Act .

3. It is an admitted position that the 1st defendant company owns tow undertakings - one in Bombay and the other at Jaipur. As regards the undertaking in Bombay in concerned, the same vests in the Central Government owns an undertaking at Jaipur too, which is not vested in the Central Government. The plaintiff's application for appointment of a receiver relates to this undertaking at Jaipur.

4. Undoubtedly, the Act makes a distinction between a textile company and a textile undertaking. There is no dispute about this dichotomy. Section 8(I) of the Act itself indicates the distinction between the two. Similarly, the plain words of the said provision do not suggest any restraint on appointment of a receiver in respect of an which is not vested in the Central Government. It is also logical to think that the Central Government's consent is respect of an undertaking which is taken over by the Government. A reasonable interpretation of S. 8(I) of the Act is that so long as the management of a textile company remains vested in the Central Government, the following three things shall not be done; (a) No Director shall be appointed in relation to such an undertaking by the shareholders or by any other person; (b) no effect to any resolution affecting such undertaking shall be given unless approved by the Central Government; (c) no winding up of the company shall be proceeded with excepting with the sanction o the Central Government. Therefore, there cannot be any appointment of a liquidator or a receiver in any such proceedings.

5. Mr. Aspy Chinoi appearing for the 1st defendant submits that the Act contemplates, continuance of the company, while the management of its

undertaking might vest in the Government. He further submits that the Act , in fact, gives protection to the Company, notwithstanding anything contained in the companies Act and the articles of association. He interprets the words "receiver in respect thereof" appearing in s. 8(I)(c) of the Act to mean, receiver in respect of the Company and/or its assets, and he says that no receiver shall be appointed in any proceedings, except with the consent of the Central Government. His argument is that since the Company as a whole cannot be wound up, appointment of a receiver in respect of a part of the assets, as in the present case, the Jaipur undertaking, together with the undertakings taken over by the Government is as good as winding up of the Company itself, which is contrary to the Act . he further contended that the use of the word "receiver" indicates proceedings other than winding up, as under the company law, there is no mention of "receiver" at all.

6. The last of his submissions cannot stand scrutiny at all, as the Court in any proceedings for winding up has got powers to pass such interim orders as it thinks fit. (S.443 of the Companies Act , 1956). This must necessarily include appointment of a receiver. Even otherwise, under S. 448 of the Companies Act , there is an express mention of "official receiver" attached to a District Court for insolvency purposes, who shall be the Official Liquidator attached to that Court. What is prohibited under S. 8(I)(c) of the Act is the proceedings for the winding up of the Company, which would naturally include the appointment of a Liquidator or Receiver in respect thereof. The words "in respect thereof" must necessarily mean "proceedings for winding up". Assuming that I am wrong in this, it should necessarily mean appointment of a receiver of the assets of a Company in the proceedings for the winding up of the Company. Certainly the words do not convey that a receiver cannot be appointed in respect of any assets of a Company in the proceedings for the winding up of the Company. Certainly the words do not convey that a receiver cannot be appointed in respect of any asset of the company, in any proceedings other than that of the winding up of a Company. This is made clear when one refers to sub. S (2) of S. 8 of the Act , which expressly says that subject to the restrictions as contained in sub-s. (I) of S. 8 of the Act , the provisions of the Companies Act . 1956 shall continue to be applicable. That circumscribes the ambit of S. 8(I) of the Act as such.

7. Significantly the Act nowhere provides for liquidation or diminution of the liabilities of the Textile Company. Similarly there are no constraints as against a creditor to file a suit or to obtain a decree or even to execute a decree as against the Textile Company and any of its assets. The Act confers no general moratorium against erring companies. It is a temporary measure, brought in, in the wake of a prolonged strike in the textile industry in Bombay in the year 1982. The object was to reorganise and rehabilitate the undertakings, and "thereby to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public".

This shows that the object of the law is to see that the Central Government would invest large sums of money, take over the management of such undertakings and finally rehabilitate the undertakings. The object is not to liquidate the Textile companies. The fetters are as against the liquidation of the Companies. Therefore, when a receiver is appointed in respect of Jaipur undertaking, it cannot follow that thereby the company would be wound up. The management of the Bombay undertaking is taken over not for the purpose of winding, up, but for the purpose of reviving and injecting life into them.

8. This takes me to the second question. Relying on O.40, R.1, sub-r.(2) of the Civil P.C., Mr. Chinoi submitted that that this being a case of an equitable mortgage and since the mortgagee has not right to be in possession, no receiver can be appointed in this suit. He also submitted that in any event, there are no allegations of waste and, therefore, in equity no relief or receiver can be given to the plaintiffs. He further submitted that he has no objection if the Court gives any direction for the purpose of taking inventory and even for inspection of the same from time to time. He has also no objection if the Court grants an injunction restraining the defendants from disposing of the property. He further pointed out the Court, in fact, had passed an order for the purpose of making an inventory on 6-2-1987 and the Court Receiver took an inventory after nearly about six months of the order. He therefore, submitted that since the matter is being pursued with no due diligence on the part of the plaintiffs, no relief of receiver should be granted.

9. Mr Chinoi drew my attention, particularly, to a case of Sri Raja Papamma Rao v. Sri Vira Pratapa H. V. Ramachandra Razu, reported in ILR (1896) Mad 249. He submitted that a simple mortgage gives to the mortgagee a right, not to possess but to a judicial sale, which he must work out in execution. In that case, the District Judge while passing a money decree stipulated that if the decretal amount was not paid within three months, the plaintiff, the mortgagee would be put in possession of the property. This, of course, was not proper. The Privy Council observed that the legal effect was that thereupon the mortgagee became mortgagee in possession and it was open to the mortgagor to redeem the property. This case, in my view, does not deal with the question whether a receiver could be appointed or not during the pendency of he suit, either for foreclosure or for redemption. Mr. Chnoi also drew my attention to one or two other cases for the purpose of contending that O. 40, R. 1, sub-r. (2) of the Civil P.C., would apply to all the parties to the suit, and, it the plaintiff has to present right to possession a receiver cannot be appointed. This contention has been expressly negatived in a Division Bench's case of the Bombay High Court, which is cited by Mr. Diwan. That is the case of Damodar v. Radhabai, reported in AIR 1989 Bom 54, and the relevant portion is as follows;

10. "It seems to me that the meaning and effect of this sub-rule is perfectly plain. It is an enactment for the benefit of third parties and means that the wide words of sub-r.(I) are not to be construed to justify the Court in removing from

possession or custody of property a third party who has got a good title to such possession or custody as against the parties to the suit. The words "whom any party to the suit has not a present right so to remove" merely mean whom no party to the suit has a right so to remove. The provision seems to be ex abundanti cautela because it could hardly be suggested that it would be just to remove from possession of property a person who has a good right to such possession as against the parties before the Court".

in fact, my attention has been drawn to an observation of a Division Bench (Coram; Desai and Parekh, JJ). In Appeal NO. 860 of 1986 IN Notice of Motion NO. 759 of 1985 In Suit No. 1806 of 1984, M/s Gupta Engineering Co. (India) v. State Bank of India, decided on January 6, 1987, to the effect that the Court Receiver is the usual order in a mortgage suit.

11. Therefore, neither on authority nor on principle, can it be said that the Court has no powers to appoint receiver under O. 40, R.1 of the Civil P.C. in a pending mortgage suit, if the other requirements of the law viz, that it should be just and convenient to appoint a receiver, having regard to the facts and circumstances of each case, are satisfied.

12. In the present case, my attention has been drawn to the fact that the Jaipur undertaking has not been functioning since long and even after the Bombay undertaking was taken over the plaintiffs sanctioned further loans to the 1st defendants and the defendants have not been able to come out of their financial crisis. It has also been pointed out that the machinery is getting deteriorated everyday and, therefore, in a sense there is a jeopardy as regards the security is concerned. Mr. Diwan, also pointed out that as far as moveables are concerned, every deed of hypothecation, being Exhibits W. 28, W-34, W-38, W-39 and also W-23, contain provisions to the effect that if the loan is not repaid, the Bank has the right to take possession of the articles hypothecated.

13. In these circumstances, there is no reason as to why I should not appoint Court Receiver as receiver of the Jaipur undertaking.

14. I, therefore, pass the following order;

ORDER

15. Motion made absolute in terms of prayer (a) of the Notice of Motion. As regards the machinery, fittings, fixtures, including the Immovable property, in the Jaipur undertaking is concerned liberty to the Court Receiver to appoint the 1st defendants as the agents of the Court Receiver on such terms and conditions as the Court Receiver thinks proper. However, if the 1st defendants are not willing and/or are not in a position to accept the terms and conditions for being appointed as agents of the Court receiver, Court Receiver will then have the liberty to have the said machines and moveables sold and the net sale proceeds so realised be kept with the Court Receiver until further orders.

16. There will also be an order of injunction in terms of prayer (b) of the Notice

of Motion. Costs of the motion to be costs in the cause.

17. At this stage, Mr. Chinoi applies that the operation of the above order may be stayed for a period of four weeks from today. Mr. Thakkar opposes the application.

18. P.C. order stayed for a period of three weeks form today.

19. Mr. Thakkar for the plaintiffs pointed out that an Advocate from Jaipur could be appointed as a receiver. Mr. Chinoi has objected to the same. I am not inclined to accept this request of the learned Advocate for the plaintiffs.

20. Order accordingly.