

(1974) 05 DEL CK 0002

In the Delhi High Court

Case No : Criminal Appeal No. 334 of 1972

State Bank of India, Delhi

APPELLANT

Vs

V.K. Gupta and Another

RESPONDENT

Date of Decision : 24-05-1974

Acts Referred:

Citation : (1975) 11 DLT 254 : (1974) RLR 706

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : B. Singh and G.L. Sethi, for the Appellant;

Judgement

P.N.Khanna, J.

(1) This judgment will dispose of Civil Revisions No. 334 of 1972 and Nos 99, 111 and 131 of 1973. Respondent No 2, Messrs. Shamrock Industries is a concern of which Shri S. Nath is the sole Proprietor. It entered into an agreement, exhibit 0-3, dated 11th November, 1968 with the petitioner. State Bank of India, herein called "the Bank", under which the Bank agreed to advance monies to it up to a limit of Rs 25,000.00 on the security of hypothecation of goods.

(2) Respondent No. 2 owed certain monies to certain other creditors as well. Three decrees were passed against respondent No. 2. The decree which is involved in Cr 334 of 1972 was passed on September 14, 1967 for Rs. 2693.40 (suit No. 321 of 1967) in favor of V. K. Gupta and K. N. Gupta, decree-holders. The decree involved in Cr 99 of 1973 was passed on September 14, 1967 for Rs. 3,281.40 (suit No. 322 of 1967) also in favor of V. K. Gupta and K. N. Gupta. Decree involved in Cr 111 of 1973 was passed on 28th November, 1967 for Rs. 3,335.40 (suit No. 497 of 1967) in favor of Mrs. Kamla Gupta, and V. K. Gupta. The decree-holder took out executions. Warrants of attachment in the first two decrees (suit No. 321 and 322 of 1967) were duly served on the judgment debtor and the Pay & Accounts Officer, Ministry of Works, Housing and Supply on January. 2, 1969 for the attachment of monies due to respondent No. 2 from the

said Ministry.

(3) On January 17, 1969 respondent No. 2 executed an irrevocable power of attorney, exhibit 0-16 in favor of the Bank authorising it, inter alia, to demand, receive, transfer and assign funds of any description whatsoever, to which respondent No. 2 is now or may at any future time be entitled and "to apply the proceeds in satisfaction of any monies due from it. Clauses 5, 6 and 10 of the said exhibit 0-16 which are relevant in this connection read as follows :

"(5)To demand and receive all debts, sums of money, principal money interest, dividends and dues of whatever nature of kind whatsoever which now are or at any time hereafter maybe due or, payable or belong to the said firm on any account or in any account or in any capacity whatever. (6) To sign and endorse all cheques, promissory notes, bills of exchange, bills of lading or other orders for payment of money or delivery of property of every description to which the signature or endorsement of or on behalf of the said firm may be needed or deemed expedient. (10) To sell, endorse, negotiate, transfer in due course of law or assign all or any such securities, shares, stocks and funds as aforesaid and apply the proceeds in satisfaction of -any moneys due by the said firm to the said Bank at the time of sale."

(4) On February 20, 20, 1969 an attachment in pursuance of the third decree involved in Cr Iii of 1973 was also taken out. On February 27, 1969 a second agreement, exhibit 0-5 was entered into between the Bank and respondent No. 2 under which the Bank further agreed to advance monies up to a limit of Rs. 40,000/".

(5) On May 6, 1969 a third agreement, exhibit 0-7 was entered into between respondent No. 2 and the Bank for advancing monies to. the former up to a limit of Rs. 10,000.00 against any or some or all of the following securities :

"(A)bills drawn on Government departments/agencies/institutions or quasi-Government bodies/public sector institutions/ Railways or other parties for the cost of goods supplied to them accompanied by invoices and acceptance notes or inspection notes and/or other documents; (b) bills drawn on Government departments/agencies/institutions or quasi-Government bodies/public sector institutions/ Railways or other parties for the cost of goods supplied/to be supplied to them accompanied by invoices and railway receipts or truck receipts or shipping documents and/or other documents such as inspection notes; (c) bills drawn on my/our customers accompanied by invoices and railway receipts or truck receipts or shipping documents and/ or other documents evidencing sale and dispatch of goods; the bills being made out in the name of the Bank or endorsed in favor of or assigned to or made payable to the Bank and handed by me/us to the Bank for collection or which may hereafter be handed by me/ us to the Bank for collection from time to time It Is Hereby Agreed As FOLLOWS"

Clauses 4, 14 and 15 of the agreement which are relevant read as follows :

"4.The Bank shall have first and paramount lien on the said bills and the monies received there under and the goods covered by the railway receipts or truck receipts or shipping or other documents shall remain pledged to the Bank and irrespective of its rights as a pledgee of such goods in case of any dispute the Bank shall also have Banker's lien on all bills goods securities documents and moneys belonging or purporting to belong to me/us for all moneys claims and demands due or to become due from me/us to the Bank. 14. This letter is to be retrospective in its action, and to apply to all current as well as future transactions. 45. The promissory note executed or notes that may hereafter be given by us in renewal of or in substitution for the said promissory note or any renewal thereof shall be held by the said Bank upon and subject to the same terms and conditions as are herein expressed."

On May 15, 1969 a Fourth agreement was executed between the Bank and respondent No. 2, exhibit 0-12, replacing the agreement, exhibit 0-7 dated May 6, 1969. which thus stood cancelled. Exhibit 012 reproduced all the clauses of exhibit 0-7, including clauses 1 . 4, 14 and 15 reproduced already. The limit up to which the Bank was to advance monies to respondent No. 2 was raised to Rs, ^0,000.00 .

(6) It appears that in spite of the issue of attachment orders in the execution referred to earlier, nothing could be attached, as no information regarding money due and payable to respondent No. 2 has been intimated to the Pay & Accounts Officer of the Ministry concerned. Fresh warrants in the said executions were again ordered on March 14, 1969 to be issued for attachment of monies due to respondent No. 2 from the aforesaid Ministry against his bills. Due service was actually effected on the Pay & Accounts Officer on March 2 \ 1969. On June 11, 1969 the Pay & Accounts Officer of the Ministry of Works, Housing and Supply wrote to the executing court that payment for 70,000 numbers of dessert spoons had to be made to respondent No. 2. But no bill for payment had by then been received by that office. The said Officer also stated that a note of attachment had been kept in the relevant payment record in, order to watch the recovery, which will be effected on receipt of the bill from the firm. It was also stated by the said Officer that the firm had executed a power of attorney in favor of the Bank which had been registered in the books of that office. The court was informed that in view of this power of attorney, the Pay & Accounts Officer could not recover the amount from the bills of the firm straightaway without being authorised by the court to do so. Such orders were solicited,

(7) On July 7, 1969 respondent No.2 entered into yet another agreement, exhibit 0-1 with the Bank whereby the Bank agreed to advance monies to respondent No. 2 up to a limit of Rs. 30,000/. This agreement replaced agreement exhibit 0-12, which thereby stood cancelled. All the clauses of the agreements, exhibits 07 and 0-12 including clauses 4, 14 and 15 were incorporated in exhibit 0-1 as well. The letter dated June 11, 1969 of the Pay & Accounts Officer of the Ministry of Works, Housing and Supply was taken up for consideration" by the

Commercial Sub Judge on December 5, 1969, when it observed inter alia : I am of the view that the Bank remains owner of the amounts payable to him by the officer concerned on account of his bills and the power of attorney has only the effect of Constituting the Bank as agent for collection of the dues". The Pay & Accounts Officer was asked to remit the said amount in court.

(8) On February 6, 1970, the Bank filed objections under Rule 58 of Order 21 of the CPC in the three executions aforesaid contending inter alia that the Bank was protected by an irrevocable power of attorney and the bills of respondent No. 2. The amount lying with the Pay & Accounts Officer was, Therefore, said to be not available for attachment in execution of the aforesaid money decrees. These objections were dismissed on August 25, 1972. The learned Commercial Sub Judge while dismissing the aforesaid three objection petitions by a common judgment, observed, inter alia, that the execution of the power of attorney in favor of the Bank would not create any lien in favor of the Bank because it was already held by the order dated December 5, 1969, referred to earlier, that the Bank was merely an agent of the judgment-debtor for collection of his dues.

(9) Before the dismissal of Bank objections another decree (a fourth one) for Rs. 13,313.70 was passed against respondent No. 2 on October 21, 1971, execution of which was also taken on January 31, 1972, asking for attachment of monies due from the Ministry of Works, Housing and Supply. This decree has reference to Cr 131 of 1973. An objection petition under Order 21 Rule 58 of the CPC was also filed by the Bank in this execution of decree in suit No. 193 of 1970, which was also dismissed by the executing court, adopting the reasoning with which the earlier three objections petitions had been dismissed. It is against the said orders dismissing the Bank's four objection petitions that four separate revisions have been filed in respect of the four separate execution proceedings, which had been launched against respondent No 2 by the aforesaid decree holders,

(10) MR.G L.Seth, the learned counsel appearing on behalf of the decree-holders in Cr 334 of 1972 and CRs 99 and 111 of 1973, and Mr.RC Sawhney appearing on behalf of the decree-holder, respondent in Cr J 31 of 1973, raised a preliminary objection to the effect that the revision was not competent. They referred to Order 21 Rule 63, which enables the party against whom an order is made on his objections under Order 21 Rule 58, Code of Civil Procedure, to institute a suit, to establish his right to the property in dispute. They emphasised the words of Rule 63 in particular, to the effect that subject to the result of such suit if any and the order shall be conclusive". It is no doubt true that the High Court will not interfere in revision, especially when remedy by way of suit has been provided under the statute itself. The revisional power is a matter of discretion, which will not be exercised unless where the order works manifest injustice, or where there is a patent irregularity in procedure. The manner in which the executing court dealt with the objections of the Bank is far from satisfactory. The executing court ignored the effect of power of attorney, which was the basis of the Bank's claim before it. The executing Sub-Judge relied on a

note on the file made by his predecessor in office, that the power of attorney did not mean that the Bank had become the owner of the dues payable to the judgment-debtor and that Bank had been made merely an agent of the judgment debtor turn collection of the dues. The executing court thus did not consider the effect of the power of attorney and did not exercise its mind at all, on the objections which the Bank had raised. The earlier order was passed when the Bank was not before the court and had not been heard. It was in the nature of an administrative order and in any case was not at all binding on the Bank.

(11) The court had thus acted with material irregularity and in fact, had failed to exercise jurisdiction which was vested in it, to consider objections raised by the Bank and to decide them in accordance with law. This was a gross error in the matter of the exercise of jurisdiction by the court which has resulted in manifest injustice in a non appealable case. It has further been brought to my notice that the limitation for filing the suit under Order 21 rule 63 of the Code of Civil Procedure, by the Bank has already expired and the Bank has been left with no remedy to obtain justice which is due to it. The learned counsel for the respondents referred to the case of *M.L Sethi v. R. P. Kapur*, where the Supreme Court dealing with the limited jurisdiction of the High Court u/s 115 of the Code of Civil Procedure, approved the following dictum laid down by the Judicial Committee in AIR 1949 156 (Privy Council) : " section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction ; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have effected the ultimate decision." The manner in which the executing court dealt with this matter in the present case, was wholly unsatisfactory and unwarranted. I am, Therefore, "not inclined to uphold the preliminary objection raised on behalf of the respondents.

(12) Coming to the merits, the question to be considered is whether there was any assignment in favor of the Bank, of the monies due to the judgment-debtor, before they were attached. Mr. B. Singh, the learned counsel for the Bank has placed reliance on *Seth Loon Koran Sethi v. Ivan E. John and Bharat Nidhi Ltd. v. Takhat Mal*. In the former case the appellant was indebted to a Bank in whose favor it executed a power of attorney authorising it to execute the decree obtained by the appellant debtor against a third person and credit the realisations to the debtor's account. The Bank levied execution of the decree. The appellant objected to the execution of the decree. The Supreme Court held that the power given to the Bank was a power coupled with interest and the same was irrevocable and that the Bank was merely authorised to act as an agent of the appellant and the appellant continued to be the owner of the amount due under the decree. The Bank was not assignee of the decree in law, but the power, it was held, constituted an equitable assignment of the amount due under the decree or so much of that amount as was necessary for

discharging the debts due to it, and that on the strength of the equitable assignment in its favor, the Bank could execute the decree. In Bharat Nidhi's case, a military contractor had entered into an agreement with a Bank, whereby it agreed to advance monies to the contractor against his bills for supplies under contracts. For carrying out this arrangement the contractor executed an irrevocable power of attorney in favor of the Bank authorising it to receive payment of bills from the authorities. The contractor made a bill on the military authorities for a sum and handed over the same to the Bank for collection with an endorsement that it should be paid to the Bank. Before the Bank could receive the payment, the amount due under bill was attached by a creditor of the contractor. The Supreme Court held that the attachment by the creditor u/s 60 of the CPC was not valid. The power of attorney coupled with the endorsement on the bill was a clear engagement by the contractor to pay the bank out of monies receivable under the bill and amounted to an equitable assignment of the fund by way of security. Although the document did not amount to a transfer within section 130, it was held to operate as equitable assignment of the actionable claim.

(13) In the present case, it is contended on behalf of the respondents that the power of attorney itself merely gives an authority to receive certain sums due to the judgment debtor, respondent No. 2. The agreement under which the amounts were advanced by the Bank to respondent No. 2 (exhibit 01), was executed on July 7, 1969, i.e. long after the attachments were effected. But this argument ignores the important fact that exhibit 0.1 was a mere renewal of an earlier agreement, exhibit 0-12, which in turn was a renewal of a still earlier agreement, exhibit 0-7 dated May 6, 1969. The original agreements under which monies were advanced were exhibit 03 dated November II, 1968 and exhibit 0-5 dated February 27, 1969. By virtue of clause 14 already reproduced in an earlier part of the judgment, occurring in the agreement exhibit 0-1 dated July 7, 1969 and exhibit 0-12 dated May 15, 1969 (as also in exhibit 0.7 dated May 6, 1969), the said agreements had been made applicable to all earlier transactions. The Bank was empowered by the irrevocable power of attorney to receive payments due to respondent No. 2 from the Ministry and to apply them towards the discharge of the liability of respondent No. 2 towards the Bank. It was thus a power coupled with interest in favor of the Bank.

(14) In accordance with the dictum laid in Seth Loon Koran Sethiya and Bharat Nidhi Limited. the irrevocable power of attorney dated January 17, 1969 coupled with exhibits 0-3, 0-15, 0-7, 012 and 0.1, created an equitable assignment of the amount that was or may become due to respondent No. 2 from the Ministry of Works, Housing and Supply, Government of India, New Delhi, more especially as the said power of attorney was also registered with the said Ministry. This equitable assignment became effective on the execution of the power of attorney dated January 17, 1969 and in any case was effective on May 15, 1969, when exhibit 0-12 was executed, which was then merged in exhibit 0-1 dated July 7, 1969, the attachment warrants; in suits Nos 321 and 322 of 1967 (which are the

subject matters of Cr 334 of 1972 and Cr 99 of 1973 respectively) had been served on January 2, 1969. But, no monies were lying then with the Pay & Accounts Officer, Ministry of Works, Housing and Supply and, Therefore, nothing came to be attached on that date. Even the attachment issued on February 20, 1969 had remained unsuccessful. This is clear from the letter dated June 16, 1969 from the Pay & Accounts Officer, Ministry of Works, Housing & Supply, Government of India, saying that no bills had yet been received by his office from respondent No. 2 for payment. In any case. the counsel for the respondents failed to point out anything on record to show that any money was actually attached before July 7, 1969 when exhibit 0-1 was executed in pursuance of any attachment order issued by the court, No money due to respondent No.2 could be shown to have come into the hands of the Pay & Accounts Officer. As no money of respondent No. 2 lay in the hands of the Pay & Accounts Officer, no attachment became effective, (see Hyderabad Cooperative Commercial Corporation Ltd. v. Syed Mohiuddin Khadri).

(15) The irrevocable power of attorney together with the agreement, exhibits 0-3, as already observed, had already created an equitable assignment in favor of the Bank in respect of monies that were due to respondent No. 2 from the Ministry of Works, Housing and Supply. The subsequent agreements (exhibits 0-5, 0-7, 0-12 and 01) between the Bank and respondent No, 2 every time created the Bank's lien on monies due from the Ministry, Whenever the earlier agreement was cancelled, a lien was created by the fresh agreement, which alone cancelled the earlier one. The amounts due to respondent No. 2 were, thus, never released from the Bank's lien and from the equitable assignment in its favor. The attachments issued from the executing court, Therefore did not affect the Bank's rights; and remained ineffective in so far as the Bank's rights to receive the money due to respondent No. 2 from the Ministry are concerned.

(16) In the result, all the aforesaid revision petition shall succeed. The orders of the learned Commercial Sub-Judge, as also the attachment orders are set aside. The objection petitions of the Bank are allowed.

(17) In the peculiar circumstances of the case, however, the parties shall bear their own costs.