(2006) 12 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4320 of 2001

State Co-operative Spinning Mills Federation	APPELLANT
Vs	
Shakti Traders Cotton and Oil Merchants and others	RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Citation : (2007) 2 LLR 685 : (2007) 2 PLR 46 : (2007) 1 RCR(Civil) 825

Hon'ble Judges : Vinod K.Sharma, J

Advocate : For the Appellant : Mr. Puneet Kansal, Advocate, Mr. O.P. Goyal, Sr. Advocate with Ms. Mamta, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.

1. The Liquidator of the Kotakpura Cooperative Spinning Mills Ltd. Sandhawan, a society under liquidation, has filed the present appeal against the order passed by the learned Additional District Judge, Faridkot, dated 28.7.2001 dismissing the appeal filed by the present appellant and respondent Nos. 2 and 3 herein against the order dated 29.3.2001 passed by the learned Civil Judge, (Sr. Divn.), Faridkot, vide which the applocation moved by the appellant under Sections 58 and 59 read with Section 82 of the Punjab Cooperative Societies Act, 1961 (for short the `Act'') for dismissal of the execution application filed by the decreeholder was dismissed.

2. The decreeholderrespondent No. 1 herein filed a suit for recovery against the appellant and respondent No. 2 for recovery of sum due to it on account of supply of cotton bales to respondent No. 2 herein. During the pendency of the suit, respondent No. 2 herein went into liquidation vide order dated 26th of March, 1998 passed by the Registrar, Cooperative Societies, Punjab, and the Deputy Registrar, Cooperative Societies, Faridkot, was appointed as a Liquidator of the mill. The Liquidator was impleaded a party to the suit. The suit was decreed in favour of the plaintiff decreeholder and a decree for a sum of Rs. 24,85,531.74 along with future interest @ 1.5% per month from the date of filing of the suit till realisation was passed. The decreeholder filed execution

application wherein an application was filed by the petitioner stating therein as per the provisions of Section 56 of the Act, whole assets of the society now vest in the Liquidator. It was further submitted that (under) subsection (c) of Section 59 of the Act the Liquidator is to decide the question of priority arising between the claimants. It was further submitted that under Section 82 of the Act, no Civil or Revenue Court would have the jurisdiction in respect of any matter concerning winding up and dissolution of a Cooperative Society. Subsection (2) of Section 82 of the Act further provides that no suit or proceedings relating to the business of the said society shall be proceeded with or instituted against the Liquidator. It was the further case of the appellant that Liquidator had invited claims from the claimants through Public notice and decreeholder has put his claim before the Liquidator. The appellant further submitted that all the assets and liabilities were being investigated by the Liquidator so as to settle the same as per provisions of the Act. The jurisdiction of the executing Court to decide the claim of the decreeholder was also disputed and accordingly a prayer was made that the execution application be dismissed.

3. The decreeholder contested the objections filed by the appellant and it was claimed that the appointment of the Liquidator did not affect the rights of the appellant in execution of a lawful and valid decree which was already passed in favour of the decreeholder. It was further claimed that the judgment and decree operates as res judicata and, therefore, is binding on the parties. It was also claimed that the judgmentdebtor had not taken objections in the main suit and now they are estopped by their act and conduct from raising these objections. It was further the case of the decreeholder that it was only the court passing the decree, has to take the decision on the execution application. It was also disputed that the provisions of Section 82 of the Act are not applicable to the facts and circumstances of the present case. It was further claimed that the dispute in the present case was not covered under the provisions of the Act and it was not touching with the business of the society. It was also claimed that the decreeholder submitted his claim before the Liquidator. However, no action on the said claim has been taken. Thus, it was claimed that the Court had the jurisdiction to execute the lawful and valid decree.

4. The learned executing Court as well as the learned Appellate Court came to the conclusion that the dispute in this was regarding the purchase of cotton by the society from the decreeholder and the said amount was not paid by the society and, therefore, the transaction could not be said to be relating to the business of the society so as to attract the bar under Section 82 of the Act. The Courts further came to the conclusion that the executing Court could not go behind the decree and, therefore, rejected the objections.

5. Mr. Puneet Kansal, learned counsel for the appellant, argued that the objection raised by appellant was as per the provisions of Sections 58 and 59 of the Act, it was the Liquidator, who was to adjudicate the claim. This important aspect of the matter has not been answered by the learned Courts below. Learned counsel for

the appellant fairly conceded that he was not disputing the decree passed in favour of the decreeholder, but objected to the execution of the decree in view of the bar contained under Sections 58, 59 and 82 of the Act.

6. The contention of the learned counsel for the appellant was that there was a bar under Section 82(2) of the Act in view of the fact that the appellant was under windingup. Section 82 of the Act reads as under :

"82. Bar of Jurisdiction of Courts. Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of

(a) the registration of a cooperative society or its byelaws or amendment of byelaws;

(b) the removal of committee;

(c) any dispute required under Section 55 to be referred to the Registrar; and

(d) any matter concerning the windingup and the dissolution of a cooperative society.

(2) While a Cooperative Society is being wound up no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof except by leave of the as Registrar and subject to terms as he may imposed.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

7. The contention of the learned counsel for the appellant, therefore, was that in absence of the permission having not been granted by the Registrar, no proceedings could have been instituted and thus the decree passed by the Court was void and not capable of being executed. Though the contention raised by the counsel for the appellant is correct, however, the same cannot apply to the facts of the present case as the Liquidator was impleaded as a party in the suit, who contested the same and after having taken a chance, it was not open to the judgmentdebtor thereafter to raise a plea that the suit as framed was not competent or was barred under Section 82(2) of the Act. The objections of the appellant on this ground cannot be sustained and it has to be held that the decreeholder is entitled to the decretal amount.

8. The next contention of the learned counsel for the appellant was that it was only the Liquidator, who could decide the claim of the decreeholder as per the priority. Section 59 of the Act reads as under :

"59. Power of Liquidator. (1) Subject to any rules made in this behalf, the whole of the assets of a Cooperative Society, in respect of which an order for windingup has been made, shall vest in the liquidator appointed under Section 58 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

(2) Such liquidator shall also have power, subject to the control of the Registrar

(a) to institute and defend suits and other legal proceedings on behalf of the Cooperative Society by the name of his office;

(b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs, or legal representatives of deceased members or by any officer or former officers, to the assets of the society;

(c) to investigate all claims against the Cooperative Society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to pay claims against the cooperative society, including interest upto the date of winding up according to their respective priorities, if any, full or ratebly, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate of fixed by him but not exceeding the contract rate in any case;

(e) to determine by what persons and in what proportions the costs of the liquidation are to be borne.

(f) to determine whether any person is a member, past member or nominee of deceased member;

(g) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same;

(i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable.

(j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;

(k) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such a manner as may be prescribed; and

(l) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts and all claims present or future, certain or contingent subsisting or supposed to subsit between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the

Cooperative Society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof.

(3) When the affairs of a Cooperative Society have been wound up, the liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct."

9. Learned counsel for the appellant thereafter referred to provisions of Section 85 of the Act to contend that the State Government is empowered to frame rules for following procedure by the Liquidator appointed under Section 58 in respect of the provisions of Section 59 of the Act. It cannot be disputed that in pursuance of the powers conferred under Section 85 of the Act, statutory rules called The Punjab Cooperative Societies Rules, 1963 (hereinafter called the `Rules'') have been framed and Rule 63 of these rules reads as under :

"Distribution of assets [Sections 59(1) and 85(2) (xxvi)] The liquidator shall distribute the realised assets in such manner and in such priority as the Registrar may direct."

10. In terms of Section 63, a consolidated circular has been issued including the one dealing with to pay off all the liabilities of the society under liquidation. Circular No. 17.32 of the said circulars reads as under :

"17.32. The liabilities of a society under liquidation should be paid off in the following order :

(a) Liquidation expenses.

(b) Government Dues.

(c) Claims or employees in respect of Provident and Security Deposit.

(d) Pay and other claims of the employees.

(e) Secured creditors (Both principal and interest).

(f) Ordinary creditors (Principal only).

(g) Interest to ordinary creditors.

(h) Share money to the members.

(i) Any surplus should be disposed of as ordered by the Registrar.

In each of the above groups, all persons must share in the payments in proportion to their total claims and each group must be fully paid off before payment of the next group is concerned."

By making reference to this circular, the contention of learned counsel for the appellant was that the decreeholders are to be treated as original creditors and the decretal amount has to be paid by the Liquidator as per the priorities referred to above. In support of this contention, learned counsel for the appellant placed reliance on the judgment of this Court in The Central Coop. Consumer Store Ltd. (Super Bazar) now under liquidation through its liquidator and another v. Super Bazar, Chandigarh Employees Union and others, Letters Patent Appeal No. 1435 of 2001, decided on November 22, 2001 wherein it has been held as under :

"It is further the case of the appellants that all the liabilities of the Super Bazar shall be discharged in accordance with the provisions of Rule 63 of the Punjab Coop. Societies Act, 1963 read with order of priorities of discharge of liabilities prescribed vide Standing Order 17.32 of the Book of Consolidated Circulars issued by the Registrar, Coop. Societies, Punjab, prevalent as on 1.11.1966 which are binding upon the Union Territory of Chandigarh under the Punjab ReOrganisation Act, 1966 read with notification dated 20.11.1968 whereby all the State Acts, Rules, Orders, Byelaws, Schemes, Notifications or other instructions were adopted by the Chandigarh Administration w.e.f. 1.11.1966. It is also the case of the appellants that liquidator had no authority to discharge liability except in accordance with the priorities fixed by the Registrar, Coop. Societies. Under the Standing Order 17.32 of the Consolidated Circular of the Coop. Department, the following line of priorities in the distribution of assets is prescribed :

(a) Liquidator expenses.

(b) Government dues.

(c) Claims of employees in respect of Provident and Security Deposit.

(d) Pay and other claims of the employees.

(e) Secured creditors (Principal only).

(g) Interest to ordinary creditors.

(i) Any surplus should be disposed of ordered by the Registrar."

11. It may be noticed that after observing the provisions as referred to above, the Hon''ble Division Bench of this Court was pleased to order that the petitioners would be paid their admitted dues in accordance with the priorities settled and mentioned above.

12. Learned counsel for the appellant thereafter contended that the provisions of Section 82(2) of the Act are similar to the Section 446 of the Companies Act and accordingly placed reliance on the order passed by this Court in M/s. Sanchi Security Co. Pvt. Ltd. v. The Punjab Wireless System Ltd., Mohali, C.A. No. 561 of 2001, wherein this Court was pleased to order that the petitioner company in the said application would be at liberty to lodge the claim with the Official Liquidator and in case any such claim is lodged, the same has to be considered in accordance with law.

13. Learned counsel for the appellant thereafter placed reliance on the judgment of this Court in the matter of M/s. Kartar Glass Work Limited (in liquidation) v. Civil Judge (Sr. Divn.) Nawanshahr and another, C.A. No. 268 of 2005 in Company Petition No. 163 of 2001, decided on 23.2.2006 to contend that in view of the decree passed by the civil Court, the decreeholders have to be treated as unsecured creditors and their claims have to be decided as per the priorities. The order passed by this Court reads as under :

"The application is by the Official Liquidator to stay the proceedings in Execution Cases Nos. 85, 86 and 147 of 1997 against the company in liquidation pending in the Court of Civil Judge (Senior Division), Nawanshahr.

It has been pointed out that the decree has been passed in favour of respondent No. 2 as an unsecured creditor. Therefore, claim of unsecured creditor in respect of company in liquidation cannot have any preference against the rights of the secured creditors."

Keeping in view the said fact the proceedings in Execution Cases 85, 86 and 147 are stayed. However, the Official Liquidator shall take into consideration the said decrees while settling the claim of unsecured creditors at the appropriate stage.

With the said observation, the application stands disposed."

14. Learned counsel for the appellant also placed reliance on the judgment of the Hon''ble High Court of Delhi in the case of Reserve Bank of India v. Crystal Credit Corporation Ltd., 2006(132) Com Cas 363 (Delhi) to contend that the decreeholder is entitled to get money only along with other creditors and Official Liquidator is to take steps to realize money disbursed. In the said case, the Hon''ble Delhi High Court has been pleased to order as under :

"At the same time, it has to be borne in mind that the sale proceeds of the property put to auction have to go to the official liquidator and these are required to be distributed, along with other money realized by the Official Liquidator in accordance with the provisions of the Act by distributing the dividends to various creditors. The decreeholders who have been able to get the money in the said sale would only be creditors along with other creditors and by realizing the money after the passing of the winding up orders they have been able to get the said money to which they were not entitled at this stage. The money was disbursed to various decreeholders and the applicant has filed the list of those decreeholders, who were disbursed of the money. For that appropriate steps which the official liquidator should take would be to file application under Section 446 of the Act against the said decreeholders for realizing this money."

15. Learned counsel for the appellant also placed reliance on the order passed by this Court in C.A. No. 208 of 2003 in Company Petition No. 45 of 1997 wherein this Court was pleased to hold that where the sale is conducted by the Civil Court with the permission of the Company Court, the same cannot be allowed for the benefit of unsecured creditors. Learned counsel thereafter placed reliance on the

judgment of this Court in the case of H.S. Oberoi and Associate v. Punjab Wireless System Ltd., in Company Petition No. 174 of 2000 in Company Petition No. 226 of 1999, decided on July 11, 2001, wherein this Court was pleased to hold that the property attached by the Civil Court in execution of a decree did not create any interest in the decreeholder. The operative part of the judgment reads as under:

"On the basis of the conclusion drawn above that no charge stands created in favour of the Corporation visavis the property of the respondent company i.e. Punwire attached vide orders dated 17.8.1999 and 6.12.1999, it is not possible for this Court to accept the prayer of the Corporation to allow it to execute the judgment and decree dated 19.9.1999 against this respondent company i.e. Punwire, for the recovery of a sum of Rs. 7,42,27,312/ besides costs and interest from the attached properties as a secured creditor. Thus viewed, I find no merit in the claim of the petitionerCorporation for being permitted to continue the execution proceedings initiated by it by filing execution proceedings in this Court to enforce the judgment and decree dated 9.9.1999. The corporation may, if be so advised, make an appropriate claim in this behalf before the liquidator in view of the fact that a windingup order has already been passed in furtherance of company petition No. 226 of 1999 on 1.2.2001."

On the basis of the judgments referred to above, the contention of the learned counsel for the appellant was that it was not open to the executing Court to execute the decree in view of the provisions contained in Sections 58 and 59 read with Section 82(2) of the Act and, therefore, the only remedy with the decreeholder was to file a claim with the Liquidator on the basis of the decree passed in its favour and it was for the Liquidator to liquidate the liabilities of the society as per the priority fixed and that thereafter should have sought for setting aside of the impugned judgments passed by the learned Courts below.

16. Shri O.P. Goel, Senior Counsel appearing on behalf of the respondent decreeholder vehemently contended that the right of the parties stands determined by the decree of the Civil Court dated 20th March, 1999 and the parties are bound by the decree unless the same is valid. It was further argued that the objections of all sorts could be taken before the trial Court by the Liquidator. When the said objections have been overruled and the decree has become final, the same cannot be allowed to be taken in the execution proceedings. It was further contended by the learned Senior Counsel for the respondentdecreeholder that the executing Court cannot go behind the decree and, therefore, was bound to execute the same as passed without looking into any other matter unless the Court did not have the jurisdiction or the decree was a nullity. It was also contended by the learned Senior Counsel that once the Liquidator was a party to the suit, therefore, the objections sought to be taken now could only be taken before passing of the decree.

17. It was next contended by the learned Senior Counsel for that the provisions of the Company Act regarding windingup and the powers of the Liquidator cannot

be imported into the provision of the Punjab Cooperative Societies Act, 1961 and, therefore, it was claimed that the authorities relied upon by the learned counsel for the appellant were distinguishable.

18. It was also contended by the learned counsel for the respondentdecree holder that the reliance on circular No. 17.32 of the consolidated circulars of the Cooperative Department cannot be placed for want of source of the said circular. It was claimed that the charge over the property has been created when the application was filed before the Civil Judge, (Sr. Divn.), Chandigarh on 28.11.1996 and, therefore, the executing Court was bound to dispose of the said application for execution of the decree. Learned senior counsel in support of this contention placed on the judgment of this Court in the case of Ram Sarup v. Food Corporation of India, Patiala and another, AIR 1979 P&H 116 to contend that where (there is) no lack of inherent jurisdiction in the Court passing the decree, the executing Court cannot go behind the decree. The learned Senior Counsel also placed reliance on the judgments of the Hon''ble Supreme Court in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, 1970 RCR 427 : AIR 1970 SC 1475; Ravinder Kaur v. Ashok Kumar and another, 2004(1) RCR(Civil) 35 : 2003(2) RCR(Rent) 709 (SC) : AIR 2004 SC 904 and the Hon''ble Orissa High Court in the case of Arjun Sethi v. L.A. Collector, Cuttack and others, AIR 1998 Orissa 34 in order to contend that the executing Court cannot go behind the decree.

19. The next contention of the learned Senior Counsel was that unless the decree is nullity or his passed by the Court which has no jurisdiction, then only the executing Court can entertain objections, otherwise, the executing Court is bound to execute the decree passed.

20. Learned Senior Counsel by placing reliance on the judgment of the Calcutta High Court in the case of Praga Tools Ltd. v. Official Liquidator of Bengal Engineering Co. (P) Ltd. (in liquidation), 1984(56) Comp. Cas. 214, contended that as the charge was created over the property of the respondent No. 2 by order of the Court dated 28.11.1996 the decreeholder has to be created (treated ?) as secured creditor as the said charge did not need registration. Therefore, (if) the Liquidator has to adjudicate the claim of the decree holder, then he has to be treated as secured creditor for the said purpose.

21. Learned Senior Counsel relied upon the judgment of this Court in the case of Uddat Bhagat Ram Nazol Land Cooperative Society v. Lleekal and others, 1981 PLJ 79 to contend that in absence of a resolution having been passed by the Society, no appeal was competent and, therefore, once the appeal filed by the society was not competent, it is not open to challenge the impugned by way of present appeal.

22. I have heard arguments advanced by the learned counsel for the parties and find no force in the contention raised by the learned counsel for the appellant. The reading of Sections 58, 59 read with Section 82(2) of the Act read with rules

framed, thereunder, the creditors of the society have to be dealt with by the liquidator and the liabilities of the society have to be discharged on the basis of priorities referred to above by way of statutory circular referred to above. The authorities (cited by) by the learned counsel for the appellant are fully applicable to the facts of the present case and it was not open to the executing Court to have rejected the objections filed by the appellant.

23. The contention of the learned counsel for the respondentdecree holder that the executing Court cannot go behind the decree, cannot be disputed on the question of settled law. However, in the present case, there was no question for the executing Court going behind the decree, rather the counsel for the appellant had admitted that the decree could not be subjected to challenge before the executing Court as the same had attained finality. The contention of the learned counsel for the appellant was that the executing Court should have directed the decreeholder to seek its remedy before the Liquidator as per the statutory provisions of law. The reading of Sections 58, 59 and 82(2) of the Act leaves no manner of doubt that these are para materia with the provisions of the Companies Act and, therefore, law laid down by the Courts would be applicable even under the provisions of the Act. However, there is no force in the contention raised by the learned counsel for the respondentdecreeholder that in view of the charge having been created over the property in pursuance to the order passed by the Civil Judge, (Sr. Divn.) Chandigarh, on 28.11.1996, the decreeholder has to be treated as secured creditor as per the law laid down by the Hon''ble Calcutta High Court in the case of Uddat Bhagat Ram Nazol Land Cooperative Society (supra).

24. Accordingly, this appeal is allowed, the impugned orders are set aside and the Liquidator is directed to consider the claims of the decreeholder in terms of the priority fixed vide circular No. 17.32. However, he is to treat the decreeholder as secured creditor for the purpose of discharge of its claim.

