

(1990) 11 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 17123 of 1990

Sukra Shoe Fabric

APPELLANT

Vs

United Commercial Bank

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1992) 73 CompCas 179 : (1991) 1 LW 452 : (1991) 1 MLJ 27

Hon'ble Judges : V. Kanakaraj, J

Bench : Single Bench

Judgement

Kanakara, J.—The petitioner is a firm of exporters of leather garments and footwear. The petitioner applied to the respondent-bank for the

grant of term loan facility, packing credit facility and foreign bills discount facility and the respondent-bank accepted the request on June 21, 1988.

The petitioner set up the factory in a backward area with a view to get certain concessions and obtained a lease of land measuring 1.5 acres at

Dindigul. The respondent-bank sanctioned a term loan of Rs. 54 lakhs. The petitioner had hypothecated the machinery to and in favour of the

respondent-bank. An additional term loan of Rs. 4 lakhs was also sanctioned by the respondent-bank. The entire amount of Rs. 58 lakhs was to

be paid by the petitioner in ten half-yearly instalments in accordance with the hypothecation agreement.

2. According to the petitioner, after the installation of the machinery, the petitioner commenced its business and exported leather goods to foreign

countries and negotiated the bills through the respondent-bank. The loan amount paid towards working capital was being adjusted from out of the

bills and also from and out of the sum of Rs. 34 lakhs lying with the respondent-

bank in fixed deposits. The petitioner was able to obtain a subsidy from the State Industries Promotion Corporation of Tamil Nadu (hereinafter called ""the SIPCOT"") to the tune of Rs. 11,84,000. Even though the said amount should have been utilised for working capital expenses, the respondent-bank had adjusted a sum of Rs. 9,83,000 towards the term loan account.

3. By a communication dated October 27, 1990, the respondent-bank purported to recall the loan stating that the petitioner had not paid the term loan of Rs. 54 lakhs and that there was overdue of the instalment to the tune of Rs. 30.9 lakhs. The amount was demanded within a period of 20 days from the date of receipt of the letter. On November 2, 1990, the officers of the respondent-bank came to the factory and asked the manager to go out of the factory stating that they were going to lock and seal the premises. Along with the officers of the respondent-bank, an Inspector of Police was also present. The entire staff of the petitioner were asked to go out. An inventory of the machinery was taken and then the factory building was locked and sealed. The protest of the manager was in vain and the police threatened to arrest him. The manager is said to have given a protest letter to the chief manager of the respondent-bank. The writ petition has been filed for the issue of a writ of mandamus to direct the respondent to remove the lock and seal applied to the factory premises and deliver possession of the same back to the petitioner.

4. In support of the writ petition, it is argued that the respondent has no power either in law or under the hypothecation agreement to enter the premises and lock and seal the same. Further, they had granted 20 days time in and by their letter dated October 27, 1990, and even before the expiry of the said period, they had proceeded to enter into the premises and lock and seal the same in a high-handed manner. The respondent has ample security for the repayment of the loan and the machinery itself is worth about Rs. 118 lakhs. It is also stated that, under the agreement with the SIPCOT, the petitioner has to run the factory and submit annual progress reports to them. Otherwise, the petitioner will be forced to repay the subsidy amount. The argument is that the respondent, being a nationalised bank, cannot act in an arbitrary and capricious manner.

5. In support of the points raised in the writ petition, Mr. B. T. Seshabari, learned

counsel for the petitioner has cited the judgment in Union of India

(UOI) and Another Vs. CT. Shentilanathan, formerly known as PL. CT. M.P. Palaniappa Chettiar and Another, for the proposition that, under a

hypothecation agreement, the creditor will not have the right to enter the premises and lock and seal the same. In that case, the hypothecation deed

contained a clause enabling the creditor to seize the goods, sell the same and appropriate the said proceeds towards the amounts due to the

creditor. The Division Bench held as follows (at page 645 of 48 Comp Cas) :

The most conspicuous feature of exhibit A-1 is that, in case the borrower committed default in the payment of the debt as stipulated, the plaintiff

was at liberty to seize the goods. The position, therefore, incontrovertibly is that on the date when the hypothecation deed was entered into no

possession of the goods was ever handed over to the creditor (plaintiff) nor was it in contemplation between the parties. It was only by a future

overt act on the part of the creditor that he could sequester the goods, if he so desired, and that too by a process known to law. At best, the right

which the plaintiff had under exhibit A-1 was to file a suit on the debt and, after obtaining a decree therein, proceed against the properties specified

in exhibit A-1 in realisation of the decree.

6. The respondent has filed a counter-affidavit. The term loan and the payment of subsidy though the SIPCOT are not disputed. The main ground

on which the respondent seems to have acted in a rather unusual manner is that the partners of the petitioner-firm are also the partners of another

firm, M/s. R. S. Creation. The said firm, M/s. R. S. Creation, had also availed of certain facilities from the bank to the tune of Rs. 185 lakhs and

there were outstandings to the tune of Rs. 157.36 lakhs. They had also executed a hypothecation bond in respect of the raw materials, stock-in-

trade and machinery. After granting the facilities to the petitioner-firm, it is alleged that the entire stock worth Rs. 126.27 lakhs disappeared from

the said firm, M/s. R. S. Creation. The apprehension of the respondent-bank was that the petitioner firm also may do the same thing and deplete

the bank's securities. It is admitted that a letter was written on October 27, 1990, calling upon the petitioner to pay the amounts within 20 days.

But it is added that the said notice did not contain any assurance that they will not take any other steps to protect the interests of the bank. It is

contended that the bank has only exercised the powers reserved under clause 4(j) of the hypothecation deed. By locking and sealing the premises, the bank has only seized the goods and they could have as well removed the goods but they have not done so. It is admitted that the police were present. But it is stated that they did not enter the factory and they were waiting only outside the factory. They were present only to help the respondent-bank in case of any obstruction. It is also stated that the petitioner's manager did make a pretence of a protest but ultimately did not resist. It is claimed that the respondent-bank has a right to seize the goods and it has consequential rights to seal the premises also. The premises itself had been equitably mortgaged to the bank.

7. Mr. V. Sridevan, learned counsel for the respondent-bank, has raised a preliminary objection that the writ petition is not maintainable.

According to learned counsel, the rights of the parties are governed by a contract and it is not a statutory contract. In support of this contention,

learned counsel has relied on a few judgments. The most important of them all is Bareilly Development Authority and Another Vs. Ajay Pal Singh

and Others, . That case only says that a writ will not issue under article 226 of the Constitution of India so as to compel the authorities to remedy a

breach of contract pure and simple, in a case where the contract is purely non-statutory. Therefore, if the petitioner is aggrieved by the action of

one of the contracting parties, its remedy is only to file a civil suit for damages. I am totally unable to agree with this contention of learned counsel

for the respondent-bank. It is not disputed that the respondent is a nationalised bank and it has been held that such banks are authorities within the

meaning of article 12 of the Constitution of India. It owes a public duty to its customers as well as to the persons to whom it has advanced loans. It

has been held by the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others*

Vs. V.R. Rudani and Others, , that mandamus can issue against any person provided that the court is satisfied that such a person owes a duty to

the public at large. It cannot be disputed that the bank will come under the category of persons mentioned by the Supreme Court of India in the

said judgment. The following passage in the said judgment is relevant to the facts of this case (at page 1613) :

Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute.

Commenting on the development of this law, professor De Smith states : ""To be enforceable by mandamus a public duty does not necessarily have

to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial

Review of Administrative Action, fourth edition, page 540). We share this view. The judicial control over the fast expanding maze of bodies

affecting the rights of the people should not be put into water-tight compartments. It should remain flexible to meet the requirements of variable

circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not

come in the way of granting that relief under article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the

writ petition.

8. I, therefore, reject the first contention that the writ petition is not maintainable. The only other question is whether the respondent-bank has any

authority of law to enter the premises, lock and seal the same. I have already referred to the judgment of the Division Bench of this court where it

has been held that the hypothecation agreement will not enable the creditor to enter the premises, lock and seal the same without recourse to law. I

am bound by the said judgment of the Division Bench of this court.

9. In this case, even though it is claimed that the premises are also equitably mortgaged to and in favour of the bank and the machinery is

hypothecated to the bank, it cannot be disputed that the petitioner was operating the machinery and was in possession of the premises. It is

claimed that there were 50 to 60 workmen apart from the staff of the factory. When the factory was actually working, the officers of the

respondent-bank along with the police have gate-crashed into the factory and purported to lock and seal the premises. If a nationalised bank can

take the law into its own hands, how can the courts criticise and find fault with others ? The rights given to a creditor under a hypothecation

agreement can be exercised only by approaching the court of law, and not by taking the law into its own hands. If we recognise such a power in a

nationalised bank, then every other State Financial Corporation and Government

company will be emboldened to follow the same procedure. It will tantamount to bidding good-bye to the rule of law. There are sufficient remedies available to the creditor-bank. Even in case there is imminent danger of the debtor secreting the properties or depleting the securities, it is not uncommon for Civil Courts to issue temporary orders of attachment as well as appointment of commissioners to safeguard the interests of deserving creditors.

10. One other aspect of the case which bothers me is that the respondent-bank was able to bring the police along with them. I do not know under what provision of law the police accompanied the bank officials when they purported to enforce a term of the hypothecation deed. More often than not, the public complain that the police do not lend their support in urgent cases where there is threat to life, liberty and property of a citizen.

While so, it is rather strange that the police should have accompanied the officers of the respondent-bank when they are allegedly enforcing a term of a hypothecation deed. I am not going into any other question in this writ petition except the action of the respondent-bank in entering the premises forcibly and locking and sealing the premises. According to me, the said action of the respondent-bank is totally unauthorised and arbitrary.

11. For all the above reasons, I am satisfied that the petitioner is entitled to the relief asked for in this writ petition. Consequently, there will be a direction to the respondent-bank to remove the lock and seal applied to the petitioner's factory at Madurai Road, Begampur, Dindigul, and to deliver possession of the factory premises along with the goods and articles to the petitioner on or before November 21, 1990. The writ petition is allowed with costs. Counsel's fee Rs. 1,000.