

(2001) 12 PAT CK 0038

In the Patna High Court

Case No : Appeal From Original Order No. 554 of 1999

UCO Bank

APPELLANT

Vs

Eastern Sugar Industries Limited and Another

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151
Constitution of India, 1950 — Article 227

Citation : (2002) 1 PLJR 351

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Shambhu Nath Choubey and Arun Kumar Lal, for the Appellant; Ajay Prasad, R.C. Sinha and Raj Shekhar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Prasad, J.—On 25.8.2000 learned Counsel for the Appellant and Respondent No. 1 fairly agreed that this appeal can be disposed of without being admitted. However, as Respondent No. 2 had not appeared, this Court directed for issuance of notice to Respondent No. 2. After service of notice on Respondent No. 2, with consent of parties, the appeal itself was heard in part on 9.10.2001. However, after the matter was heard for some time, learned Counsel for Appellant prayed for adjournment to see that the payment of the dues of the Appellant Bank as per Annexure 1 is made. Accordingly, since then the matter was adjourned on several dates and lastly on 5.12.2001, this Court after noticing the fact that the matter has been coming up for quite some time and adjourned on several occasions on the request of the learned Counsel for the Respondents to enable the Respondents to pay the entire remaining amount as agreed by the Bank, vide Annexure 1, with up-to-date interest on the remaining amount from that date but the action of the Respondents has not been fair till then, however, on the request of the learned Counsel for the Respondents, adjourned the matter to 11th December, 2001 with the assurance from the Respondents received by the learned Counsel that the cheque for the remaining amount with up-to-date

interest shall be produced on that date. On 11th December, 2001 the matter was passed over as the learned Counsel for the Respondents submitted that he has received instruction that the cheque shall positively be produced on 13th December, 2001, but today he expressed inability as the Respondents have not turned up with the cheque.

2. This appeal filed on behalf of the Bank is directed against the order dated 21.7.1999 passed in Title Suit No. 183/1999/20/1999 by Subordinate Judge III, East Champaran, Motihari on a petition filed on behalf of the Plaintiff-Respondent No. 2 herein under Order XXXIX, Rules 1 and 2 and Section 151 of the Code of Civil Procedure, whereby and where under he has restrained the Defendant-Appellant from interfering in use, occupation and possession of the Plaintiff over the suit premises named and styled as "Motihari Chini Udyog" fully described in Schedule I of the plaint. The Defendant-Appellant has also been restrained from creating any disturbance in running of the sugar factory till the disposal of the suit.

3. In short, the relevant facts are that in the year 1985 the Appellant Bank instituted a suit, inter alia, against Respondent No. 2 in the original side of the Calcutta High Court, being Suit No. 759 of 1985 for a decree of Rs. 1,99,59,428.64 along with interest thereon from December 16, 1985 till filing of the suit ad interim interest and interest on judgment at the rate of 17.5.% per annum till realization. However, pursuant to the enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the said suit was transferred to the Debts Recovery Tribunal, Calcutta and was numbered as T.A. No. 41 of 1994. The Appellant Bank and Respondent No. 2 filed a joint petition of compromise, inter alia, stating that the settlement has been arrived at by and between the parties thereto. The said joint petition also mentioned the terms of settlement whereby Respondent No. 2 was to pay to the Appellant Bank a sum of Rs. 75,00,000/- on the date of signing of the said settlement and, further, to pay the balance sum of Rs. 164.97 lacs in eleven installments of Rs. 16,00,000/- each from July 7, 1995 to January, 1998. The Respondent No. 2 was required to pay the last installment of Rs. 12,40,000/- on April 7, 1998. The said compromise petition filed before the Debts Recovery Tribunal has been annexed as Annexure 1. The said compromise petition was accepted by the Tribunal on May 5, 1995 and a certificate was issued in terms of the same disposing T.A. No. 41 of 1994 accordingly.

4. Respondent No. 2 failed to make the payment in accordance with the said terms of settlement. On 8th July, 1997 the Appellant Bank filed an application before the Tribunal, inter alia, contending that a total sum of Rs. 1,71,00,000/- had been paid by Respondent No. 2 in accordance with the terms of settlement and Respondent No. 2 had failed and neglected to pay the balance installment and, therefore, was required to pay the balance amount of Rs. 68,97,000/- along with interest thereon as per the said compromise.

5. By Order No. 23 dated 8th July, 1997, the Presiding Officer, Debts Recovery

Tribunal at Calcutta, inter alia, directed Respondent No. 2 to pay the said sum of Rs. 68,97,000/- plus interest at the rate of 16% per annum up to the date of payment within 15 days of the receipt of the said order. Photo copy of the said order has been annexed as Annexure 2. After the expiry of the said time, the Appellant-Bank filed an application on 16th June, 1997 before the Recovery Officer of the Tribunal seeking an order of attachment over the assets mentioned in Schedule A and for appointment of a Receiver for preparation of inventory and other reliefs. The Tribunal, vide order dated 29th July, 1998, appointed one Mr. Sandip Dutta, Advocate as Receiver for making inventory of the property of Respondent No. 2 and to take symbolic possession thereof. The Presiding Officer also passed an order of attachment of the movable and immovable properties of Respondent No. 2 and, inter alia, directed the Receiver to cause a copy of the order of attachment to be affixed on a conspicuous part of the property and to file a report with regard to the same on 16th December, 1998, vide Annexure 4.

6. Respondent No. 2 filed an application under Article 227 of the Constitution before the Calcutta High Court, being C.O. No. 2278 of 1998 against the said order (Annexure-4), in which the Calcutta High Court on 20th August, 1998 directed as follows:

Till the disposal of the revisional application, the attachment of movable and immovable property of the Appellant-Company will continue and the property of the Company will be under the Receiver. However, if the Appellant-Company deposits a sum of Rs. 10 lacs to the" Receiver within a fortnight from date, in that event, the Appellant-Company will be permitted to run the business under the Receiver. There will be a further condition for running the said business under the Receiver. So long the business will continue under the Receiver, the Receiver will be entitled to take out Rs. 16 lacs per quarter from the earning of the Company and to adjust the same towards the arrears of the Bank. Such adjustment will continue from September, 1998 after the aforesaid amount of Rs. 10 lacs is deposited by the Appellant to the Receiver. In the event, a sum of Rs. 16 lacs is not recoverable from the business for any future quarter, this interim order of stay of operation of order No. 29 dated July 29, 1998 will stand vacated and the Receiver will be at liberty to proceed in terms of the order impugned.

7. Pursuant to the said order, Respondent No. 2 paid a sum of Rs. 10 lacs to the Appellant Bank and the same was also recorded by the High Court in its order dated 7th September, 1998. Pursuant to the said order Receiver visited the Factory premises of Hanuman Sugar and Industries Limited at Motihari in Bihar on 17-19.12.1998 and made inventory of the plants and machineries and also took possession. However, Respondent No. 2 failed and neglected to pay Rs. 16 lacs per quarter. It is stated that on 21.7.1999 the Appellant came to know that Respondent No. 1 had filed a Title Suit No. 183 of 1999 on June 19, 1999 before the Subordinate Judge III, East Champaran, Motihari claiming to be bona fide lessee of the suit premises and entitled to enjoy uninterrupted possession of it till the expiry of the lease. Prayer for permanent injunction was also made

restraining the Defendant from disturbing in the use, occupation and possession of the Plaintiff over the suit property detailed in Schedule I of the plaint till the expiry of the lease period 2028 A.D. The Plaintiff Respondent No. 1 also filed an application under Order XXXIX, Rules 1 and 2, on which the impugned order has been passed.

8. It is contended that the suit itself is a collusive suit filed in collusion with Respondents No. 1 and 2 to defeat the lawful recovery process of the Appellant Bank. It is also contended that the impugned order is bad in law inasmuch as the Court was not legally justified in granting temporary injunction on the face of the earlier orders of the Tribunal and Calcutta High Court.

9. Learned Counsel for the Respondents has not been able to defend the impugned order especially on account of their past conduct in the present appeal. Moreover, this Court fails to appreciate as to how the 3rd Subordinate Judge has interfered with the order of the Debts Recovery Tribunal whereby the matter before the Tribunal was disposed of in terms of the compromise.

10. It is really shocking that learned Subordinate Judge has interfered with the process of recovery in a suit filed by the Plaintiff-Respondent No. 1 in which the claim is based on a registered deed dated 31.5.1999 as is evident from paragraph 22 of the plaint (Annexure 8) when the Presiding Officer of the Debts Recovery Tribunal accepted the joint application for compromise filed by the Appellants and Respondent No. 2 on May, 5, 1995 and, issued certificate in terms of the same disposing of the proceeding, being T.A. No. 41/94 pending before him accordingly. In fact, it is only on appointment of Advocate Receiver by the Tribunal, vide Order No. 29 dated 29th July, 1998 that Respondent No. 2 mala fide started his move for entering into the registered lease deed dated 31.5.1999 in collusion with Respondent No. 1.

11. Learned Counsel for the Respondents, however submitted that the original lease was of 22.8.1994 for a term of five crushing seasons and registered lease deed dated 31.5.1999 was with respect to renewal of the earlier lease. However, he failed to show that there was any earlier lease deed dated 22.8.1994 and that too a registered one.

12. Under such circumstances, this Court prima facie finds that the basis for the present suit by the Plaintiff Respondent itself was collusive and mala fide only to defeat the process of recovery in pursuance of the order of the Debts Recovery Tribunal on the basis of compromise. Accordingly, this Court finds it difficult to sustain the impugned order more so because of the aforementioned conduct of the Respondents in this appeal as well.

13. The appeal is, thus, allowed with a cost of Rs. 10,000/- (ten thousand) to be paid by Respondent No. 2 to the Appellant-Bank within two weeks and the impugned order dated 21.7.1999 is set aside.