(1997) 08 DEL CK 0029

In the Delhi High Court

Case No : I.A. No. 12778 of 1996 in Suit No. 925 of 1983

Union Bank of India APPELLANT

Vs

E. Faridun Abbas and others RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Citation : (1998) 94 CompCas 492 : (1997) 70 DLT 106

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Judgement

K.S. Gupta, J.—The plaintiff filed I.A. No. 12778 of 1996 alleging that defendant No. 2 died in the month of November, 1995. The plaintiff while inquiring into the details of the legal heirs of deceased defendant No. 2 came to know that defendants Nos. 1 and 3 are not residing at the given addresses for a long time. Defendant No. 4 was proceeded against ex parte by the order dated September 26, 1984. It was also revealed that defendant No. 1 disposed of the hypothecated goods and the other movable and immovable properties and left the premises of work and residence without prior informing the plaintiff-bank. It is further alleged that on the last date of hearing, i.e., November 19, 1996, it was informed that defendant No. 1 is in London while defendant No. 3 is in Russia at present. It is stated that with intention to obstruct and delay the execution of the decree which may be passed in the suit against them, defendants Nos. 1 and 3 shifted out of India by disposing of their respective properties including the hypothecated goods. It is prayed that the said defendants be arrested forthwith and may be called upon to give security for their appearance for the amount of the decree that may be passed against them.

2. Defendants Nos. 1 and 3 have contested the application by filing a joint reply. It is alleged that defendant No. 1 is presently earning his livelihood in the U.K. and visits India off and on. He was present in court in April, 1995, and February, 1996, when the case was fixed for evidence of the parties. It is alleged that the answering defendants have furnished their present addresses. The plaintiff-bank

has not pointed out which of the movable or Immovable assets have been disposed of by the answering defendants. It is denied that the answering defendants shifted out of India by disposing of their respective properties with the intention to obstruct and delay the execution of decree which may be passed in the suit against them.

3. I heard learned counsel for the plaintiff and defendants Nos. 1 and 3.

4. In Chelsee Mills v. Chorus Girl Inc. [1990] 2 Del Law 88, it was held by this court that a woman cannot be arrested or detained in civil prison under rule 1 of Order xxxvIII of the Civil Procedure Code, 1908. Therefore, the plaintiff-bank cannot seek arrest before judgment of defendant No. 3, who is a woman.

5. As regards defendant No. 1, who is admittedly residing in the U.K. at present, the case of the plaintiff-bank is that Rs. 5,00,700 towards term loan, Rs. 1,04,863.10 towards C.C. hypothecation account No. 1, Rs. 2,48,416.50 towards C.C. hypothecation account No. 2, Rs. 81,224.10 towards C.C. hypothecation account No. 3, totalling Rs. 9,35,202.70 was due from him as on May 20, 1983, inclusive of interest. Defendant No. 1 for availing of the facilities of term loan and C.C. hypothecation executed promissory notes and hypothecation agreements as detailed in paras. 3 and 6 of the plaint in favor of the plaintiff-bank. G. K. Thairani, who was working as manager in the Lajpat Nagar branch of the plaintiff-bank, during the period November, 1972, to May, 1977, as PW-1 has, inter alia, stated that defendant No. 1 who was sanctioned three loans put his signatures on two hypothecation goods agreements, exhibits PW1-3 and PW-1/4, in his presence at points A. In her deposition Smt. Jasbir Bajaj, PW-2, who remained posted as an accountant in the said branch of the plaintiff-bank from January, 1978, to August, 1981, stated that defendant No. 1 appended his signature on the letter of hypothecation, exhibit PW-2/2, in her presence. Under exhibits PW-1/3, PW-1/4 and PW-2/2 machinery to be purchased by defendant No. 1 and also raw material and semi-finished goods were hypothecated by defendant No. 1 in favor of the plaintiff-bank. It may be noted that in the joint reply it is not denied specifically by defendant No. 1, principal borrower, that he had disposed of the goods which were hypothecated by him with the bank. There is no material on the file to suggest that defendant No. 1 owns any movable or immovable property in India. Therefore, the only conclusion which one may draw is that the hypothecated goods were disposed of by defendant No. 1 with intent to obstruct or delay the execution of decree that may be passed against him in this case. Further, the record does not indicate that defendant No. 1 was present either in April, 1995, or February, 1996, when the case was fixed for evidence of the parties, as alleged. The plaintiff-bank has, thus, made out a case for furnishing of security by defendant No. 1 for his further appearance in the suit.

6. Therefore, defendant No. 1 is directed to furnish security for his appearance at any time when called upon during the pendency of the suit and until satisfaction of any decree that may be passed against him in the suit within four weeks from today. The application is disposed of accordingly.

7. List for further orders on September 22, 1997.

