

CASE NO.:
Appeal (civil) 8491 of 2001

PETITIONER:
Syndicate Bank

RESPONDENT:
New Look Rubbers (P) Ltd & Ors

DATE OF JUDGMENT: 03/04/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
NON-REPORTABLE

CIVIL APPEAL NO.8491 OF 2001

HARJIT SINGH BEDI, J.

1. This appeal by special leave arises out of the following facts.

2. The Syndicate Bank, the appellant herein, sanctioned various credit limits to the respondent No.1 company including an overdraft limit of Rs.1,00,000/- and working capital term loan of Rs.1,00,000/- on certain prescribed conditions. These loans were granted after cancellation of the earlier limits with a view to nurse respondent No.1 which was a sick unit. In order to secure the advance, the Managing Director of respondent No.1, that is respondent No.2 and the other Directors executed several documents as securities and respondent No.2 also mortgaged his property to the Bank as a collateral security. As the respondent No.1 defaulted in the repayment of the loan, the Bank filed a suit for recovery (O.S.No.732/1987) in the Trichur Civil Court seeking a decree for Rs.1,19,832.63 with interest @ 12.5% per annum in the Term Loan Account and Rs.2,09,120.75 in the Overdraft Account with interest @ 16% per annum compounded quarterly. The following issues were framed in the suit:

1) What is the correct amount that is due to the Plaintiff?

2) Whether the defendants are entitled to the benefit of the direction given by the Reserve Bank of India on sick units?

3) What is the correct rate of interest?

4) Reliefs and costs.

3. The trial court observed that the Bank had not been harsh or arbitrary in dealing with the defendants and that it appeared that the defendants were not prepared to repay the loan despite the agreements that had been executed. It was also observed that the defendants were not entitled to the benefit of any scheme framed for the rehabilitation of sick units which had been formulated by the Reserve Bank of India. The suit was accordingly decreed on 9th April 1990 and the defendants were given a year's time for payment. No appeal was filed against this judgment with the result that it attained finality. An application for execution of the decree (EP No. 819/1991) was filed by the Bank on 20th December 1991 and while the matter was still pending, the judgment-debtors (the defendants in the above suit) filed civil suit

(No.1340/1993) for injunction seeking an order prohibiting the execution of the decree rendered in O.S. No.732/1987 alleging that it was a nullity. The Bank contested the suit which was ultimately dismissed by Judgment & Order dated 1st March 1996 and as no appeal was filed thereagainst, this decision too attained finality. In April 1993, the judgment-debtors also filed a Pauper Petition (No. 19/1993) in the Sub-Court, Trichur claiming damages of about Rs.30/- lacs from the Bank with 18% and 100% ex-gratia payment on several grounds. This suit was dismissed for non-prosecution on 15th November 1995 and an application for its restoration was also dismissed on 6th June 1997. As no further proceedings were taken by the judgment-debtors, these orders attained finality as well. It appears that while this spate of litigation was continuing, the judgment-debtor filed various objections (during the year 1994-97) in E.P.No.819/1991 alleging that the decree was not executable, and amongst others, two objection petitions being E.A.No. 847/1997 and 1197/1997 were filed claiming the protection and benefits available under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called "SICA") and under section 18FH of the Industries Development and Regulation Act, 1951 (hereinafter called the "Regulation Act") praying that the execution proceedings be kept in abeyance till such time the proceedings initiated by the Government of Kerala for the revival of the unit were going on. It appears that while the objections were pending, the mortgaged property of judgment-debtor No.2 was sold in auction by the executing court for a sum of Rs.3.50 lacs which was deposited in Court and later released to the Bank and the sale was also confirmed and possession of the property handed over to Antony the auction purchaser. Vide order dated 21st July 1998 the execution application Nos.847/1997 and 1197/97 were dismissed. This order was challenged by the respondent Nos.1 and 2, the original defendants, by way of CRP No.2315/1998 alleging that the execution proceedings ought to have been stayed pending the decision of the proceedings under section 18 FH of the Regulation Act and section 22 of SICA. The respondent No.1 Company also filed a writ petition on 7th April 2000 under Article 226 of the Constitution of India (No. O.P.11862 of 2000) in the Kerala High Court against the Government of Kerala, the Kerala Financial Corporation, the Syndicate Bank and Antony the auction purchaser alleging that the judgment-debtors' unit had been rendered sick on account of the arbitrary actions of the Bank and the Kerala Financial Corporation and that the proceedings in O.S. 732/1987 were without jurisdiction and, therefore, null and void and consequently the decree in EP 819/1991 too was not enforceable. The Civil Revision and the Civil Writ Petition were heard together and both were allowed vide order dated 11th April, 2001 with the High Court observing that though the benefits of section 18FH of the Regulation Act and section 22 of the SICA were not available to the judgment-debtor but they were entitled to succeed on other issues and concluded that:

"The petitioner has filed CRP 2315/98 challenging the common order passed by the execution court in E.A.847/97 and E.A.1197/97 in E.P.819/91 in O.S.732/87. The petitioner was the judgment debtor in O.S.732/87, a suit instituted by the present 3rd respondent bank for realization of the entire arrears due from the petitioner. The decree holder filed E.P.819/91 and the property and the residential building belonging to the

Managing Director of the company placed as security was sold in auction for an amount of Rs.3.5 lakhs. The petition filed by the petitioner for setting aside the sale was also dismissed. Later the petitioner filed E.A.847/97 and E.A.1197/97 u/s 18FH of the IDR Act sec.22 of the SICA and Sec.151 CPC for annulling the court sale and also for staying further execution proceedings. Both the petitions were dismissed by the execution court. I have already found that sec.22 of SICA or sec.18FH of the IDR Act have any application in the present case and as such the above order dismissing E.A.847/97 and E.A.1197/97 has only to be upheld in the ordinary course. As the suit was instituted and proceeded in collusion with the KFC and as both the above financial institutions have agreed before the 1st respondent for the revival of the industry granting concessions and packages (as evident from ext.P.24), I think it just and proper to set aside the sale of the property of the Managing Director of the company in execution of the decree in O.S.732/87. In fact the KFC was strangulating the industry from one side where as the Bank was doing the same thing on the Managing Director of the company from the other side which was shocking to judicial conscience. In the above circumstances for the ends of justice this court is constrained to interfere and to undo the injustice caused to the petitioner and to save both the industry and the Managing Director of the industry by setting aside the order of taking over the industry and the court sale of the property. The entire amount deposited by the 4th respondent towards price of the auctioned property with 5% of the above amount and interest at 6% from the date of deposit till return shall be paid by the 3rd respondent bank to the 4th respondent. The bank also will have to consider the grant of interest holiday for the period during which the industry had been under the possession of the KFC in pursuance to the take over. Hence for the proper administration of justice, I think it proper to set aside the court sale and to allow C.R.P.2315/98."

4. As the order dated 11th April 2001 was a comprehensive one, taking within its ambit the Civil Revision as well as the Writ Petition, two LPAs, one by the Bank and the other by the judgment-debtor, were filed and are pending in the Kerala High Court against the order in the writ petition whereas the present appeal has been filed by the Bank against the order in the Civil Revision.

5. Mr. A.B.Dial, the learned senior counsel for the appellant has pointed out that the High Court had overstepped its jurisdiction as after giving a positive finding that the respondent was not entitled to any relief under section 22 of the SICA or under section 18 FH of the Regulation Act, it had virtually set aside all the effective orders of the Civil Courts which had been made in favour of the appellant Bank and had attained finality. It has further been pleaded that the further direction of the High Court as to the entitlement of the respondent to the benefit of the re-settlement schemes for

revival was not the issue before it as the executing court or the High Court could not go beyond the decree itself and hold that the suit which had led the decree was bad having been filed in collusion with one or the other party. Respondent No.2 appearing in person has, however, argued that the High Court had proceeded on the basis that the respondent had been gravely wronged by the Bank and the Kerala Financial Corporation and has also submitted a large number of documents in support of this submission. He has also pointed out that the State Government had taken steps towards the revival of his unit and as such, there was no justification in interfering with the order of the High Court.

6. Before we go to the issues raised, we reproduce here the final directions of the High Court:

"1. The order of the 2nd respondent KFC taking possession of the industrial unit New Look Rubbers (P) Ltd. (petitioner company) is set aside and the KFC is directed to surrender possession of the industrial unit to the petitioner forthwith.

2. The 2nd respondent (KFC) shall grant interest holiday for the period from the date of taking possession of the industry till it is handed over to the petitioner.

3. The court sale of the property of the Managing Director of the petitioner company in pursuance to the decree in OS 732/87 of Sub-Court, Trichur, shall stand set aside and the 3rd respondent shall return the entire sale amount with a sum equal to 5% of the above amount and with 6% interest on the sale amount from the date of deposit till the date of return to the 4th respondent."

7. We are of the opinion that the High Court has clearly overstepped its jurisdiction. The facts of the case show that the appellant had filed civil suit O.S.No.732/1987 against the respondent for recovery of the sums advanced as loan plus interest. This suit was decreed on 9th April 1990 with the positive finding that there was no harsh or arbitrary behaviour in the proceedings against the respondent. Admittedly, no appeal was filed against the judgment dated 9th April 1990 and it attained finality. The appellant Bank thereafter filed E.P.No.819/1991 for the realization of the decretal amount on which the respondent filed O.S. No.1430/93 praying that the appellant Bank be enjoined from executing the decree in O.S.No.732/1987. This suit too was dismissed on 1st April 1996. Another Pauper Petition No. 19/1997 was filed by the respondent claiming damages from the Bank and this too was dismissed. Admittedly all these matters have attained finality. Two sets of objections in execution petition, E.A. No.847/97 and E.A.No.1197/97 had been filed with regard to the applicability of section 22(1) of SICA and section 18 FH of the Regulation Act and in the meanwhile, the property mortgaged was sold in execution of the decree. The aforesaid objection petitions were dismissed on 21st July 1998. It is against the order in E.A. No.1197/1997 that the present revision was filed. We are therefore of the opinion that in the light of the issues decided by the Civil Court in the various litigations which were allowed to become final and as the decree had already been executed in as much that the mortgaged property

has been sold, the directions issued by the High Court are clearly not warranted. We are also of the opinion that there can be no objection to the revival of the respondent's unit but that is a matter between the respondent and the Kerala Financial Corporation or other Governmental Agencies and cannot in any manner affect the legal rights that have accrued to the appellant as a consequence of a series of orders/ judgments. We accordingly allow this appeal, set aside the order of the High Court in so far as the decision in the Civil Revision is concerned, but with the rider that should the Government or its agencies choose to provide any succour to the respondent they would be at liberty to do so, but without in any manner affecting the rights or interest of the appellant Bank. There will be no order as to costs.

JUDIS