

Bharat Coking Coal Ltd.

Vs

The Raneeunge Coal Association Ltd. and Others

Civil Appeal No. 884 of 1976

(N. L. Untwalia, Jaswant Singh, R. S. Pathak JJ)

28.07.1978

JUDGMENT

PATHAK, J. :-

1. This appeal, by special leave, is directed against an order of a Division Bench of Calcutta High Court substantially confirming an order of a learned Single Judge of that Court on a receivership application in a pending suit.
2. The thirteenth respondent, the Punjab National Bank (hereinafter referred to as the 'Bank') instituted Suit 521 of 1974 in the High Court of Calcutta against the appellant, Bharat Coking Coal Ltd., and the first respondent, the Raneeunge Coal Association Ltd., and others praying for a decree for Rs. 1,15,76,464.45 and a declaration that (a) all stocks of coal, plant and machinery and (b) present and future book-debts, outstanding moneys, bills and documents belonging to the first respondent had remained hypothecated with the Bank as security by way of first charge for payment of the Bank's claims, and that the charge in respect of (a) and, if the law so compelled, in respect of (b) also now stood shifted to the amount receivable by the first respondent from the Central Government through the Coal Mines Authority. It also prayed for the appointment of a Receiver.
3. The suit was brought on the allegations that the Raneeunge Coal Association enjoyed cash credit facilities with the Bank against hypothecation of its plant, machinery, spares and stores, stocks of coal, etc. Loans were also extended by the Bank to the Raneeunge Coal Association under two separate loan accounts. The Bank claimed a decree for the total of the amount due to it in the cash credit account and the loan accounts. It was pleaded that under the Coking Coal Mines (Nationalisation) Act, 1972, when all stocks of coal, plant and machinery, etc. on which the Bank had the First charge, stood transferred to and vested in the Central Government free from all encumbrances, the Bank's first charge shifted from that security to the amount payable by the Central Government to the Raneeunge Coal Association through the Coal Mines Authority. It was also asserted that the other securities including all present and future book-debts, belonging to the Raneeunge Coal Association were not transferred to or vested in the Central Government, by reason of the Explanation to Section 3(j)(xi) of that Act and, therefore, the said securities remained subject to the first charge for payment of the amount due to the Bank. It was pleaded that in case those securities also were regarded as having vested in the Central Government free from all encumbrances, the said charge must likewise be taken to have shifted to the amount payable by the Central Government to the Raneeunge Coal Association through the Coal Mines Authority.
4. It appears that during the pendency of the suit, a learned Single Judge of the High Court made an order dated December 8, 1975 restraining the Bank and the Raneeunge coal Association from

withdrawing the compensation money payable to the latter, and appointing Joint Receivers to realize all unrealised book-debts of the Raneeunge Coal Association as well as book-debts realised by the Bank during the period October 17, 1971 to March 31, 1973. On appeal by Bharat Coking Coal, a Division Bench made an order dated July 6, 1976 modifying the order of the learned Single Judge. The Joint Receivers were appointed in respect of "all unrealised book-debts of respondent 1, Raneeunge Coal Association Ltd., as were outstanding on May 1, 1972 as also of such of those book-debts as have been realised by the appellant during the period May 1, 1972 and March 31, 1973. They are also appointed receivers to collect all book-debts outstanding on May 1, 1972 and not yet realised. The appellant will hand over to the Joint Receivers the amounts realised by them in respect of debts outstanding on May 1, 1972 during the period between May 1, 1972 and March 31, 1973 less the sum of Rs. 10,12,768 deposited by them with Punjab National Bank under the order of the Supreme Court dated July 6, 1973. The Joint Receivers are directed to deposit the moneys to be realised and collected by them in a Special fixed deposit account renewable from time to time with the Punjab National Bank, such money to be held by the Bank until further orders. The appellant is directed to furnish particulars of realization of the book-debts outstanding on May 1, 1972 up to March 31, 1973. That order is now the subject of appeal before us.

5. We have heard the learned Counsel for Bharat Coking Coal, the Raneeunge Coal Association and the Bank. The point which finds favour with us is that the High Court erred in appointing the Joint Receivers in respect of the book-debts already realised by Bharat Coking Coal before the suit was filed. Those moneys were not made the subject of the suit and no relief has been claimed in the plaint in respect of them. A perusal of the plaint will show that the relief in respect of the book-debts relates to unrealised present and future book-debts. The question whether the realised book-debts could or could not be claimed by the Bank did not, it appears, engage the attention of the High Court when it made the impugned order. Whether the realised book-debts could be the subject of a claim by the Bank is a matter of debate, and we should have expected the order of the High Court to have contained some justification for directing Bharat Coking Coal to pay over the moneys realised by it to the Joint Receivers. Indeed, there has been a fair degree of contentious argument before us with reference to the various provisions of the Coking Coal Mines (Emergency Provisions) Act, 1971 and the Coking Coal Mines (Nationalisation) Act, 1972. We do not think it necessary or advisable to express our view on any of those questions at this stage. In acting on the plaint as it stand and without specifically finding that the moneys representing the realised book-debts could legitimately be claimed by the Bank, the High Court erred in making an order appointing Joint Receivers in respect of those moneys. We hold that the impugned order of the High Court is vitiated accordingly.

6. The appeal is allowed and the order dated July 6, 1976 made by the High Court is set aside in so far as it appoints Joint Receivers in respect of the moneys representing the realised book-debts. There is no order as to costs.

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