

Jethabhai Khatau & Co.

Vs

Luxmi Narayan Cotton Mills Ltd. and Others

Civil Appeals Nos. 1256-58 of 1981

(A. C. Gupta, D. A. Desa JJ)

10.04.1981

JUDGMENT

DESAI, J. -

1. M/s. Jethabhai Khatau & Co., a partnership firm, is the appellant in all the three appeals. The respondents in all the three appeals are : (1) Luxmi Narayan Cotton Mills Ltd., an incorporated company ('company' for short), (2) State of West Bengal, (3) S.K. Dutta, who was for some time a receiver appointed by the High Court, (4) Grindlays Bank ('Bank' for short), having a fixed deposit account in the name of Receiver S.K. Dutta on behalf of Luxmi Narayan Cotton Mills Ltd., (5) A.K. Dutta, and (6) R.C. Deb, who claim to have been appointed as joint receivers after the removal of Sh. S.K. Dutta.

2. Appellant filed Suit 1194 of 1966 against the company on the original side of the Calcutta High Court to recover a certain amount due under two separate heads. By the time the suit came up for hearing the Board of Directors of the first respondent company was superseded and one Gurudas Sharma was appointed as an Administrator. The Administrator on behalf of the first respondent company entered into a compromise with the appellant in respect of the claim in suit of the appellant and after obtaining leave of the court to settle the matter, invited a consent decree by which the company was held liable and directed to pay Rs. 2,85,000 with interest thereon at 6 percent per annum from January 6, 1970, the date of the decree, till realisation. The first respondent company was given an option to pay the decretal amount by monthly installments of Rs. 5,000, the first installment becoming due and payable on March 15, 1970, and each subsequent installment to be paid by 15th day of the next succeeding month. The default clause in the consent decree provided that if the company committed default in payment of any two installments within the time stipulated in the decree, the whole of the decretal amount and the interest on the balance of the decretal amount will become due and payable at once. It appears that the first respondent company received Rs. 15,00,000 from the Custodian of Enemy Property in respect of its cotton mills situated in Narayanganj, Bangladesh. The third respondent S.K. Dutta appears to have been appointed a receiver in respect of this compensation amount and he appears to have deposited Rs. 8,40,000 out of the compensation amount in fixed deposit account evidenced by receipt No. 1002-2539 with the Bank at its Netaji Subhash Road Branch, Calcutta. The appellant, by an order dated April 5, 1978, of the Calcutta High Court, obtained leave to execute the decree by attachment of funds lying in the hands of the third respondent receiver S.K. Dutta (Annexure 'D'). By the date of the order Rs. 4,20,702.94 had become due and payable under the decree. Pursuant to this order an interim attachment was levied under Order 21, Rule 52, CPC on the amount covered by the aforementioned fixed deposit receipt, and accordingly the Master of the Court, Shri S.K. Ghosh informed the third respondent receiver by the writ of the court dated April 12, 1978, that the receiver shall hold the

money under the fixed deposit account subject to such order as may be made respecting the same in the suit in which he had been appointed a receiver and subject to further orders of the court (Annexure 'E'). The Master confirmed the interim attachment by his order dated April 24, 1978 (Annexure 'F'). On May 4, 1978 upon a petition by the appellant the court directed the receiver third respondent to pay the sum of Rs. 4,20,702.94 to the appellant-decree-holder out of the amount in the fixed deposit account of the judgment-debtor with the bank in fixed deposit receipt No. 1002-2539 standing in the name of the receiver which was attached in terms of order dated April 12, 1978, as confirmed by the order dated April 24, 1978. Presumably neither the third respondent receiver nor the Bank effectively implemented the order dated May 4, 1978, whereupon the appellant moved the court during the vacation on May 24, 1979, for an appropriate direction and a learned Judge of the Calcutta High Court working as Vacation Judge gave the directions prayed for. As this order has some legal consequences in this matter, it would be advantageous to extract it. It reads as under :

There will be an order in terms of prayers (a) and (b) of the petition.

Prayer (a) : That the receiver Sudhir Kumar Dutta be forthwith directed to instruct and intimate to the Grindlays Bank Ltd., Netaji Subhash Road Branch, Calcutta, to pay a sum of Rs. 4,20,702.94 to the petitioner-decree-holder in terms of the payment order dated May 4, 1978 out of the amount of the fixed deposit of the judgment-debtor with Grindlays Bank Ltd., in Fixed Deposit Receipt No. 1002-2539 which has been lying attached in terms of the order dated April 12, 1978 and is confirmed by the order dated April 24, 1978 and the said Grindlays Bank Ltd., Netaji Subhash Road Branch, Calcutta, be directed to pay the said sum of Rs. 4,20,702.94 to the petitioner-decree-holder;

Prayer (b) : That Grindlays Bank Ltd., Netaji Subhash Road, Calcutta, be directed to pay the said sum of Rs. 4,20,702.94 to the petitioner-decree-holder in terms of the payment order dated May 4, 1978, out of the said fixed deposit receipt No. 1002-2539.

Effectively this order of the court directed the receiver to pay the amount therein mentioned to the decree holder and the bank, the keeper of the fixed deposit account of the receiver was also put under an obligation not to raise any objection on receiver withdrawing the money and paying the same to the decree holder. In fact, upon its true construction, the bank was also under an obligation to take effective steps to pay the amount mentioned in the order to the decree holder. It appears that these directions were not obeyed. Consequently, the appellant moved the court for holding the third respondent receiver S.K. Dutta and the fourth respondent bank in contempt and for passing appropriate order for punishing them for contempt unless they purged themselves of the contempt.

3. On June 7, 1979, when the petition for taking action against the alleged contemnors came up before the court, respondent 5 and 6 appear to have been appointed as joint receivers. The bank appeared through its counsel Mrs. Majumdar and the joint receivers appeared for themselves as well as for their respective clients, namely, first respondent company and the second respondent State of West Bengal. Mr. Majumdar, learned Advocate for the bank undertook to the court to comply with the order dated May 24, 1979, to pay the amount therein mentioned to M/s. Maharia & Co. Advocate-on-Record for the appellant. The court directed that on such payment being made the bank shall be absolved from all the liability in respect of said amount. The court specifically noted that in view of the undertaking given by the learned Advocate on behalf of the manager of the bank, the court was not inclined to pass any order in respect of the contempt application and the

application for taking action in contempt was accordingly disposed of. At this stage, Mr. A.K. Dutta appearing for the first respondent company prayed for stay of a portion of the order of the court which prayer was specifically refused observing that as no fresh orders have been passed on that day affecting the interests of the said company, no question of granting stay of a portion of the order arises. The court specifically directed that all the parties and particularly the manager of the bank should act on the signed copy of the minutes. It appears that the solemn undertaking given by the bank was not acted upon. Probably soon thereafter some interim orders were obtained as would transpire from the order of Mrs. Padma Khastgir, J. dated March 7, 1980. When the matter came up on March 7, 1980, the court observed that there will be no order on the applications before it save and except that the receiver will hold the balance sum of Rs. 4,19,697.06 till further order of the court. The court also declined to grant prayer for discharge of the receiver S.K. Dutta, the third respondent, because notice of the application was not served upon him. This observation would, however, establish that till March 7, 1980, the third respondent was not discharged as a receiver though from the recitals in the order dated June 7, 1979, it appears that by that date A.K. Dutta and R.C. Deb were functioning as joint receivers. In this order it was distinctly made clear that except what is stated specifically in the order all interim orders were vacated. However, the court at the instance of joint receivers stayed the portion of the order dated March 7, 1980, for a period of a fortnight. To clarify the position it may be mentioned that when the court directed that balance of Rs. 4,19,697.06 will be held by the receiver it would imply that that would be the balance after payment of the amount directed to be paid to the appellant. Specifically this order has the effect of confirming the earlier order dated May 24, 1979, to pay the decretal amount to the appellant.

4. It appears that thereafter three appeals came to be filed before the Division Bench of the Calcutta High Court. Appeal 95 of 1980 and Appeal 94 of 1980 were preferred by the first respondent company. Appeal 122 of 1980 was preferred by the second respondent State of West Bengal. These three appeals were preferred against the order dated March 7, 1980, made by Mrs. Padma Khastgir, J.

5. In the two appeals preferred by the first respondent company a Division Bench of the Calcutta High Court by its order dated March 27, 1980, granted ad interim stay as under :

The Joint Receivers, R.C. Deb and A.K. Dutta are directed not to part with any money lying deposited under the fixed deposit receipt No. 1002-2539 in the Grindlays Bank.

There will be an order directing the Grindlays Bank Ltd. of 29, Netaji Subhash Road not to disburse any amount in respect of fixed deposit No. 1002-2539 standing in the name of S.K. Dutta, the fixed deposit receipt whereof is lying deposited with the present joint receivers R.C. Deb & A.K. Dutta . . .

Order of injunction restraining Jethabhai Khatau & Co. from obtaining any payment out of the moneys lying in the Grindlays Bank and held by the joint receivers or receiver.

This interim order was confirmed by the Division Bench by its order dated September 9, 1980. Hence these three appeals by special leave.

6. Frankly, this Court ordinarily does not interfere with interim orders unless and until manifest injustice convulsively shakes it. Even then, with our usual response of reluctance to undertake to examine interim orders, only a notice to show cause why special leave should not be granted and the interim stay application not be considered, was issued to the respondents. After notices were served

and counter-affidavits and rejoinder affidavits were filed, this matter came before us about four weeks back; our hands off attitude to interim orders manifested itself when we adjourned the matter for four weeks indication to the parties, especially the respondents who are appellants before the High Court, to take effective steps to get their appeals placed on the cause list for hearing and to move for expeditious disposal of the same. We also declined to grant any interim relief. We so adjourned the matter in the fond hope that we may hang on to our tenuous view that ordinarily we would not undertake to deal with interim orders. Our hope has proved a mirage.

7. When this matter was listed before us on April 3, 1981, Mr. Kacker, learned counsel for the appellant stated that almost within the dying embers of the time granted by this Court an attempt was made by the respondents to get their matter listed in the High Court and the only order that the court has made is that the appeals be added to the caused list of the Division Bench and it would be anybody's guess when this last added matter would reach hearing. Having no alternative left open to us, we have heard the matter.

8. As the appeals are pending before the Division Bench of the Calcutta High Court and are to be heard on merits, we would make every manageable human effort to avoid any expression of opinion which may even remotely interfere with judicious adjudication of the issues before the Division Bench. However, we make it clear that even if there is any express or implied opinion discernible in this order, the same has to be wholly ignored by the High Court while disposing of the appeals on merits. With this extra caution we proceed to dispose of these appeals. As every stage of the proceeding has been neatly delineated by us with the orders of the court referred to in details, the permissible inferences may alone be set out.

9. What is the injudicious situation which may bring disrepute to judicial process, stares in the face. The consent decree under which appellant was entitled to recover Rs. 2,85,000 with interest at the rate of 6 per cent per annum from the date of the decree till realisation was made by the court on January 6, 1970. The decree without being satisfied in its minutest part has collected dust for 11 years. And at present who is impeding the execution of the decree ? It is the first respondent company which has been a party to the consent decree and which decree has become final and unassailable. There is no proceeding at present questioning the correctness, validity or legality of the decree or its binding character on the first respondent company.

10. It is again incontrovertible that the judgment debtor-first respondent company has in its fixed deposit with the fourth respondent bank a sum of Rs. 8,40,000. That this amount is of the ownership of the judgment-debtor is not in dispute. Third respondent S.K. Dutta was once a receiver. Respondents say that he has been removed and respondents 5 and 6 who are respectively the advocates of the first respondent company and the second respondent State of West Bengal claim to be appointed as joint receivers. The date of appointment is not made clear but the order dated March 7, 1980 (Annexure 'J') by Mrs. Padma Khastgir, J. leaves no room for doubt that till that date third respondent S.K. Dutta was not discharged as receiver.

11. The High Court on a petition of the appellant levied attachment under Order 21, Rule 52, CPC on the amount lying in fixed deposit account with fourth respondent bank in the name of third respondent S.K. Dutta as receiver of the first respondent company by order dated April 5, 1978. This attachment order was levied by the Master of the Court and the interim attachment was confirmed. Admittedly these orders were not challenged.

12. Sabyasachi Mukherjee, J. by his order dated May 4, 1978, directed third respondent S.K. Dutta

to pay the amount of Rs. 4,20,702.94 out of the amount lying in fixed deposit receipt No. 1002-2539 with the fourth respondent bank to the appellant in satisfaction of the decree. This order may appear to have become final as not having been questioned by any one. Manoj Kumar Mukherjee, J. by his order dated May 24, 1979, directed third respondent S.K. Dutta, receiver of the first respondent company to pay Rs. 4,20,702.94 out of the fixed deposit account held by him as receiver of the first respondent company to the appellant and a consequential order was made directing the bank to pay the amount set out in the order to the appellant. This order dated May 24, 1979, may appear to have become final as it appears not to have been questioned, challenged or appealed by any one.

13. Failure to comply with the court's mandatory direction led the appellant to file a petition for contempt. The alleged contemnors impleaded were first respondent company and the fourth respondent bank. When this petition for taking action in contempt came up before Manoj Kumar Mukherjee, J. there appeared on the scene one Mr. Majumdar, learned counsel for the fourth respondent bank as well as the two joint receivers functioning in dual capacity as joint receivers as well as learned counsel for the respective clients, namely, first respondent company and the second respondent State of West Bengal. At the hearing of this motion for taking action for contempt, Mr. Majumdar learned counsel for the fourth respondent unreservedly agreed to comply with the order of the court on May 24, 1979, which means that he agreed and undertook to pay the amount of Rs. 4,20,702.94 out of the fixed deposit account in the name of the third respondent S.K. Dutta, receiver of the first respondent company. It is because the bank agreed unreservedly and unconditionally to pay up the amount that the motion for taking action in contempt was discharged by the court. No action was sought to be taken against the joint receivers who had interposed themselves in the meantime. Therefore, the court declined to accede to their request to stay a portion of the order. The order dated June 7, 1979, is not a fresh order on merits. It was merely an implementation of the order dated May 24, 1979, which may appear to have become final and binding. Yet the first respondent company and the second respondent State of West Bengal took no further action and surprisingly the bank also joined hands with them by not paying the amount till March 7, 1980. Maybe, there may be some interim orders. We are not made knowledgeable about the nature and character of those interim orders save and except what has been recited in the order dated March 7, 1980, of Mrs. Padma Khastgir, J. However, there seems to be some apparent collusion between the company on one hand and the joint receivers in not complying with the court's order dated May 24, 1979, even though action for contempt was avoided by giving an unconditional undertaking to carry out that order.

14. The three appeals were preferred against the order dated March 7, 1980. That order has nothing to do with the order dated May 24, 1979, or the order dated June 7, 1979. At any rate, the order dated May 24, 1979, may appear to have become final.

15. Would it be appropriate in such circumstances to grant an interim stay of the portion of an order which may appear to have become final in an appeal against an altogether different order ?

16. Mr. Sanker Ghose, learned counsel for the respondent wanted us to take note of various allegations against the third respondent, the receiver, the fact that he was removed, the fact that he was colluding with the appellant and that he was negligent as also that he was discharged at some stage of the proceedings. At this stage, these contentions in our opinion are not very relevant. Maybe, there is merit in these contentions. Maybe, the Division Bench hearing the appeals by the first and second respondent will examine these contentions on merits. The only live issue is whether would it be fair while granting stay of the order dated March 7, 1980 to effectively stay the order

dated March 24, 1979, which appears not to be under appeal though its validity may be questioned in the course of the hearing of the appeal ? If that be so, could the court overlook attempt of the first and second respondents to circumvent the order by obtaining an interim stay in such manner that an order not under appeal gets frozen ? It is, therefore, that we propose to interfere with the interim order made by the Division Bench of the Calcutta High Court on September 9, 1980, confirming the ad interim order dated March 27, 1980, to a limited extent so that an impression that the court's process can be lightly trifled with, may be avoided.

17. Under the circumstances the proper thing to do would be to set aside the interim stay order dated March 27, 1980, as also the order dated September 9, 1980, confirming the interim order but in order to ensure the resultant justice as we are interfering with an interim order, we consider it proper to give certain directions, while restoring status quo ante in the event the appeals filed by the respondents 1 and 2 are allowed or any specific positive direction is given by the court in this behalf. We accordingly allow these appeals and set aside the orders made by the Division Bench on March 27, 1980 and September 9, 1980. The result would be that the order dated May 4, 1978, by Sabyasachi Mukherjee, J. and the order dated May 24, 1978, made by Manoj Kumar Mukherjee, J. as also the undertaking given by the manager of the fourth respondent bank through his learned counsel Shri Majumdar before Manoj Kumar Mukherjee, J. on June 7, 1979, would be revived and would be effective and will have to be implemented. In pursuance to the aforementioned two orders, the fourth respondent bank will have to pay Rs. 4,20,702.94 to the decree holder appellant towards the decretal amount. On receipt of the amount the appellant shall pass a receipt acknowledging receipt of the amount and to the extent of the payment of the amount herein indicated the liability of the fourth respondent bank to the first respondent company or anyone claiming on its behalf or the third respondent receiver shall stand discharged. Before the amount is paid, the appellant shall give security to the satisfaction of the High Court and also an undertaking on affidavit to the Division Bench of the Calcutta High Court before which the appeals preferred by the first and second respondents are pending that in the event the appeals are allowed which makes it consequently necessary for the appellant to repay the amount received from the fourth respondent bank in payment of the decretal amount, the appellant shall deposit the said amount with the Calcutta High Court within one month from the date of the order of the appellate Bench.

18. The appeals will stand disposed of as herein indicated with no order as to costs.

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