

Amiya Prosad Sanyal and Another

Vs

Bank of Commerce Limited (in liquidation) and Others

Civil Appeal Nos. 1438-39 of 1996

(G.N. Ray, S.B. Majmudar JJ)

03.01.1996

JUDGEMENT

G. N. RAY, J. :-

1. Leave granted. Heard learned counsel for the parties.
2. These appeals are directed against the order dated May 17, 1991 and June 18, 1991 passed by a Division Bench of the Calcutta High Court in Appeal No. 436 of 1986 (Samarendra Nath Dass v. Bank of Commerce Limited (in liquidation) and Appeal No. 437 of 1986, Smt. Anjali Paul v. Bank of Commerce Limited (in liquidation). By the first order dated May 17, 1991 both the said appeals were allowed whereby certain properties numbering nine out of nineteen properties earlier sold to the appellants pursuant to the court's sale in execution proceedings are excluded from such sale on the finding that the said nine properties belonged to the respondent Nos. 2 to 13. By the subsequent order dated June 18, 1991 passed in the said two appeals leave was granted by the Division Bench to the Official Liquidator to take steps for setting aside the auction sale by the Court and confirmed in favour of the appellants in respect of the remaining properties and to reactuate the said properties.
3. In or about 1949, the Bank of Commerce Limited (now in liquidation) had filed a suit against one Bagala Prosad Sanyal being Suit No. 1794 of 1949 to recover a sum of Rs. 1,51,939.86 being the amount due for monies lent and advanced on an overdraft account. The said Bank of Commerce Limited having gone in liquidation, it is being represented by the Official Liquidator.
4. On May 20, 1954, the said Suit was decreed in favour of the Bank for a sum of Rupees 1,67,378.36 with interest @ 6% per annum from the date of decree until realisation together with costs. The Official Receiver of the Calcutta High Court was appointed Receiver over certain shares of certain companies which were hypothecated by the judgment debtor Bagala Prasad with the said Bank and it was directed that the said shares would be sold in the event that the decretal dues were not paid. The Receiver was also directed to hand over the sale proceeds of such sale of shares to the Bank with liberty to the Bank to appropriate the sale proceeds in protanto satisfaction of its claim under the said decree. The said shares were however of defunct companies and as such were not marketable. No amount therefore could be realised by sale of the said shares. The decree holder was not aware about the fact that there were immovable properties owned by the judgment debtor. The Official Liquidator caused enquiries pursuant to the orders passed by the Court and it was revealed that the judgment debtor owned nineteen several properties. After ascertaining the title of the judgment debtor in respect of the said nineteen properties, the Official Liquidator proceeded against the immovable properties belonging to the Judgment debtor Bagala Prosad in execution of the said decree and an application was taken out by the Official Liquidator for appointment of a Receiver

over the said immovable properties and for the sale of the same. It may be noted here that the judgment debtor Bagala Prosad had died in the meantime and steps were taken to serve the notice of sale of the immovable properties on the heirs and legal representatives of the said Begala Prosad. A notice under Order 21 Rule 22 of the Code of Civil procedure was issued by the Master of the Calcutta High Court for the purpose of sale of the immovable properties requiring the Judgment debtor to show cause why the said decree should not be executed by selling the said properties.

5. In the said execution proceedings, an order was passed on May 20, 1970 whereby the Official Receiver of the Calcutta High Court was appointed as Receiver over the right, title, and interest of the said heirs and legal representatives of the deceased judgment debtor in respect of nineteen properties with power to sale the same. Pursuant to the said order dated May 20, 1979 a notice was also published in October, 1986 in three leading newspapers of Calcutta for the sale of the said properties. The properties were then put up for sale in the Court of the Company Judge. A joint offer was given by the appellants and such offer was found to be the highest and the same was accepted by the High Court. In compliance with the direction of the High Court, the appellant also deposited a sum of Rs. 1,40,000/- being the 25% of their offer by October 3, 1987.

6. Prior to that in or about November, 1986, two applications were filed, one by the respondent Nos. 2 to 6 and the other by the respondent Nos. 7 to 13 claiming right, title and interest in respect of nine properties out of nineteen properties advertised in the said notice. A prayer was made in the said applications for exclusion of the nine properties from the sale notice for being auctioned. The properties sought to be excluded by the respondent Nos, 2 to 13 are properties under Item Nos. 1, 2, 4, 5, 8, 16, 17, 18 and 19 of the sale notice.

7. The respondent Nos. 2 to 6 claimed for exclusion of the said properties on the ground that they had purchased the same from the heirs and legal representatives of the deceased judgment debtor between 6th May to 8th May, 1970. The respondent Nos. 7 to 13 claimed exclusion of the other properties on the ground that their vendor Manik Sanyal and others had purchased the said properties from the heirs and legal representatives of the deceased judgment debtor between 6th May and 8th May, 1970 and the said respondents thereafter purchased the said properties from the said Manik Sanyal and others between 14th May and July 23, 1986. The said two applications filed by the respondent Nos. 2 to 6 and 7 to 13 were disposed of by the learned Single Judge of the Calcutta High Court. No order was passed on the said applications but leave was granted to the respondents to take appropriate steps in accordance with law against the Official Liquidator.

8. Being aggrieved by such order passed by the learned Single Judge, two appeals were preferred to the Division Bench of the High court being appeal Nos. 436 of 1986 and 437 of 1986. It has already been indicated that the orders impugned in these appeals have been passed by the Division Bench in the said two appeals.

9. The learned counsel for the appellants has submitted that the sale transaction made in favour of the respondent Nos. 2 to 13 were sham and fraudulent transactions. It is contended that the legal heirs and representatives of the deceased judgment debtor were fully aware that the said properties were notified for auction sale in execution of the decree passed against their predecessor-in-interest, the judgment debtor. But in order to avoid the sale of those valuable properties, the said legal heirs and representatives of the judgment debtor entered into a sham transaction with the respondents and their vendors between 6th May to 8th May, 1970. Accordingly, such purported sale must be held as null and void. It has been contended that on May 20, 1970 in the execution proceedings, a Receiver was appointed in respect of the said nineteen properties. Accordingly, the subsequent sale

transactions by the vendors, Manik Sanyal and others in favour of the respondent Nos. 7 to 13 between May 1986 to July 1986 must be held illegal and void. It is contended that the said sale transactions between 6th May and 8th May, 1970 by the legal heirs of the Judgment debtors had been made with ulterior motive for nullifying the execution proceedings initiated by the decree holder respondent No. 1. It is contended that the Division Bench unfortunately failed to appreciate the facts and circumstances of the case which speak for themselves. Having ignored the fraud practiced by the Respondents which is patent from the purported sale transactions, the Court accepted the said sale transactions to be valid and on such footing excluded the same from being auctioned although such properties had in fact been already sold in auction to the appellants and such sale had been confirmed. It has also been contended that the sale of the said nine properties in auction in favour of the appellants having been effected by the Company Judge of the High Court, the Division Bench should not have allowed the appeals filed by the said respondents for assailing such sale. It has also been contended that the offer of the appellants being highest, the sale in favour of the appellants ought to have been finalised and the applications made by the said respondents should have been rejected.

10. The learned counsel appearing for the respondent Nos. 2 to 13 has, however, refuted such contentions. It has been submitted that the registered conveyances of nine properties being item Nos. 1, 2, 4, 5, 8, 16 to 19 in favour of the said respondents and their vendors by the heirs and legal representatives of the deceased judgment debtor are legal and valid, Accordingly, such properties cannot be sold in auction in execution of the said decree.

11. The learned counsel has submitted that admittedly the said registered conveyances in respect of nine properties in favour of the respondents had been effected long before any Receiver was appointed in respect of the said properties. By the order of the Court, Receiver was appointed only on May 20, 1970, but the properties were sold between 6th May and 8th May, 1970.

12. It is contended by the learned counsel for the respondents that as the title of the respondents had been perfected earlier namely between 6th May and 8th May, 1970, the Division Bench in the impugned orders had rightly observed that when the sale deeds were executed by the heirs and the legal representatives of the deceased judgment debtor, no Receiver had been appointed by the Court. The Division Bench has also come to a specific finding that no notice of the application for issuing sale proclamation on which the order of May 20, 1970 was made by the Court had been served on the heirs and legal representatives of the deceased judgment debtor. The fact is that the notice stated to have been served was not on the legal representatives of the judgment debtor but it was issued in the name of the judgment debtor who was then dead. The Division Bench has therefore rightly held that no proper notice had been served on the legal representatives of the judgment debtor and the sale transactions between the parties could not be held invalid.

13. The learned counsel for the respondents has also submitted that the Division Bench has also held that the Official Liquidator had also not taken any step to set aside the sale in respect of the said nine properties in favour of the said respondents. Accordingly, there was no occasion for the Court to interfere with such sale made in favour of the respondents Nos. 2 to 13.

14. The learned counsel has submitted that after noticing the said fact, the Division Bench has held that unless the sale is set aside in appropriate proceedings by any party aggrieved by such sale, the Court cannot at that stage interfere with the said sale.

15. The learned counsel has also submitted that in the said suit instituted by the Bank prayer for sale

of certain shares stated to have been hypothecated with the plaintiff Bank was made. There was no allegation that the said nine properties had been mortgaged with the Bank. No mortgage decree in respect of the said nine properties had also been sought for in the suit. The said suit was decreed in 1954. The sale of the said nine properties in favour of the respondents Nos. 2 to 13 had taken place after about sixteen years from the date of decree between 6th May and 8th May, 1970. Even after another sixteen years namely in 1986, an attempt was made for the first time by the Official Liquidator to sell the said properties. Such sale, however, in respect of the said nine properties cannot be held because the respondents Nos. 2 to 13 had already obtained valid title to the said properties on the strength of registered conveyances executed between 6th and 8th May, 1970.

16. The learned counsel for the respondents has also submitted that although the said respondents had validly obtained title in respect of the said nine properties even then, pursuant to the directions of the Court, the said respondents made additional payment of Rupees 84,000/- in favour of the decree holder. The learned counsel has also submitted that the total price of the properties had been fixed at Rupees 5,51,000/- but as the nine properties had already been transferred to the said respondents, the value of the remaining ten properties was fixed at Rs. 3,17,900/-. Such deduction in the value of the properties after excluding the value of the said nine properties clearly indicates that the appellants as auction purchasers had not paid anything for the said nine properties and there was no occasion for them to suffer any prejudice by the exclusion of the said nine properties. The learned counsel has, therefore, submitted that no interference against the impugned judgment is called for and the appeals should be dismissed.

17. After giving careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that the decree holder Bank did not claim any mortgage right in respect of the said nine properties. A simple money decree was obtained by the Bank in 1954. Initially, the attempt was made to sell certain shares which had been hypothecated with the Bank for realisation of the decretal amount but such shares were issued by defunct companies and therefore they had no marketable title. It was only after a long lapse namely after thirty two years from the date of decree an attempt was made by the Official Liquidator in 1986 to sell the nineteen properties which were owned by the Judgment debtor after ascertaining the title to such properties. On the prayer of the Official Liquidator that the decretal amount would be satisfied by the sale of the said properties belonging to the Judgment debtor, the Court appointed a Receiver on May 20, 1970, in respect of the nineteen properties which were owned by the Judgment debtor. It, however, appears that between 6th and 8th May, 1970, the said properties had been sold by the heirs and legal representatives of the deceased Judgment debtor. On the dates of sale of the said nine properties, there was no legal bar for the said heirs of the Judgment debtor to execute sale deeds in respect of the said properties. Such properties had not been attached on the dates between 6th May and 8th May, 1970. The Receiver was appointed only on May 20, 1970. The Division Bench has also clearly come to the finding that no notice about the proposed auction sale had been served on the legal representatives of the deceased Judgment debtor between 6th May and 8th May 1970. As a matter of fact initially a notice was issued in the name of the deceased judgment debtor. There is also no material warranting a finding that the respondent Nos. 2 to 13 were aware about the steps taken to effect the sale of the immovable properties of the Judgment debtor in execution of the money decree on the dates when the nine properties had been sold.

18. The Division Bench has also not found as a fact that there had been any collusion between the purchaser of the said nine properties and the heirs and legal representatives of the deceased judgment debtor. In the aforesaid circumstances, auction sale of the said nine properties in execution of the said decree can not be held valid. The Division Bench of the High court has also indicated

that although the said nine properties had been sold between May 6 and 8, 1970, the Official Liquidator had not taken any step to get the sale transactions set aside in any appropriate proceedings. In the aforesaid facts and circumstances of the case, we do not find any reason to interfere with the impugned decision of the High Court. The appeals therefore fail and are dismissed with no order as to costs. Appeals dismissed.