

# SUPREME COURT OF INDIA

Gloria Chemical Industries Ltd.

Vs.

Bank of India

(A Ahmadi, K Paripoornan and S V Manohar JJ.)

09.10.1996

## ORDER

Sujata V. Manohar, J.

1. The first respondent, Bank of India, filed a suit against Gloria Chemical Industries Ltd., the petitioner in S.L.P. (C) No. 3277 of 1992 and against Ramesh Kumar Seth and Asha Seth the petitioners in S.L.P. (C) No. 3276 of 1992 for a decree for Rs. 3,62,37,165.10 and for other reliefs. The suit was filed against Gloria Chemical Industries Ltd. as principal and Ramesh Kumar Seth and Asha Seth as guarantors. The claim of the bank was in respect of credit facilities given to Gloria Chemical Industries Ltd., under a Cash Credit Account, Term Loan Account No. I, II and III, Temporary Overdraft Account and Guarantee Account. Ramesh Kumar Seth and Asha Seth were guarantors in respect of the amounts advanced by the bank to the said company.

2. On 30.8.1990 the plaintiff-bank took out a judge's summons under the provisions of chapter XIII - A of the Rules of the Calcutta High Court for final judgment against the company and the guarantors. chapter XIII - A of the Rules of the Calcutta High Court Provides a summary procedure in suits to recover debt or a liquidated demand in money or for immovable property. Rule 1 of the said Chapter is as follows:

1. Nature of Cases in which applicable:

The provisions of this Chapter shall not be applicable save to suits:

(A) in which the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant with or without interest arising

(i) on a contract express or implied; or

(ii) on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee where the claim against the principal is in respect of a debt or a liquidated

demand only; or

(iv) On a trust: or

(b) for the recovery of immoveable property with or without a claim for rent or mesne profits by a landlord against a tenant whose terms has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant.

3. The plaintiff-book had claimed the following reliefs in the suit:

(a) Decree for Rs. 3,62,37,165.10 against defendants 1, 2 and 3 jointly and severally:

(b) Interim interest and interest on judgment s mentioned in Paragraph 18 of the plaint:

(c) Declaration that the suit properties mentioned in paragraph 12 of the plaint remain hypothecated and charged as security for payment of the plaintiff's claims herein;

(d) Declaration that the plaintiff stands subrogated to the ownership rights to the stock of Hydrogenated Rice Bran Oil referred to in paragraph 17 of the plaint and has become owner thereof:

(e) Decree for sale and realisation of the suit properties mentioned in paragraph 12 of the plaint and the stock of Hydrogenated Rice Bran Oil referred to in paragraph 17 of the plaint by public auction or private contract or otherwise with liberty to the plaintiff to appropriate the net proceeds thereof in protanto satisfaction of the plaintiff's claims herein:

(f) Receiver;

(g) Injunction;

(H) Attachment;

(i) Costs;

(j) Further and other reliefs.

4. The defendants who are the petitioners here contended that the provisions of Chapter XIII-A were not applicable to the suit in question since the reliefs claimed included other claims which were not in the nature of a liquidated demand in money payable with or without interest. A special Bench of the Calcutta High Court which was constituted to consider this question held that the provisions of chapter XIII - A were attracted to this suit. It proceeded to hear the claim on merit. The court examined the claim of the plaintiff-bank against the company (1st defendant in the suit) under the said accounts as also its claim for interest, and held that no bona fide dispute was raised by defendant No. 1 to the said claim. It also noted that the interest was charged at a rate which was agreed to by the said company which had passed from time to time Board Resolutions accepting the rate of interest. The Calcutta High Court decreed the claim of the plaintiff bank in terms of prayers (a) and (b) of the Judges' summons.

5. In relation to the claim of the plaintiff- bank against the two guarantors the court came to the conclusion that the guarantees given by them were in respect of the amounts due under the Cash Credit Account, Term Loan Accounts No. I, Term Loan Account No. III and the Guarantee Account with interest thereon at the agreed rates. The guarantees did not cover the claim of the plaintiff-bank relating to Term Loan Account No. II and Temporary Overdraft Account. Accordingly, it decreed the claim of the plaintiff-bank against the guarantors who were defendants 2 and 3 in the suit for a sum of Rs,3,46,91,831 and gave to them unconditional leave to defend the balance of the claim.

6. The petitioners before us in the two special leave petitions who are the original defendants, have contended before us that the provisions of chapter XIII-A of the Calcutta High Court Rules were wrongly applied to the claims in the present suit. After arguments were advanced before us at some length, the first respondent i.e. the original plaintiff-bank submitted before us that in fact the hypothecated goods and/or mortgaged properties had already been sold by another creditor namely, the West Bengal State Financial Corporation to one M/s. Kalyani Soap Industries Ltd. for a consideration of Rs. 170 lakhs. Out of the down payment of Rs. 46 lakhs made by the said purchaser, the plaintiff-bank had received its pro rata share of Rs. 20.19 lakhs. The plaintiff-bank was also entitled to receive a further sum of Rs. 34 lakhs from out of the balance sale consideration of Rs. 124 lakhs. It further submitted that the bank had given credit to the petitioners for the sum of Rs. 20.19 lakhs already received by it against the claim in the present suit. According to the plaintiff-bank this amount has been received by the plaintiff-bank between April, 1992 and May, 1995 after the decree of the Calcutta High Court. The plaintiff-bank who is the first respondent before us filed an application for deletion of prayers (c), (d), (e), (f), (g), and (h) of the plaint, they having become infructuous and unnecessary. This application was granted by us. In view of this amendment to the plaint the claim of the plaintiff-bank is confined only to the money claimed. The question, therefore, whether the provisions of chapter XIII-A of the Rules of the Calcutta High Court are attracted to the present suit thus becomes academic.

7. On the merits of the claim the Calcutta High Court has examined the documents, the defence of the defendants and has by a reasoned order granted the reliefs set out earlier. We do not see any reason to interfere with the same. We make it, however, clear that the bank, first- respondent herein, will give credit to the petitioners for the amount receivable by it as its pro rata share on the sale of the mortgaged/hypothecated properties from the date when the sale took place. The petitioners will not be liable for any claim for interest on the said amount from the date of the sale till the date of actual realisation of the price so that the petitioners are not charged interest in respect of the time which the bank and other creditors have granted to the purchaser for payment of the sale price.

8. The special leave petitions are disposed of accordingly. In the circumstances there will be no order as to costs.