

SUPREME COURT OF INDIA

Sajjan Textile Mills Ltd.

Vs.

ICICI Bank Ltd.

C.A.No.573 of 2005

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

16.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. In the light of the order we intend making, only the skeletal facts are necessary. They are as under:

2. The appellant, Sajjan Textile Mills Ltd. was sanctioned a loan of Rs.3 Crore by the respondent Bank on 15th July 1992. As the appellant committed default in making repayment, a civil suit for recovery was filed. The Bombay High Court also passed an order dated 18th December 1997, appointing the Court Receiver, as the Receiver for the movable and immovable properties of the appellant. The appellant, however, made an application before the BIFR on 23rd June 1998 for being registered as a sick industrial unit and it was registered as such on 15th July 1998 and was declared a sick unit by order dated 6th August 1998. Two suits were thereafter filed by the respondent Bank in the Bombay High Court, one against the appellant for recovery of a sum of Rs.8, 36, 15,087/-and the other against the guarantors. The aforesaid civil suits as also suits filed by the Central Bank of India and the State Bank of Travancore also for recovery of loans advanced were all transferred to the DRT, Bombay Bench, and an inventory of all the machinery available in the appellant's mill was made and a report submitted to the Tribunal. The BIFR also passed an order on 5th October 2001 that as the appellant company could not be resuscitated, it was just and equitable that it be wound up. In the meanwhile, the respondent Bank (in April 1999) also filed an application for the recovery of the principal amount of Rs.3 Crore. The DRT in its order allowed the application and passed an order for the recovery of the aforesaid amount from the appellant. A notice of demand dated 31st December, 2002 was issued by the Recovery Officer and recovery proceedings were initiated. The Recovery Officer issued a certificate against the appellant and the guarantors making them jointly and severally responsible for a payment of Rs.5,90,32,753/-. As the properties were situated within the jurisdiction of the DRT, Coimbatore, Tamil Nadu, the recovery proceedings were accordingly transferred to Coimbatore on an application made by the Bank. As the appellant and the guarantors did not pay the amounts due, an order for the attachment of the movable

property of the appellant was issued, and despite several objections taken by the appellant, a proclamation for sale by way of tender was issued on 19th January 2004. The five tenders received were opened on 3rd February, 2004 and Sri Maruthi Textiles was found to be the highest bidder with a bid of Rs.2,50,99,999/-. The Recovery Officer thereupon directed the successful tenderer to deposit the balance money within 15 days which was further extended by 30 days up till 27th February 2004. The aforesaid amount was, however, not paid on which the Recovery Officer in his order dated 17th March 2004 directed that the offer of the 2nd respondent, Sri Vairalakshmi be accepted on payment of the amount tendered by Sri Maruthi Textiles. This offer was accepted by respondent No.2 and it undertook to deposit the bid money, but vide application dated 25th March 2004, sought an extension of time for doing so, which too was granted. It appears that on 1st March 2004, the Office of the Recovery Officer and DRT Coimbatore fell vacant and the Presiding Officer DRT, Chennai was appointed to hold the dual charge of both places. On 16th April 2004, respondent No.2 once again applied for more time for complying with the conditions of payment and the Presiding Officer, DRT, Chennai, who was holding the post as an additional charge made the following order on 7th May 2004:

“Since no regular Recovery Officer is available in this Tribunal, the EMD deposited by the second bidder has to be returned. Further, the matter should be returned to DRT-III, Mumbai for further N.A.”

4. On 11th May 2004, the respondent Bank filed a writ petition before the Madras High Court for a direction to the Presiding Officer, DRT, Chennai to proceed with the recovery of the amounts due. In this petition, Sajjan Textiles, the present appellant, was shown as respondent No.3 and SriVairalakshmi & Co. was shown as the second respondent. The appellant was duly served and a vakalatnama also filed by an Advocate on its behalf on 21st July 2004. It appears, however that the High Court by its order dated 2nd August 2004 disposed of the writ petition in the absence of the appellant's counsel by giving yet more time to respondent No.2 to pay the balance amount either in full or in instalments within a time frame of 2 months and the Presiding Officer, DRTC was directed to complete the sale transaction in terms mentioned in the body of the order. It is this order which has been impugned in this appeal.

5. Mr. Singhvi, the learned senior counsel for the appellant, has at this stage raised only one argument before us. He has pointed out that the appellant was respondent No.3 in the writ proceedings in the High Court and though a Vakalatnama had been filed by a counsel on its behalf, the name of the counsel had not appeared in the cause list on the 2nd August, 2004 nor on the date preceding that date with the result that the appellant had suffered serious prejudice on account of remaining unrepresented on being unaware of the proceedings.

6. Mr. Andhyarujina, the learned senior counsel for the respondent Bank has, however, taken us through the entire sequence of events and the history of the litigation, and pointed out that the appellant was only a formal party in the writ proceedings, and as all the orders pertaining to the recovery and the sale had become final as some had not been challenged by the appellant and in some others, the challenge had failed, no useful purpose would be served in

interfering in this matter. He has also pointed out that the property had been sold and removed from the appellant's mill under the orders of this Court and nothing now remained to be decided and that the efforts of the appellants to prolong the litigation any further should be discouraged.

7. We have heard the learned counsel for the parties and gone through the record very carefully. It is true that the litigation has had a chequered career in several forums including this Court. However in the present proceedings, we are not called upon to take a decision on the ultimate effect of the earlier set of proceedings as Mr. Singhvi has limited his claim to the fact that the appellant had not been heard at the time when the High Court had made the impugned order on 2nd August 2004. We are unable to accept Mr. Andhyarujina's plea that as the sale proceedings had attained finality, there was no need to have heard the appellant/Company as it had been impleaded as a mere formality. We feel that once having made the appellant a party in the writ proceedings, it does not lie on the Bank to contend that the appellant was not entitled to a hearing. We, accordingly, set aside the order of the High Court dated 2nd August 2004, and remit the case for a fresh decision in accordance with law. We also direct that till such time the High Court takes its decision in the matter, the status quo order passed by this Court on 29th October 2004 will continue to operate. We also request the High Court, in the background that the matter has been pending for a very long time, to render its decision as expeditiously as possible.

8. The appeal is allowed. There will, however, be no order as to costs.