

## **RAJASTHAN HIGH COURT**

Bank of Baroda

Vs.

Satyendrapal

Civil Misc. Appeal No. 622 of 2000

(J.C. Verma, J.)

19.09.2000

### **JUDGEMENT**

**J.C. Verma, J.**

1. This Civil Misc. Appeal has been filed by the Bank of Baroda, against the order dated 4-5-2000, passed by the learned Addl. District Judge No. 4, Jaipur City, Jaipur, whereby he had allowed the application for temporary injunction filed under Order 39, Rules 1 and 2, Civil Procedure Code by Satyendra Pal Khurana, the plaintiff respondent No. 1 in the suit who is the real contesting respondent.

2. The brief facts of the case are that a firm named as M/s. R.S. Rubber Industries Ltd. Jaipur, consisting of five partners namely; Tilak Raj Parnami, Smt. Usha Parnami, Satyendra Pal Khurana, Smt. Bela Khurana and Smt. Lajwanti Khurana, had started a business on the plot allotted to them by the RIICO. The firm had taken a loan from the present petitioner. The property on which the business had started was allotted in the name of the business had started was allotted in the name of the partners of the firm. The loan as taken by the firm remained unpaid with the result that the appellant Bank had moved the debt Recovery Tribunal, Jaipur, against eight persons namely, the Firm, the five persons and the guarantors. At the time of filing of the recovery suit before the Tribunal the partners the respondent Nos. 4, 5 and 6 had retired whereas Lajwanti Khurana, had died and Satyendra Pal remained only partner alive as a sole proprietor of the firm. The decree was passed against all the parties made before the Tribunal. However, Satyendra Pal the respondent No. 1, moved an application that he was the partner of the firm but he was not served and therefore, so far as the decree against his personal name is concerned, that be set aside and this application was accepted on 10-6-1998, by the Tribunal. However, the decree was maintained against

rest of the defendants including the firm.

3. For the recovery of the amount, the Bank had approached the Recovery Officer, for auction of the plot No. F-957. Even the receiver was appointed to take inventory of the goods lying in the firm. The (sic) respondents had also approached the Appellate Tribunal at Bombay but were not successful. The property in question was also kept as mortgage with the Bank and a certificate was also issued by the RIICO that the plot had been allotted on the application of the partners of the firm. The title deed of the property in question was also deposited with the Bank for creation of the equitable mortgage for obtaining loan. In the lease deed granted by the RIICO in the year 1988, the property in question also stood in the name of M/s. R.S. Rubber Industries Ltd. Jaipur.

4. Satyendra Pal, the respondent No .1, approached the Civil Court in Suit No. 6/2000 for injunction with an application of temporary injunction against the Bank, praying therein, that for the reason that the three partners of the firm had already retired and fourth partner had died and therefore, now the property in question belongs to Satyendra Pal, the respondent No. 1, and as such recovery could be made by the sale of the said property.

5. It is not disputed that the property has since been sold by way of auction and the auction money amounting to Rupees 26,85,000/- has also been deposited with the Debt Recovery Tribunal, by the auction purchaser. However, by the said order, the trial Court while accepting the application for temporary injunction had ordered that no decree should be passed for the recovery of the loan against the plaintiff and the auction should not be confirmed, with a further direction to the plaintiff that the plaintiff shall also not alienate the property till the whole amount of debt is paid.

6. The parties had agreed that the matter can finally be decided at the admission stage and therefore, I decide it finally at admission stage.

7. It is the contention of the learned counsel for the appellant Bank, that the trial Court, while granting injunction has transgressed on the powers of the Debt Recovery Tribunal, which is the statutory authority and the auction and the decree passed by the Tribunal would stand nullified if the interim injunction is allowed to continue and therefore, the court below has in violation of the said principles, relating to the grant of

interim injunction, exceeded its jurisdiction or has exercised the jurisdiction either not vested in it or exercised illegally.

8. Per contra, learned counsel for the respondent, Mr. B.L. Sharma, appearing for Mr. Satyapal Khurana, states that the respondent No.1 is duty bound to safeguard its interest and the property in question could not have been put to sale for the reasons that the partners had either voluntarily retired and one had expired and for the reasons that there was no partner in the firm except the respondent No. 1; it is to be deemed that there is no firm in existence and in such situation, the property of the firm is vested in respondent No. 1, in his individual capacity and there is no decree passed against Shri Satyendra Pal Khurana, and as such no auction could have been made or ordered to be made and therefore, the order of the trial Court in granting interim injunction is perfectly in order.

9. From the above said facts and contentions, the following points are admittedly in existence:-

1. The firm consisting of the five partners had started the business on the property in question which was allotted by the RIICO for the purpose of industry of the said firm through five partners.
2. The firm through the partners did obtain the loan from the Bank;
3. The firm had placed the title deed with the Bank as collateral security of the property in question;
4. The firm had been dealing with the Bank through its partners;
5. There is a decree in existence against the firm and against its partners in individual capacity and guarantors except the Satyendra Pal Khurana, as partner.
6. Three partners had retired after obtaining the loan and one partner had died. Shri Satyendra Pal Khurana, became the sole proprietor of the firm . The decree passed against the firm had become final; and
7. Recovery Certificate had been issued. The property in question has already been sold for a sum of Rs. 26,85,000/- against the amount of loan rupees about 43,00,000/- and the auction money had already been deposited about a year back but the confirmation of the sale has been stayed.

10. The only question arises, is whether in the circumstances as mentioned above, the

firm as such was liable or not. It goes without saying that the firm had mortgaged its property by all the initial partners including the present plaintiff. For certain reasons, the partners retire/or even firm is dissolved, the liability as created by the firm remains intact. In the present case, the trial Court has not appreciated the law properly only because of the reason that one of the partner who is now the sole proprietor of the firm has alleged that he is only the person left in the partnership firm, therefore, he is not liable to pay the amount in question from the property mortgaged by the firm, and accepting this argument by the trial Court amounts to exercise of the jurisdiction illegally. There was neither a *prima facie* case to grant the interim injunction nor balance of convenience in favor of the plaintiff. In the present case, the decree passed by the DRT under the special Act had already been passed against the firm and even the auction of the property pledged by the firm as security had also been completed and the amount stood deposited on the issuance of the recovery certificate issued by DRT.

11. In the circumstances none of the principles for granting the interim injunction i.e. the *prima facie* case, balance of convenience etc. could not be said to have been in favor of the plaintiff. The order passed by the trial Court can not be sustained in the eyes of law and is set aside by the Court.

In the result, the appeal is allowed. The order dated 4-5-2000 , passed by the trial Court on the application for temporary injunction under Order 39, Rule 1 and 2, Civil Procedure Code is quashed and set aside. The interim injunction granted by this Court stands vacated.

Appeal allowed.