

(1973) 10 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 456 of 1973 in Civil Writ No. 2289 of 1972

The State of Punjab and Others

APPELLANT

Vs

The Industrial Finance

RESPONDENT

Corporation of India and Others

Date of Decision: Oct. 1, 1973

Acts Referred:

- COMPANIES ACT, 1956 - Section 391
- Punjab General Sales Tax Act, 1948 - Section 17

Citation: (1974) 34 STC 453

Hon'ble Judges: Harbans Singh, C.J; Prem Chand Jain, J

Bench: Division Bench

Advocate: I.S. Tiwana, Deputy A.G, for the Appellant; Jagjit Singh Arora and R.K. Chhibbar for respondent Nos. 1 and 2 and Bhagirath Dass, for the Respondent

Final Decision: Dismissed

Judgement

Prem Chand Jain, J.

In order to decide the contentions raised before us, it would be appropriate to notice certain salient features of this case which read as under;

2. The Industrial Finance Corporation of India (hereinafter referred to as the corporation), advanced a loan of Rs. 45,00,000 to the Panipat Woollen and General Mills Company Limited (hereinafter referred to as the company), against an English mortgage on its entire movable and immovable properties excepting raw materials, stocks in process, finished and unfinished products, by an indenture dated 25th February, 1964. Subsequently, at the request of the company to furnish guarantee for an amount not exceeding Rs. 7,00,000 in respect of the deferred payment to be made to the machinery suppliers, namely, M/s. Toyada Tsusho Kalsha Limited, Nagoya (Japan), in respect of the plant and machinery to be imported by the company from them, the corporation issued a letter of guarantee on 11th October,

1963, in favour of the said company in Japan and in order to secure the liability of the corporation arising on account of the said guarantee, the company created an equitable mortgage by deposit of title deeds on 10th October, 1983, and also executed hypothecation deed on that date in favour of the corporation. The company covenanted to repay the corporation the amount in twenty half-yearly instalments and in case of breach of payment of any instalment, the company was liable to pay the amount in lump sum. As the company committed breach in the payment, the Chief Law Officer of the corporation asked the company by a letter dated 29th May, 1969, to pay the corporation an amount of Rs. 45,34,898.65 with further interest within 15 days and in case of failure, the provisions of the deed of mortgage and the Industrial Finance Corporation Act, 1948 (hereinafter referred to as the Act), would be enforced. The company failed to make the payment.

3. It further transpires that on account of financial difficulties of the company, some of its unsecured creditors and depositors made an application to this court for winding up of the company under the Companies Act, 1956 (hereinafter referred to as the Companies Act). During the pendency of the proceedings, a scheme of arrangement was proposed by the company but the same was not accepted with the result that the company submitted another scheme of arrangement with its unsecured depositors and shareholders u/s 391 of the Companies Act. The said scheme of arrangement was sanctioned by this court on 26th April, 1972, with some modifications. The management of the company failed to supply the funds according to the terms of the said arrangement, and a letter was written to the corporation requesting it to take steps as might be necessary for protecting its interests. The corporation served a notice on the company through Shiv Kumar Gupta, dated 20th May, 1972, calling upon him to hand over the peaceful possession of the mortgaged assets to the corporation. The board of directors of the company, after considering the Setter of the corporation, sent to it a resolution agreeing to hand over the possession of the mortgaged assets subject to the directions of this court. The corporation, in the meantime, had negotiated with one L.N. Jhunjhunwala, Managing Director of Rajasthan Spinning and Weaving Mills Limited, who agreed to take on lease the mortgaged assets of the company for a period of 10 years on an annual rent of Rs. 12,00,000 payable quarterly. On an application, this court ordered that, the possession of the mortgaged assets be given to the corporation and it could give the same on lease to L. N. Jhunjhunwala. In pursuance of the order of this court, the corporation, after taking possession of the mortgaged assets of the company gave them on lease by a registered lease deed dated 25th June, 1972, to Padamshree Textile Industries Limited (hereinafter referred to as the lessee), a company formed by L.N. Jhunjhunwala, for a period of ten years on an annual rent of Rs. 12,00,000 payable quarterly. The possession of the company was also delivered to the aforesaid lessee.

4. It further transpires that some proceedings were initiated for the recovery of the arrears of sales tax by the excise and taxation authorities about which the lessee

informed the corporation that the excise and taxation authorities had preferred a claim for Rs. 8,00,000 towards arrears of sales tax for the years 1966 to 1972, outstanding against the company and had purported to attach the properties of the company which were on lease with them and that the authorities were contemplating to sell the properties on or before 11th July, 1972. The corporation represented to the authorities but the attachment was not withdrawn and the objections were rejected. The corporation was also Informed, vide letter dated 7th July, 1972, that the arrears of sales tax, if not recovered in the normal course, would be recovered as arrears of land revenue. The corporation filed Civil Writ No. 2289 of 1972, calling in question the legality and propriety of the aforesaid action of the authorities under the Sales Tax Act.

5. The claim in the writ petition was contested on behalf of respondents 1 to 4 on various grounds. The learned single Judge, after going through the entire matter, found that the action of the authorities was illegal and accordingly allowed the petition with costs, vide order dated 29th January, 1973. It is against the said order of the learned single Judge that the present appeal under clause 10 of the Letters Patent has been filed by the State of Punjab and others.

6. The only contention raised on behalf of the corporation before the learned single Judge was that the corporation was the mortgagee of the mill, that the respondents had no right to attach and sell their rights in the mill and that the arrears of sales tax could be recovered from the attachment and sale of equity of redemption, The learned single Judge, relying on a Division Bench decision of this Court in Industrial Finance Corporation of India v. State of Punjab and Ors. 1972 R.L.R. 82 accepted the contention, referred to above, raised by the learned counsel for the corporation. However, to defeat the claim of the corporation, a contention was raised on behalf of the department that the company had transferred the business to the corporation which was carrying on the same and that in view of the provisions of Section 17 of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Tax Act), the authorities were entitled to recover the amount of sales tax from the sale of the aforesaid properties. This contention was rejected by the learned single Judge on the short ground that such a plea had not been taken in the return.

7. In the appeal before us, Mr. I.S. Tiwana, the learned Deputy Advocate-General, did not contest the finding of the learned single Judge given on the basis of Industrial Finance Corporation of India's case 1972 R.L.R. 82 that the mortgagees of the mill were entitled to remain in possession of the property till the whole of the mortgage amount was paid and that the sales tax authorities could attach and sell only the equity of redemption. However, it was sough to be argued that the learned single Judge fell in error in not permitting the contention to be raised on the basis of the provisions of Section 17 of the Tax Act, on the ground that no such plea had been taken in the return. According to the learned Deputy Advocate-General, it was the case of the petitioners themselves in sub-paragraph (1) of paragraph 22 of the

petition that the approach of the authorities that the entire assets and liabilities of the company, which had been transferred to the corporation, were liable to be sold for the payment of the arrears of sales tax under the provisions of Section 17 of the Tax Act, was not tenable and this plea was denied by the department in its return, and in view of the definite stand taken in the petition, no further pleading by the department was necessary in this respect. After giving our thoughtful consideration to the entire matter, we find ourselves unable to agree with the contention of the learned Deputy Advocate-General as it was for the department to prove that the ownership of the business had been entirely transferred and such a question could not be decided merely on the negative plea taken by the corporation in the petition. However, in spite of this definite view of ours, we allowed the learned Deputy Advocate-General to make his submissions on merits also. The learned Deputy Advocate-General contended that the corporation or the lessee was the transferee of the business and as such in their hands also the amount of arrears of sales tax could be recovered. Section 17 of the Tax Act reads as under:

17. Transfer of business.--Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the certificate of registration of such dealer had initially been granted to the transferee; and the transferee shall on application to the prescribed authority be entitled to have the registration certificate amended accordingly.

8. From its bare perusal, we find that it has absolutely no applicability to the facts of the present case. One of the essential conditions before the applicability of this provision could be invoked is that the ownership of the business is entirely transferred. Admittedly, in the instant case, there has not been such a transfer of the entire ownership of the business. The equity of redemption is still with the company. The provisions of Section 17 would apply only where there is a complete transfer of the business such as where the business has been sold in its entirety. Moreover, the moment it is conceded that the finding of the learned single Judge to the effect that the corporation was entitled to remain in possession of the properties till the whole of the mortgage amount was paid and that the sales tax authorities could attach and sell the equity of redemption only, was unassailable, we fail to see how the second contention on the basis of the provisions of Section 17, could even arise at all. Thus viewed from any angle, we find that the contention of the learned Deputy Advocate-General is without any merit.

9. No other point was urged.

10. For the reasons recorded above, this appeal fails and is dismissed with costs.