(1981) 12 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Miscellaneous No. 4005-CII of 1981

Industrial Finance Corporation of India and another		APPELLANT
	Vs	
M/s Sehgal Paper Ltd. and others		RESPONDENT

Date of Decision: Dec. 2, 1981

Acts Referred:

- Industrial Finance Corporation Act, 1948 - Section 30

Hon'ble Judges: Rajendra Nath Mittal, J

Bench: Single Bench

Advocate: S. Rongarajan with Mr. L.M. Suri, for the Appellant; H.L. Sibal with Mr. J.K. Sibal and Mr. J.S. Narang for the Respondent No. 1, Mr. D.N. Awasthy with Mr. Sita Ram and Mr. R.M. Suri for the Respondents No. 2 to 4, Mr. R.N. Narula for the Respondent No. 5, Mr. N.K. Kaushal, Chief Law Officer, State Bank of Patiala with Mr. Kuldip Singh, Bar-at-law for the respondent No. 6, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajendra Nath Mittal, J.

The petitioners have filed a petition u/s 30 of the Industrial Finance Corporation Act, 1948 (hereinafter referred to as the Act) against M/s. Sehgal Papers Limited, respondent No. 1, for sale of latter''s properties, subject-matter of the deeds of hypothecation dated 24th February 1979, 23rd March 1973, and 23rd December 1980; and mortgage by deposit of title deeds created on 23rd December 1980; appointment of a Receiver; attachment of the properties mentioned above; and injunction restraining respondent No. 1 from transferring, encumbering or in any way dispensing of the properties Alongwith that petition, they have also filed an application u/s 30 (3) and (14) of the Act read with Order 39, rules 1 and 2 and Order 40, Rule 1 CPC (hereinafter referred to as the Code), for appointment of a Receiver and attachment of the properties mortgaged with petitioner No. 1. It is stated in the application that respondent No. 1 owes an amount of Rs. 5,35,54,035.49 to application No. 1 in respect of the loans advanced plus interest due under the provisions of the Act It is further stated that respondent No. 1 has suspended production since December 1980 On account of the suspension of the production, the plant and machinery are lying idle and rapidly deteriorating for want of proper maintenance. These are also exposed to the danger of destruction, removal and pilferage. Consequently, a prayer has been made for appointment of a Receiver and issuing an injunction to the effect that respondent No. 1 and its Directors be restrained from transferring or removing the property mortgaged/hypothecated with the applicant. It is also prayed that an order of attachment of the said properties be passed.

2. The main petition and the civil miscellaneous application came up for preliminary hearing before me on 30th October, 1981. On that day, 1 admitted the main petition and issued notice regarding the civil miscellaneous application Mr. J.K. Sibal accepted the notice on behalf of respondent NO. 1 I also injucted the respondent from transferring any machinery or equipment till the next date of hearing, and attached its properties mortgaged with petitioner No. 1. Mr. Sibal gave an undertaking that he would furnish a list of properties of the Company by the next date. The case was adjourned to 2nd of December, 1981. The civil miscellaneous application was adjourned to 17th November, 1981.

3. On 17th November, 1981, replies on behalf of respondents 2 to 4 and respondent No. 5 were filed, Respondent No. 6 did not file any reply to the application The civil miscellaneous application was again adjourned to 18th November, 1981, on which date respondent No. 1 filed reply to the same. It has contested the application and has inter ilia pleaded that the application has been moved in a mala fide manner for extraneous considerations. There is no cause for appointment of a Receiver as the properties already stand mortgaged and hypothecated with the applicant and it had been injucted from transferring any machinery or equipment It also filed a list of properties of the Company mortgaged Annexure "G". In the circumstances it was prayed that the application be dismissed. The other respondent have supported the application of the applicants.

4. It is contended by the Learned Counsel for the applicants that the liability of respondent No 1 to the applicant and respondents Nos. 2 to 6 amounts to more then Rs. 19 crores besides other liabilities. An application for winding up has also been filed by one of the creditors, which is pending decision in this Court. The Factory has stopped working and the plant and machinery is lying idle and is rapidly deteriorating for want of maintenance. It is further contended that, according to the terms of the mortgage deeds, the applicant can take possession of the mortgaged properties. In the aforesaid situation, he urges that it is just and convenient that a Receiver of the property be appointed so that he may preserve the property.

5. I have heard the Learned Counsel for the parties at a considerable length. The Act provides a special procedure for recovering the amounts from the companies advanced to them by the applicants. Section 30 of the Act relates to special procedure for enforcement of claims by them. It is as follows :--

30(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to the guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Corporation or where the Corporation requires an industrial concern to make immediate repayment of any loan or advance u/s 29 and the industrial concern fails to make such repayment, then without prejudice to the provisions of section 28 of this Act and of section 69 of the Transfer of Property Act, 1882, my officer of the Corporation generally or especially authorised by the Board in this behalf may apply to the Court for one or more of the following reliefs, namely.

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance, or

(b) for transferring the management of the industrial concern to the Corporation, or

(c) for an ad interim injunction where there is apprehension of the machinery or the equipment being removed from the premises of the industrial concern without the permission of the Board.

(2) * * * * * * * * * * * * * * * * * *

(3) Where the application is for the reliefs mentioned in sub-clauses (a) and (c) of sub-section (1), the court shall pass an ad interim order attaching the security or so much of the property of the industrial concern as would on being sold realise in this estimation an amount equivalent in value to the outstanding liability of the industrial concern to the corporation together with the costs of the proceedings taken under this section with or without an ad interim injunction restraining the injustrial concern from transferring or removing its machinery or equipment.

(4) to (7). * * * * * * * * *

(8) If cause is shown, the Court shall proceed to investigate the claim of the Corporation and the provisions of the Code of Civil Procedure, 1908, shall as far as practicable apply to such proceedings.

(9) to (13) ... * * * * * *

(14) For the removal of doubts, it is hereby declared that any Court competent to grant an ad Interim injunction under this Act shall also have the power to appoint a Receiver and to exercise all other powers incidental thereto.

(15) to (16)... * * * * * *

6. A reading of the above section makes it clear that if a Company fails to repay the loan, the Corporation can file an application under the Act and claim reliefs mentioned in sub-clause (a) (b) and (c) of sub-section (1) and in case it claims reliefs mentioned in sub-clauses (a) and (c), it is incumbent on the Court under-sub-section (3) to pass an ad interim order attaching the security with or without an ad interim injunction restraining the industrial concern from transferring its machinery. Sub-section (14) also empowers to appoint a Receiver. The language of the section also makes it clear that an order of attachment by the Court is mandatory but that of appointment of a Receiver is discretionary No guide line has been provided in the Act as to when a Receiver is to be appointed. Therefore, for that purpose, the provisions of Order 40, rule 1 of the Code shall have to be invoked. The said rule provided that the Court can appoint a Receiver where it appears to be just and convenient to do so. These words have been interpreted in 1 T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty and Others, wherein it is observed that the appointment of a Receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the person seeking the appointment of a Receiver is exposed to manifest peril. It is further observed that this exceedingly delicate and responsible duty has to be discharged by the Court with the utmost caution.

7. The following prerequisites for appointment of a Receive have been laid down :--

1. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

(2) The Court should not appoint a Receiver except upon proof by the plaintiff that prima-facie he has a very excellent chance of succeeding in the suit.

(3) Not only must the plaintiff show a case of adverse an conflicting claims to property but he must show some emergence, or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration.

(4) An order appointing a Receiver will not be made where it has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong It would be different, where the property is shown to be "in meoio", that is to say, in the enjoyment of no one. And

(5) The Court, on the application made for the appointment of a Receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.

8. I am in respectful agreement with the above observations. Now, it is to be seen whether or not, in view of the above principles, a Receiver should be appointed in the present case. The main grievance of the applicants is that the plant and machinery is not being maintained by respondent No. 1 properly and it requires a heavy repairs it is stated that a Receiver shall get the repairs made and maintain the plant and machinery in proper condition so that value thereof may not go down. Mr. M.M. Sehgal, Chairman of respondent No. 1, has filed an affidavit that he is keen to run the machinery and undertakes to spend all money from his own resources for the upkeep thereof He has further undertaken that he will do so within a month and will start the factory by the end of December 1981. He has also stated that if that factory starts production, he shall be able to return the loan in due course. From the categoric stand of Mr. Sehgal, it is evident that the is keen on running the plant. It is not disputed that some of the goods produced 7 respondent No. 1 are not manufactured anywhere in India If respondent No. 1 is able to start the factory, I am sure, it may be able arrange for the finances to pay off the liabilities of the applicants and other creditors However, if a Receiver is appointed, it may (sic) be possible for respondent No. 1 to start the factory and thus it ay suffer an irreparable injury.

9. As far as the interest of the applicants and other creditors is concerned, it has been amply safeguarded by attachment and issuance ad interim injunction restraining respondent No. 1 from transferring removing its machinery etc. The Learned Counsel for respondent No. 1 has also given an undertaking that no machinery etc. shall be moved from the premises. The raw-material worth about one crore of pees is stated to be lying in the premises of the factory. However, is pledged with the creditors and is under their control. Respondent No. 1 cannot sell the same without the consent of other creditors. Thus, the interest of other creditors also is sufficiently safeguarded.

10. The Learned Counsel for the applicants has made reference to (sic) on the law and Practice as to Receivers" (15th Edition), herein it is said that the objects sought by such appointment is the (sic) of the property for the benefit of these entitled to it. There are two main classes of cases in which the appointment is made firstly, to enable persons who possess right over property to obtain benefit of these rights and to preserve the property pending realisation where ordinary legal remedies are defective and, secondly, to preserve property from such danger which threatens it. There cannot be any dispute about the above-said propositions. But, the observations are not applicable to the facts and circumstances of the present case.

11. After taking into consideration all the aforesaid facts and circumstances, I do not find sufficient reasons for appointing a Receiver at this stage. In case, respondent No 1, fails to fulfil the undertakings given by it in the affidavit, the applicant may make a fresh application for the said purpose (appointment of a Receiver) I. however, affirm the order of attachment and injunction That will safeguard the interest of the applicants for recovery of its amount It may also be highlight that list of properties of the Company has been furnished by Mr. Sibal. The Learned Counsel for the applicants did not suggest that it was

prepared inaccurately. It will further safeguard interest not only of the applicants but of all the creditors

12. For the aforementioned reasons, dismiss the application subject to the observations made above.