

State Trading Corporation of India Ltd. Vs State Bank of India and Another

Court: Calcutta High Court

Date of Decision: May 3, 2001

Acts Referred: Companies Act, 1956 " Section 446, 446(1)
Constitution of India, 1950 " Article 227

Citation: (2002) 108 CompCas 509

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: N.N. Debnath and S.N. Banerjee, for the Appellant; Debasish Chowdhury, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

This revisional application under Article 227 of the Constitution of India is at the instance of a defendant in

proceedings before the Debt Recovery Tribunal and is directed against Order No. 10, dated August 30, 2000, passed by the Tribunal thereby

rejecting an application filed by the petitioner for dismissal of the proceedings for initiating the same without taking leave of the High-powered

Committee constituted pursuant to the direction of the apex court.

2. In the proceedings before the Tribunal, the State Bank of India claimed recovery of Rs. 5,31,47,672.76 with interest at the rate of 15.81 per

cent. per annum. One Tea Trading Corporation of India was the borrower while the State Trading Corporation of India, the present petitioner was

the guarantor. Thus, both were made defendants.

3. There is no dispute that in response to the leave prayed for by the State Bank of India, the High-powered Committee observed as follows :

The Committee noted that the liquidation proceedings of Tea Trading Corporation had since been initiated and are pending before the High Court

and, therefore, the claim of creditors of the company would be subjected to the decision of the High Court. The Committee, therefore, directed

State Bank of India to await the ruling of the High Court.

4. The Tribunal however by the order impugned herein rejected the prayer of the petitioner on the ground that as the apex court has held that for

initiating proceedings for recovery of money before the Tribunal, permission of the company court u/s 446(1) of the Companies Act, 1956, is not

necessary, there was no justification for allowing the prayer of the petitioner.

5. Being dissatisfied, the State Trading Corporation of India Limited has come up with this application under Article 227 of the Constitution of

India.

6. Mr. Debnath, learned counsel appearing on behalf of the petitioner contended that the High-powered Committee having asked the State Bank

of India to wait till decision is given by the company court, the Tribunal acted illegally and with material irregularity in deciding to proceed with the

matter. Mr. Debnath contends that the Tribunal was bound to follow the direction of the High-powered Committee.

7. Mr. Chowdhury, learned counsel appearing on behalf of the bank has on the other hand supported the order impugned and has relied upon the

decision of the Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, , in this connection. He has also relied upon the

decision of the apex court in the case of Steel Authority of India Ltd. (Successor to Hindustan Steel Ltd.) Vs. Life Insurance Corporation of India

and Others, .

8. In the case of Steel Authority of India Ltd. (Successor to Hindustan Steel Ltd.) Vs. Life Insurance Corporation of India and Others,

proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act having been initiated against the petitioner, such petitioner

challenged the action before the High Court on the ground that in the absence of leave of the High-powered Committee such proceedings could

not continue. The High Court having turned down such prayer, the petitioner filed a special leave application before the Supreme Court. Under

such circumstances, the apex court approved the order of the High Court on the ground that prior approval of the High-powered Committee is not

necessary for initiating a proceeding for eviction.

9. Thus, it is clear, that the principles laid down therein have no application to the facts of the present case.

10. As regards the question of applicability of the decision of the apex court in the case of Allahabad Bank v. Canara Bank [2000] 101 Comp

Cas 64, I am of the view that the High-powered Committee, in the instant case having asked the State Bank of India to wait till the disposal of the

proceedings before the company court, it was beyond the competence of the Tribunal to dispute the correctness of the decision of the High-

powered Committee. The bank, if dissatisfied with the decision of the High-powered Committee, can approach the appropriate forum challenging

such decision, but so long as such decision is not varied or modified, the Tribunal was bound to honour the same.

11. Therefore, the Tribunal below acted illegally and with material irregularity in ignoring the decision of the High-powered Committee.

12. I, thus, set aside the order impugned and direct the Tribunal to stay all further proceedings until the High-powered Committee signifies its

consent to proceed.

13. I make it clear that this order will not prevent the bank from disputing the correctness of the order of the High-powered Committee before the

appropriate forum and if in such proceedings the order of the High-powered Committee is altered, it is needless to mention, such decision will be

binding upon the Tribunal.

14. The revisional application is thus allowed.

No costs.

C. O. No. 721 of 2001:

15. In view of my order passed today in C. O. No. 2755 of 2000, the present revisional application has become infructuous and is thus disposed

of accordingly.

No costs.