

(2000) 03 CAL CK 0004

Calcutta High Court

Case No: F.M.A.T. 764 of 2000

W.B. Financial Corporation

APPELLANT

Vs

C.T. Colour Laboratories and
Others

RESPONDENT

Date of Decision: March 15, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11

Citation: 104 CWN 667

Hon'ble Judges: Vinod Kumar Gupta, J; Malay Kumar Basu, J

Bench: Division Bench

Advocate: Ashok Kumar Dhandhanias and Amiya Kumar Sur, for the Appellant; Hari Narayan Sahu, for the Respondent

Judgement

Vinod Kumar Gupta, J.

This appeal is admitted for hearing under Order 41 Rule 11 of the Code of Civil Procedure. With the consent of the parties, the appeal and the application for stay are taken up today for final disposal treating both as on day's list.

2. A very short point with regard to the interpretation of Section 31(1) (aa) read with Section 32(1A) of the State Financial Corporations Act, 1951 in conjunction with Order 39 Rules 1 and 2 read with Section 151 of the CPC arises for consideration in this case. The appellant which is the West Bengal Financial Corporation, a body corporate constituted under the provisions of the State Financial Corporations Act, 1951 has filed an application under Sections 31 and 32 of the 1951 Act before the learned District Judge, Burdwan. In that main petition, an interlocutory application for grant of temporary injunction in terms of Order 39 Rules 1 and 2 read with Section 151 of the CPC was filed by the appellant. Respondent No. 4. Manaharial T. Trivedi was a guarantor to the loan transaction between the appellant and other respondents. One of the original reliefs claimed in the main petition filed against all

the respondents by the appellant was in terms of Clause (aa) of Sub-section (1) of Section 31 of 1951 Act. This main relief actually was only and could only be qua the respondent No. 4. It is in this background that the aforesaid interlocutory application for grant of temporary injunction was filed against the respondent No. 4 by the appellant. The learned Trial Judge refused to grant any temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the CPC on this application on the ground that a show cause notice was an essential pie-requisite before considering any application for grant of temporary injunction against the guarantor of the loan transaction. In saying so, he relied upon Sub-section (1A) of Section 32 of the 1951 Act. Sub-section (1A) read thus:

(1A) : When the application is for the relief mentioned in clause (aa) of Sub-section (1) of Section 31, the District Judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.

3. A plain bare reading of Sub-section (1A) (supra) clearly suggests that requirement of issuing a show cause notice by calling upon the surety to explain why is liability should not be enforced is only with respect to the grant of the main relief relatable to Clause (aa) of Sub-section (1) Section 31 of the Act. Whether the liability of a surety is required to be enforced qua the Financial Corporation or not is a matter which the District Judge is or may be required to consider and for according such consideration the issuance of a show cause notice is imperative and a necessary prerequisite as far as the language of Sub-section (1A) of Section 32 of the Act suggests. Both Sub-section (1A) (supra) and Clause (aa) of Sub-section (1) of Section 31 therefore have to be read together. This however has no applicability to the consideration of an application for temporary injunction in terms of Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. Sub-section (1A), as noticed above, deals only with the issuance of a show cause notice before the District Judge has to consider whether relief under clause (aa) of Subsection (1) of Section 31 of the Act is to be granted or not. That cannot be confused with the question regarding consideration of temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The two reliefs are different one is the grant of main relief in terms of Clause (aa) (supra) and the other is grant of temporary injunction.

4. We are of the considered view that the learned District Judge erred in law in mixing up the two issues. It appears that he did not understand the true import of Sub-section (1A) of Section 32 of the Act and unnecessarily mixing it up with the issue or grant of temporary injunction declined to consider the application of the appellant. The order on the very face of it therefore suffers from its palpable legal infirmity. We have no doubt that Sub-section (1A) of Section 32 of 1951 Act is no bar in considering an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC and that while so considering such an application. Sub-section (1A) of

Section 32 of the Act has no applicability since this sub-section cannot be brought into operation for saying that show cause notice for this purpose is at all essential. No such requirement exists in law.

5. For the foregoing reasons therefore, we set aside the order. Since, however, the question whether temporary injunction should be granted or not has not been considered on its merits by the learned District Judge, we refrain from going into the merits of the same and while remanding the matter for fresh consideration, direct the learned District Judge to dispose of the application for temporary injunction in the light of the aforesaid observation.

6. No order is made as to cost. Let urgent xerox certified copy of this order be given to the learned Advocates for the parties, if applied for.

Malay Kumar Basu, J.

I agree.