

Ifci Ltd vs.ceylon Biscuit and Others

Ifci Ltd vs.ceylon Biscuit and Others

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Court : Delhi

Decided On : Feb-23-2018

Appellant : Ifci Ltd

Respondent : Ceylon Biscuit and Others

Judgement :

\$~ * % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

16. 02.2018 Judgment delivered on:23.02.2018 + REVIEW PETITION No.348/2016 in CO. APP. 7/2013 IFCI LTD.

... Petitioner

Through Mr.S.S. Ahluwalia and Mr. Jatin Teotia, Advs. CEYLON BISCUIT AND OTHERS versus

... RESPONDENTS

Through Mr. Sarvesh Kr. Mishra, Adv for R-1. Mr. Vivek Chib, Mr. Asif Ahmed, Mr. Rudrajit Ghose and Mr. Vikramaditya, Advocates for R-2. Ms. Megha Bhawana, Adv for Ms. Ruchi Sindhwani, Adv for O.L. CORAM: HONBLE MS. JUSTICE HIMA KOHLI HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

REVIEW PETITION No.348/2016 1 The Review

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is seeking a review of the order dated 29.01.2013. Vide this order on an application of the IFCL, the following directions were issued:-

"i. Respondent No.1 will hand over possession to the representatives of the appellant, Mr. O.C. Rana, Associate Vice President, who represents the interest of the secured creditors. Review Pet No.348/2016 in Co.App.7/2013 Page 1 of 8 ii. The arrangements for securing the property and providing necessary security agency, etc. would be made by the appellant. iii. In the process of sale, as per the willingness expressed by the appellant, the OL will be kept associated. iv. The direction contained in the impugned order quashing the notice under the SARFAESI Act dated 8.6.2011 is set aside and those proceedings will be governed by the competent courts dealing with the matter under the SARFAESI Act. The result would be that the notice stands revived, an aspect with which the learned counsel for the OL is in agreement. The appellant has no objection to the OL doing the needful in terms of para 6 of the order dated 24.1.2013 as the OL is to be associated with the process of auction. The costs incurred for the same by the OL will be recovered from the sale proceeds of the property. The appeal is allowed to the limited extent aforesaid leaving the parties to bear their own costs. 2
The Review

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before this Court, M/s Bakeman Industries Pvt. Ltd. was duly represented through counsel when the above order came to be passed. Aggrieved by the aforementioned order, the Review

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filed a Special Leave Petition (Civil) No.7889/2013. This SLP was disposed of on 11.07.2016. The following order was passed:-

"Learned counsel for the petitioner seeks permission to withdraw this special leave petition, as according to him, certain submissions made before the Division Bench of the High Court have not been considered. The learned counsel for the petitioner wishes to make those submissions before the Division Bench of the High Court again. Review Pet No.348/2016 in Co.App.7/2013 Page 2 of 8 Permission is granted. The special leave petition is, accordingly, disposed of as withdrawn. 3 As

is apparent from the above order, the Review

... Petitioner

had withdrawn the SLP with permission to make submissions before this Court which as per it, had not been considered. 4 The grounds of review have been perused. The primary submission is that the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) cannot be invoked by a secured creditor who has chosen to participate in the winding up proceedings before the Company Court; he has thus waived his remedy under the SARFAESI Act. The learned Single Judge in its order dated 08.01.2013 had correctly appreciated the law laid down in the judgment of Kotak Mahindra Bank Ltd. VS. Megnostar Telecommunications Pvt. Ltd. in Co. App. No.58/2012 delivered on 17.09.2012. The facts were appreciated in the context of that law. Submission is that in the case of Kotak Mahindra, the notice under Section 13 (2) of the SARFAESI Act had been issued by the bank prior to the initiation of the winding up proceedings and the appointment of the provisional liquidator; it was only in that circumstance that the sale of the property of the company was permitted to Review Pet No.348/2016 in Co.App.7/2013 Page 3 of 8 the secured creditor without the involvement of the Official Liquidator. Moreover in the instant case, the earlier attempt made by SICOM to proceed under Section 29 of the State Financial Corporation Act (SFCA) and to take possession of the factory had been set at naught by the Supreme Court in its order dated 16.05.2008. The Division Bench by modifying and setting aside the order of the learned Single Judge has committed an error. The legal error is apparent on the face of the record. The order dated 29.01.2013 is liable to be reviewed; it is the Official Liquidator alone who should be permitted to sell the assets of the company; the order of the Single Judge dated 08.01.2013 should be restored. 5 Learned counsel for the Review

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has placed reliance upon I (2017) SLT451Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh and Others . Reliance has also been placed upon AIR 2005 SC592Board of Control for Cricket, India Vs. Netaji Cricket Club to support a submission that the provisions of Order XLVII Rule 1 of the Code of Civil

Procedure encompasses within its fold, a mistake on the part of the Court which would also include a mistake on the part of the Advocate. In the instant case, even presuming that the respondent No.2 was present at the time when the order (under review) was passed, it was due to a mistake on Review Pet No.348/2016 in Co.App.7/2013 Page 4 of 8 the part of the Advocate that the counter submissions could not be recorded by the said Court. 6 Per contra, learned counsel for the non-applicant has disputed these submissions. It is pointed out that there is no fault in the order seeking review. It was in fact a consent order which has been passed and in the presence of the Review

... Petitioner

. The petitioner was obviously convinced that the order which was being passed in the presence of its counsel is the correct order and that is why he did not raise any objection. Learned counsel for the non-applicant/IFCI has placed reliance upon a judgment of the Apex Court reported in I (2016) SLT118Pegasus Assets Reconstruction P. Ltd. Vs. Haryana Concast Limited and Another to support his submission. Submission is that in this case, the provisions of all the legislations i.e. State Financial Corporation Act (SFCA), SARFAESI Act and Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDBFI Act) had been considered. On an analysis of the legal provisions, the Apex Court had noted that no order is required of the Company Judge for association of the Official Liquidator in order to enable a secured creditor to realize his dues as there are sufficient provisions for the said purpose under the SARFAESI Act and the Rules framed thereunder; a secured creditor may proceed independently Review Pet No.348/2016 in Co.App.7/2013 Page 5 of 8 under the provisions of the SARFAESI Act. Learned counsel for the non-applicant additionally points out that if the petitioner is aggrieved by the fact that a notice under Section 13 (2) of the SARFAESI Act has been issued to him, he has ample remedy of filing an appeal under Section 17 of the said Act. 7 The Review

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before this Court is the Ex-management of the company. The provisional liquidator has since been appointed. The management of the company and the distribution of the assets of the company now vests with the provisional liquidator. Section

529-A of the Companies Act places an obligation upon the provisional liquidator to ensure that the workmen are paid their dues pari passu with the secured creditors. The IFCI is admittedly a secured creditor. It is the first charge-holder; although there are other financial institutions also involved i.e. SICOM and IDBI. On 29.01.2013, the representative of the Official Liquidator had made a statement before the Division Bench that he has no objection if the possession of the property is delivered to the appellant herein i.e. IFCI who was the first charge-holder of the secured assets of the company; he had only sought to be associated with the process of sale. The directions as noted supra were thereafter passed in the presence of the respondent No.2/Review Review Pet No.348/2016 in Co.App.7/2013 Page 6 of 8

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/Ex-management of the Company. As already noted supra, the role of the Ex-management of the company is limited. If the review petitioner is aggrieved by the issuance of the notice under Section 13 (2) or (4) of the SARFAESI Act, it has ample remedy of filing an appeal under Section 17 of the said Act. Moreover, the Review

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having failed to raise any objection when the order dated 29.01.2013 was passed, is an obvious reflection of the fact that it was not aggrieved by the order at that time. The submission made before this Court that a mistake made by the counsel is also a ground of review, is again a submission which has to be noted only to be rejected as this is just an oral submission made before this Court at the time of arguments; it has neither been pleaded, nor mentioned in the review petition. 8 The Supreme Court in Pegasus Assets (supra) has rightly considered that a secured creditor is outside the purview of winding up and he has an independent remedy under the SARFAESI Act. The order under review has in fact associated the Official Liquidator with the sale of the assets of the company. The Review

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cannot have any grievance as the Official Liquidator has now stepped into the shoes of the Ex-management of the company. The judgments relied upon by the

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are not Review Pet No.348/2016 in Co.App.7/2013 Page 7 of 8 applicable to the facts of the instant case; Anita International (supra) was on the premise of the powers of the winding-up Court under Section 446 (2) of the Companies Act; the second judgment in Board of Control for Cricket, India and Another (supra) measures the scope of the reviewing Court. 9 The prayer made in the present petition does not fall within the parameters of Order XLVII of the Code of Civil Procedure. There is no error apparent on the face of the record; there is no discovery of any new fact or piece of evidence which was not available with the Review

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at the time when the order (now impugned), had been passed. 10 This petition is nothing short of an abuse of the process of the Court and is accordingly dismissed with costs quantified at Rs.25,000/-. CM. No.28509/2016 (for stay) 11 This application has become infructuous. It is disposed of accordingly. INDERMEET KAUR, J HIMA KOHLI, J FEBRUARY23 2018 A Review Pet No.348/2016 in Co.App.7/2013 Page 8 of 8

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