

i.C.i.C.i. Ltd. Vs. Veena Textiles Limited and ors.

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Court : Mumbai

Decided On : Jun-28-2000

Reported in : [2003]115CompCas269(Bom)

Judge : R.K. Batta, J.

Acts : [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) -
Sections 3, 17, 18 and 31

Appeal No. : Suit No. 1267 of 1998

Appellant : i.C.i.C.i. Ltd.

Respondent : Veena Textiles Limited and ors.

Advocate for Def. : S.V. Doijode, Adv. i/b., ;Shah Desai and Doijode

Advocate for Pet/Ap. : Pradeep Sancheti, Adv. i/b., ;Manilal Kher Ambalal

Judgement :

R.K. Batta, J.

1. The plaintiffs seek judge's order for directions to the court receiver, Bombay High Court to pay them all the amounts of ad hoc royalty deposited and/or to be deposited by defendant No. 1 after deducting court receiver's commission costs, charges and expenses. The same is being contested by defendant No. 1.

2. The proceedings already stand transferred to the Debt Recovery Tribunal under the [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) (hereinafter referred to as the 'said Act') consequent to the notification dated July 16, 1999, by which, the Central Government has established Debt Recovery Tribunal (hereinafter referred to as 'DRT') under Section 3 of the said Act.

3. While the proceedings were pending in this court, on a notice of motion, an order was passed on March 25, 1998, appointing the court receiver, Bombay High Court as the receiver of the immovable properties described in exhibits A-1 and A-2 and movable properties as described in exhibit B as also the banker's goods as described in exhibit C to the plaint without power to sell. The court receiver was asked to take formal possession from defendant No. 1 and appoint defendant No. 1 as his agent on usual royalty without security. In pursuance of the said order, the court receiver had fixed royalty and the royalty deposited so far is about Rs. 1.37 crore as on today, for the withdrawal of which the judge's order has been moved.

4. The learned advocates for the parties were heard at length. The learned advocate for the plaintiffs urged that in view of the judgment of the learned single judge of this court in Suit No. 2784 of 1999 ICICI Ltd. v. Patheja Brothers Forgings and Stampings Ltd. [2001] 105 Comp Cas 18, this court has ample powers to pass orders sought by the plaintiffs and that the plaintiffs are ready to give an undertaking that, in case they fail in the suit, they will bring back the money so paid to them. The learned advocate for the plaintiffs drew my attention to the judgment of the Supreme Court in Hiralal Patni v. Loonkaran Sethiya, : [1962]1SCR868 to which reference has been made by the learned single judge who held that the court receiver is still amenable to the court as its officer until he has complied with the court's direction as to the disposal of the funds which he has received during the course of his receivership. He further submitted that, though in the order the learned single judge has dealt with the question of management and protection of properties, yet, all the possible situations could not be contemplated and that the power of management does itself include the power to pay royalty. He has also relied upon the Full Bench judgment of this court in State Bank of India v. Trade Aid Paper and Allied Products (India) Pvt. Ltd. : AIR1995 Bom268 and submitted that not only the properties are to be protected by the court receiver but

the defendant is required to ensure to repay the amount, if he is desirous of enjoying the benefits secured by obtaining the loan. Lastly, it was submitted by him that till machinery is created in the DRT to deal with the situation, this court is empowered to pass orders of the nature as sought by the plaintiffs, otherwise, the plaintiffs would be left without any remedy.

5. The learned advocate for the defendants drew my attention to Sections 17 and 18 of the said Act and urged that not only the main proceeding but also the application and motion on which the order of appointment was made has been transferred to the DRT and as such it will not be possible for the parties to move for variation of the said order dated March 25, 1998, and that cannot be done indirectly by way of judge's order. He also urged that the orders which can be passed in pursuance of the judgment of the learned single judge are restricted to management and protection of the property in the custody of the receiver till the proper infrastructure is available in the DRT. He also urged that in terms of the said order of the learned single judge, only the receiver can move the court for orders and the interested parties have no locus standi to move the court. He, therefore, urged that at this stage the request for judge's order is not maintainable.

6. The question which arose before the learned single judge was relating to the rights of the court receiver to manage the properties after notification dated July 16, 1999, as also the question of deposit of royalty, which some of the parties had declined to deposit on the ground that the receiver stood discharged automatically due to transfer of proceedings to the DRT. Section 31 of the said Act is clear on the subject and it provides that the proceeding shall stand transferred on the date of notification to the DRT. The notification in this respect was issued on July 16, 1999. Therefore, the proceedings stood transferred to the DRT as on the date of the said notification. Along with the proceedings, interim applications which were pending therein also stood transferred to the DRT. As such, Notice of Motion No. 1189 of 1998 also stood transferred to the DRT as on the date of the said notification. This position has been categorically stated by the learned single judge in the said judgment. In the said judgment, interim arrangement during the transitional period in the exigency of the situation referred to in the said judgment limited to directions regarding the management of property in order to preserve the

same has been made. There is no doubt, a reference to the decision of the apex court in *Hiralal Patni v. Loonkaran Sethiya* : [1962]1SCR868 , which deals with the question of directions of disposal of fund but the said ruling will not be directly applicable to the facts under consideration since the observation made by the apex court in the said ruling related to the powers of continuation of the duties of the receiver after final decree is made and even after that the receiver is still amenable to the court as its officer until he has complied with the court's directions as far as the disposal of the funds is concerned. The observations contained in paragraph 10 of the Full Bench judgment of this court on which reliance has been placed by the learned advocate for the plaintiffs would also not be attracted and cannot applied to the facts and circumstances of the case under consideration.

7. What is sought by this judge's order is in fact, further directions in respect of the matter on which notice of motion had been moved wherein certain interim directions were given. I agree with the learned advocate for the defendants that what cannot be directly done cannot be permitted indirectly by way of judge's order. Accordingly, there is no reason whatsoever to sign the judge's order as prayed for by the plaintiffs. The plaintiffs may, in case it so desires, seek remedy available under law. The request for passing the judge's order is accordingly rejected.

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