

The Assistant General Manager Vs. M/S.The Waterbase Limited

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Court : Chennai

Decided On : Jan-03-2012

Judge : R.Banumathi; R.Mala, Jj.

Acts : Companies Act; Recovery of Debts due to Banks and Financial Institutions Act - Sections 9, 19

Appeal No. : O.S.A.No.394 of 2011 and M.P.No.1 of 2011

Appellant : The Assistant General Manager

Respondent : M/S.The Waterbase Limited

Advocate for Def. : Mr.S.A.Rajan, Adv.

Advocate for Pet/Ap. : Mr.G.Masilamani, Adv.

Judgement :

This appeal arises out of the order dated 28.9.2011 in O.A.No.756 of 2011 in C.S.No.606 of 2011, whereby the learned Judge granted interim injunction that “the amount kept in 'No Lien Account' shall not be adjusted towards the interest amount till the disposal of the suit”.

2. Defendant - Canara Bank is the appellant. The respondent/plaintiff is the public limited company incorporated under the Companies Act having its registered office at Nellore and Corporate Office at Chennai. The respondent Company

manufactures prawn feed for local consumption and carries on the processing of shrimps for export business. The Company has availed banking facilities from the State Bank of India, Overseas Branch, Chennai, Union Bank of India, Chennai, State Bank of Hyderabad, Industrial Financial Branch, Chennai and Overseas Branch of Canara Bank, Chennai. State Bank of India is the lead bank of the consortium of all the four Banks. Case of respondent is that there was a slump in the export activity during the year 2005 and the industries carrying on shrimp business suffered much and therefore respondent could not settle the term loan dues. All the four Banks, which advanced finance, formed a consortium and in the meeting held on 26.03.2008, the Consortium had suggested to the respondent to sell 460 acres out of 550 acres owned by the respondent. As per the suggestion of Consortium of Banks, the respondent sold 460 acres for Rs.37 Crores. From the said amount, Rs.16 Crores was payable to the Consortium of Banks for reduction of limits at the ratio of 35% to State Bank of India, 30% to Canara Bank, 20% to Union Bank of India and 15% to State Bank of Hyderabad. State Bank of India, Union Bank of India and State Bank of Hyderabad received the amount due to them and adjusted those amounts towards the working capital limit as agreed by all the Banks in the resolution dated 4.7.2008.

3. Case of respondent is that though the appellant - Canara Bank also agreed to adjust a sum of Rs.4.80 Crores being 30% of the amount out of Rs.16 Crores towards the working capital limit, the appellant did not receive and adjust the said amount of Rs.4.80 Crores towards the working capital limit and therefore it was kept with the State Bank of India, the lead Bank in escrow account.

4. When the matters stood thus, the respondent filed W.P.No.7343 of 2010 seeking the relief to forbear the appellant from announcing the respondent company as willful defaulter' in pursuance to the letter of the appellant dated 30.3.2010. In the said Writ Petition, interim injunction was granted on the undertaking given by the respondent to deposit Rs.4.80 Crores in a separate 'No Lien Account' with the appellant Bank from the escrow account of the lead Bank. The said sum of Rs.4.80 Crores was deposited with the appellant Bank on 19.4.2010 and is being kept in 'No Lien Account'. By the letter dated 30.3.2010, the appellant Bank informed the respondent that it would declare the respondent

as a Willful defaulter' in paying the liability and the said amount kept in 'No Lien Account' is likely to be adjusted towards the interest accrued for the advance amount, instead of adjusting it with the working capital.

5. Case of plaintiff is that the sale of the lands to an extent of 460 acres was in consonance with the resolution of the Consortium of Banks and that the sale proceeds was deposited with the lead Bank promptly and the proportionate 30% of the amount payable to the appellant viz., 4.80 Crores ought to have been received by the Canara Bank for being adjusted with the working capital as agreed by them, but the appellant Bank has intended to adjust the said amount towards the accrued interest, which is contrary to the promise given by the appellant Bank with consortium of Banks through the resolution dated 26.3.2008. Therefore, the respondent had filed the suit C.S.No.606 of 2011 praying for:- (i) declaration that the proposal of the appellant Bank to declare the respondent as a willful defaulter' is illegal and improper;

(ii) direct the appellant Bank to pay to the respondent a sum of Rs.25,00,000/- as damages; and

(iii) further necessary orders.

Along with the suit, the respondent/plaintiff also filed A.No.756 of 2011 seeking interim injunction restraining the appellant Bank from in any way adjusting the said sum of Rs.4.80 Crores towards the accrued interest.

6. On receipt of summons, appellant Bank had entered appearance and filed counter contending that the respondent had received notice from Debt Recovery Tribunal-I, Chennai for recovery of the amount along with the interest and when the claim is pending before Debt Recovery Tribunal-I, the suit is not maintainable. It was further averred that it is for the financial institution to appropriate the amount paid by the debtors as per RBI guidelines and there was no conclusive compromise agreed by the appellant to adjust the amount towards the working capital limit. It was further stated that the amount remitted by the respondent was kept in a separate account before the lead Bank and the appellant Bank was not provided with the said money. It was inter alia alleged that Debt Recovery

Tribunal-I has also seized up the matter and therefore prayed for dismissal of the application.

7. Observing that the proceedings before the Debt Recovery Tribunal has been launched only subsequent to the filing of the suit, the learned judge held that there was no prohibition to file the suit. The learned judge held that the question of appropriation of the amount of Rs.4.80 Crores towards the working capital or the interest amount has to be decided only in the suit and in the meanwhile if the amount is adjusted towards interest amount, the respondent will be put to irreparable loss. The learned single Judge further held that the respondent/plaintiff has proved prima facie case and granted interim injunction restraining the appellant Bank from adjusting the said amount of Rs.4.80 Crores towards the accrued interest. Challenging the impugned order, the defendant bank has preferred this appeal.

8. The learned Senior Counsel for appellant Mr.G.Masilamani contended that when the appellant Bank was not satisfied with the performance of respondent, the borrower cannot compel the Bank to act to suit to the borrower's conveyance and advantage by compelling the Bank to adjust amount of Rs.4.80 Crores towards working capital. The learned Senior Counsel would submit that all the remedy has to be worked out only in the application filed by the appellant Bank in O.A.No.273 of 2010 before Debt Recovery Tribunal-I and the suit itself is not maintainable. It was also submitted that the interim injunction sought for has no connection with the relief sought for in the suit.

9. Countering the submissions, Mr.S.A.Rajan, learned counsel for respondent would submit that in the meeting held on 4.7.2008, Consortium of Banks agreed that the amount payable to the Consortium of Banks is for reduction of working capital limit. The learned counsel would further submit that though other members of Consortium of Banks are co-operating with the respondent, only the appellant bank did not provide necessary support, which is reflected in minutes of various meetings. It was further submitted that pending the suit and settling the other issues by keeping the amount in 'No Lien Account', no prejudice would be caused to the appellant Bank.

10. Upon consideration of the rival contentions, the following points arise for determination:

1. Whether the respondent/plaintiff has proved prima facie case that the appellant Bank is not justified in seeking to adjust Rs.4.80 Crores towards interest?

2. Whether the order of learned single Judge directing that the amount of Rs.4.80 Crores be kept in 'No Lien Account' suffers from any perversity warranting interference by the Appellate Court?"

11. Re-contention: Maintainability of the Suit:- Claiming a sum of Rs.16,10,79,284, the respondent bank filed O.A.No.273 of 2010 before Debt Recovery Tribunal I, Chennai on 3.9.2010. Learned Senior Counsel for the appellant contended that O.A. has already been filed for recovery of a sum of Rs.16,10,79,284 along with interest accrued and the learned judge did not properly appreciate that under Section 9 of the Recovery of Debts due to Banks and Financial Institutions Act the Tribunal is not only empowered to adjudicate upon the claims of the Bank against the borrower, but also the counter claim and set off, if any, to be borrowed by the borrower against the bank. While that being the legal position, suit itself is not maintainable and the learned judge erred in allowing O.A.No.756 of 2011.

12. The contention regarding the maintainability of suit does not merit acceptance. Earlier, when appellant Bank issued notice

informing the respondent that they would be termed as willful defaulter, the respondent had filed a writ petition in W.P.No.7343 of 2010 on 2.4.2010. Till that date, the lead Bank was retaining the sum of Rs.4.80 Crores payable to the appellant bank. In the writ petition, the respondent offered to deposit the amount with the appellant bank and prayed for an order that the amount would be kept in deposit with the appellant bank in No Lien Account until the dispute was settled. Recording the statement of respondent, in the writ petition, on 9.4.2010, an interim order was passed stating that the respondent/borrower gave an undertaking to deposit the sum of Rs.4.80 Crores in a separate No Lien Account. Later, recording the memo by the respondent, the writ petition was disposed of on 20.9.2011 permitting the respondent to withdraw the writ petition with liberty to pursue the

remedy in the suit. It was thereafter the suit- C.S.No.606 of 2011 came to be filed. Thus, the Court has granted liberty to file Civil Suit. However, the issue of maintainability of the suit in the light of Section 19 of Recovery of Debts due to Banks and Financial Institutions Act is left open to be agitated in the suit.

13. The respondent availed financial facilities/working capital term loan (WCTL) from

(a) State Bank of India, Overseas Branch, Chennai 35%

(b) Canara Bank, Overseas Branch 30%

(c) Union Bank of India, Overseas Branch 20%

(d) State Bank of Hyderabad, Industrial Finance

Branch, Chennai -15%

All four banks form a Consortium and State Bank of India, Overseas Branch, Chennai is the lead Bank. An agreement amongst the Consortium of Banks was entered into on 8.9.2000. the terms of inter se agreement inter alia provides that any member Bank desiring to opt out and/ or reduce its share has to abide by certain conditions as stated in clause (m) and (n)(i). We may usefully refer to the said clauses (m) and (n)(i) which read as under: “.....

m) The Lead Bank and the Second Lead Bank shall meet at quarterly intervals to assess the performance of the Borrower based on the Statement from the Borrower under the Quarterly Information System (QIS) and fix at such Meeting the Operating Limits/Individual Bank's Share thereof for the next Quarter which shall be binding on the Members of the Consortium. n) 1) In the first instance, such member bank desiring to opt out, and/or to reduce its share should offer its share to one or more amongst the other member banks in the consortium and/or to one or more new banks willing to join the consortium, and in the event of such share being taken up by either the existing members and/or new banks to be admitted into the consortium, such member bank will be permitted to either opt out or to reduce its share.

14. In 2005-2006, there was a slump in the export activity all over India and the respondent also went through difficult period basically due to anti-dumping duty levied by United States authorities and also Tsunami. This has affected the performance of the Company both in the area of exports and domestic sales. Therefore, the respondent sought for working capital term loan of Rs.9 Crores. Consortium of Banks interalia wanted the Company to fulfill the conditions viz., (i) to settle the loans due to other financial institutions amounting to Rs.20 Crores; (ii) after settling the loans, the Company has to give first charge of the fixed assets to the Banks; and (iii) the promoters to bring in Rs.2.25 Crores as their share of the working capital term loan and the Banks share would be Rs.6.75 Crores. Thus, totally, Rs.9 Crores.

15. The share of the Banks - Rs.6.75 Crores as additional working capital term loan is to be shared between the Consortium of Banks. Case of respondent is that they complied with all the conditions to avail additional working capital term loan of Rs.9 Crores and that they deposited Rs.2.25 Crores with the lead Bank and Consortium of Banks viz., State Bank of India, Union Bank of India and State Bank of Hyderabad also sanctioned the working capital loan. Further case of respondent is that the appellant - Canara Bank did not provide additional working capital of Rs.2.20 Crores and the same was not informed to the Lead Bank and therefore other consortium Banks were also prevented from providing additional capital. Grievance of respondent is that as additional working capital was not provided by all the Banks, due to the non-cooperative attitude of the appellant Bank and the respondent has to suffer. The merits of the above contention has to be seen only at the time of trial. At this juncture, suffice it to note that the relationship between the appellant Bank and the respondent was not cordial even in 2006.

16. Since the respondent was finding it difficult to proceed with the operations and since the working capital term loan was not released, the Consortium of Banks held meeting on 19.6.2007 and, 26.10.2007. In the meeting, Consortium of Banks suggested that the respondent could sell a portion of fixed assets 460 acres and would discharge liabilities to an extent of Rs.21 Crores to the other creditors of the respondent Company and would discharge Rs.16 Crores to the Consortium of Banks for reducing the over all limit of the working capital. Accordingly, the

respondent sold 460 acres for Rs.37 Crores. From out of 37 Crores, Rs.16 Crores is payable to the Consortium of Banks for reduction of limits and the respondent Company to discharge Rs.21 Crores to their creditors. In the meeting on 4.7.2008, the appellant bank was also a party. Out of Rs.16 Crores payable to the Consortium of Banks, appellant bank has to receive Rs.4.80 Crores, being 30% of Rs.16 Crores.

17. The Contention of appellant bank is that the said amount of Rs.4.80 Crores cannot be adjusted towards the working capital and that it has to be adjusted only towards interest. The learned Senior Counsel for appellant contended that owing to the act of default by the respondent in meeting repayment obligations, respondent has allowed the loan account to be a Non Performing Asset (NPA) and once a loan account becomes a NPA, any recovery made thereafter shall statutorily first be accounted towards accrued interest and only thereafter to the principal. The learned Senior Counsel would further submit that as per the prudential norms prescribed by Reserve Bank of India, the plea of respondent to adjust the sale proceeds against the reduction of working capital limit could not be complied with/acceded to, being contrary to the guidelines prescribed by Reserve Bank of India/Policy of the Bank. It was submitted that the request of the respondent to adjust any working capital limit would be against the prudential norms prescribed by Reserve Bank of India and the learned judge ought to have kept in view the norms prescribed by Reserve Bank of India.

18. In so far as direction to keep the amount in No Lien Account, the learned Senior Counsel for the appellant submitted that in case of the amount kept in No Lien Account, the said amount is only a suspense credit as it is a float fund without even a nomenclature, held in a suspense account and no useful purpose could be accomplished by keeping the money in suspense account. The learned Senior Counsel would urge that the appellant Bank may be permitted to adjust the amount of Rs.4.80 Crores towards the loan liabilities of the respondent as per Reserve Bank of India guidelines and suitable direction could be passed that any such adjustment could be subject to the result of the suit.

19. Per contra, the learned Counsel for respondent would submit that the adjustment of the amount towards the interest would not be in line with the decision taken by the Consortium of Banks. The learned counsel would further submit that because of the attitude of the appellant bank in attempting to declare the respondent as willful defaulter, the respondent is subjected to serious prejudice. As per the norms prescribed by Reserve Bank of India, any recovery has to be accounted towards accrued interest and not to the principal.

20. In minutes of the meeting held on 04.07.2008 that the Consortium of Banks is said to have agreed to adjust the amount towards reduction of limits. Learned counsel for Respondent has drawn our attention to the minutes of meeting held on 04.07.2008 in which the Consortium of Banks advised the Company to sell the land to find a way of reducing the working capital limits. The relevant portion of the minutes of meeting dated 04.07.2008 runs as under:- “Mr.Ashok Nanjapa (CEO of respondent) welcomed the bankers and then briefed as under:

a and b.

c. In the last Consortium meeting, held on 26.03.08, the bankers have advised the Company to find a way of reducing their working capital limits. One of the suggestions made was to dispose some of the unutilized excessive lands at Nellore.” (underlining added) The same is reiterated in the very same meeting stating the proposed distribution of the amount, which is as follows:

“(a) Rs.16 crores payable to the consortium of banks for reduction of limits to the extent of approximately 50% of the limits.” (underlining added)

21. Contention of Respondent is that the above minutes prima facie shows that the sale proceeds was meant only for reduction of the working capital limits and it was expected that it would help the Company to restore the operation.

22. Ofcourse the minutes of meeting dated 04.07.2008 indicate that the amount payable to the Consortium of Banks was for reduction of working capital limits. Even though the officials of Canara Bank participated in the meeting held on 04.07.2008, by perusal of the Proceedings of the subsequent meeting, it is seen

that the Appellant Bank has been insisting on payment of Rs.4.80 Crores unconditionally.

23. Even in September 2007, the loan account of Respondent was classified as "NPA". Case of Appellant is that only with a view to helping the Respondent in overcoming the financial difficulties, the Appellant gave a consent/no objection to the Respondent to sell a portion of the mortgaged property. Grievance of Appellant is that Respondent had sold the common security of land in September 2008 for Rs.37 Crores and the Lead Bank received the entire consideration only on 19.12.2008 long after the decisions to sell. Further grievance of Appellant is that from out of Rs.16 Crores, a sum of Rs.5.60 Crores was given to State Bank of India, a sum of Rs.3.20 Crores was paid to the Union Bank of India and a sum of Rs.2.40 Crores was given to the State Bank of Hyderabad. Appellant's share of Rs.4.80 Crores was retained by the Lead Bank on the basis of the request of the Respondent. As per the minutes of meeting held on 04.07.2008, even though the amount of Rs.4.80 Crores was readily available with the Lead Bank, Respondent has retained the said amount.

24. In the subsequent meeting held on 19.12.2008, the members of Consortium Bank discussed the Company's operation and also the matter related to resumption of normal working between the Canara Bank and the Company. In the meeting held on 14.5.2009, the Appellant Bank did not participate. From the minutes of the meeting on 14.5.2009, it is seen that the appellant Bank has been insisting on payment of Rs.4.80 Crores unconditionally. As per the minutes of the meeting, the meeting was stated to be convened on 14.5.2009 mainly to review the situation prevailing due to non-participation of Canara Bank and the difficulties thereon and the urgent need of the respondent for additional letter of credit of Rs.9 Crores to overcome the difficulties.

25. We may usefully refer to the relevant minutes of the meeting dated 14.5.2009, which reads as under:

"The Meeting was specifically convened to review the situation prevailing due to non participation of Canara Bank and the difficulties thereon and the urgent need or Additional letter of Credit of Rs.9 Crs to overcome the difficulties arising

thereon. b. Since the Company could not utilize a part of the credit limits, including the LC limits with Canara Bank, the Company was not able to import RM meant for feed production, which in turn affected the execution of orders which had an adverse effect on the Company's sales and the profits. The Company has therefore requested Canara Bank to find ways and means to compensate the Company adequately.

However Canara Bank has been insisting on payment of Rs.4.80 crores unconditionally.” (underlining added)

26. Since additional LC requirement was not sanctioned by the Canara Bank, the other Banks decided that the sharing of additional LC requirement will be in the same sharing pattern as per the existing sharing pattern viz., State Bank of India (50%); Union Bank of India (28%) and State Bank of Hyderabad (22%).

27. When Appellant Bank has classified the loan account of Respondent as NPA way back in September 2007 and when the Appellant Bank insisted on payment of Rs.4.80 Crores unconditionally and when the Appellant was not inclined to give credit of the sale proceeds towards the reduction in working capital limits of the Respondent, the Respondent was not justified in falling back upon the minutes. Respondent being a borrower is not justified in compelling the Appellant Bank to give credit to the sale proceeds towards the reduction in working capital limits of the Respondent.

28. In the meeting held on 20.01.2010, the Consortium Banks felt that Canara Bank should have sanctioned WCTL and the general consensus among the Consortium Banks was for Canara Bank to go in for OTS. When the loan account of the Respondent with Canara Bank was not properly serviced and when the Canara Bank classified the loan account of the Respondent as NPA, the opinion of the Consortium Banks would not help the Respondent Company.

29. As pointed out earlier, share of the Canara Bank from out of the sale proceeds of Rs.4.80 Crores was not paid to the Appellant Bank. Hence, the Appellant Bank sent a letter to the Respondent on 30.03.2010 putting them on specific notice that “the act of default of the Respondent in meeting their repayment obligations,

despite having capacity to honour its obligations is an act of willful default” and any further delay on the part of the Respondent in remitting the realized dues of Rs.4.80 Crores to the Appellant would constrain the Bank to classify the Respondent as “willful defaulter”. As against the letter of demand dated 30.03.2010, the Respondent has filed W.P.No.7343 of 2010 and obtained interim order of injunction restraining the Appellant from notifying them as “willful defaulter”. As pointed out earlier, in the said Writ Petition, the Respondent volunteered to deposit the amount with the Appellant Bank in “No Lien Account”. Learned Senior Counsel for Appellant has submitted that in the course of arguments in W.P.No.7343 of 2010, the Court felt that Writ Petition could not be sustained. Recording the undertaking to deposit the amount in “No Lien Account”, Respondent was permitted to withdraw W.P.No.7343 of 2010.

30. Case of Appellant Bank is that owing to the act of default in meeting repayment obligations, the outstanding loan amount of Respondent was classified as “NPA”. As per the norms prescribed by RBI, any recovery thereunder shall statutorily first be accounted towards accrued interest and to the principal thereafter. Plea of Respondent to adjust the sale proceeds against the reduction in working capital limits cannot be complied with/acceded to, being contrary to the guidelines prescribed by RBI/Policy of Bank.

31. Learned single Judge partly allowed the application in directing the Appellant Bank to keep the amount in “No Lien Account”. The amounts held in “No Lien account” are only a suspense credit and do not serve the purpose and usefulness for which the moneys are deposited in the Bank. As rightly contended by the learned Senior Counsel for Appellant Bank that the amount deposited in “No Lien Account” is only a suspense account and the Bank cannot have any planning for deployment of such funds. When the Appellant has filed O.A.No.273 of 2010 before DRT-I, Chennai, any direction to keep the amount in “No Lien Account” would be contrary to the norms prescribed by RBI and therefore, the impugned order cannot be sustained.

32. In the suit, respondent/plaintiff sought for:- (a) declaration that the proposal of the defendant Bank to declare the plaintiff as “willful defaulter” is illegal and

improper and (b) directing the appellant/defendant to pay damages of Rs.25 lakhs to the respondent/plaintiff. In the injunction application, respondent/plaintiff has sought for interim injunction restraining the appellant Bank from transferring a sum of Rs.4.80 Crores deposited by the respondent in "No Lien Account". The interim injunction sought for seems to have no nexus with the prayer sought for in the plaint.

33. It is fairly well settled that the interim relief sought for in an interlocutory application should be aimed at protecting the suit relief or subservient to the suit. The relief of interim injunction should fall within the ambit and scope of the suit relief. The relief sought for in the injunction application O.A.No.756 of 2011 is beyond the scope of the suit relief. The learned judge did not keep in view that the interim injunction sought for in O.A.No.756 of 2011 is beyond the scope of the suit relief. The three factors governing grant of temporary injunction are (i) prima facie case; (ii) balance of convenience and (iii) irreparable loss, if injunction is not granted. The applicant must prove prima facie case i.e., substantial question to be tried in the suit. For granting temporary injunction there must be violation of an enforceable right and that violation must be of substantial character. When the relief sought for in the injunction application is beyond the scope of the suit, it cannot be said that the plaintiff has established a prima facie case in respect of the relief sought for in the interlocutory application.

34. Normally, Appellate Court will not lightly interfere with the interim order granted by the trial Court. But in exceptional cases where on being satisfied that the findings are unreasonable and are arrived in ignoring the material evidence, it is open to the Appellate Court to modify the order. The order of learned Judge directing the amount to be kept in "No Lien Account" is against the norms prescribed by RBI and the same cannot be sustained. The amount of Rs.4.80 Crores could be adjusted against the loan account of the Respondent.

35. In the result, the order of learned Judge in O.A.No.756 of 2011 in C.S.No.606 of 2011 dated 28.09.2011 directing the Appellant Bank to keep the amount of Rs.4.80 Crores in "No Lien Account" is set aside and this appeal is allowed. However, there is no order as to costs in this appeal. Consequently, connected

M.Ps. are closed.

' ai8(0-webkit-text-size-adjust: auto; -webkit-text-stroke-width: 0px; background-color: rgb(255, 255, 255); "7. Observing that the proceedings before the Debt Recovery Tribunal has been launched only subsequent to the filing of the suit, the learned judge held that there was no prohibition to file the suit. The learned judge held that the question of appropriation of the amount of Rs.4.80 Crores towards the working capital or the interest amount has to be decided only in the suit and in the meanwhile if the amount is adjusted towards interest amount, the respondent will be put to irreparable loss. The learned single Judge further held that the respondent/plaintiff has proved prima facie case and granted interim injunction restraining the appellant Bank from adjusting the said amount of Rs.4.80 Crores towards the accrued interest. Challenging the impugned order, the defendant bank has preferred this appeal.

8. The learned Senior Counsel for appellant Mr.G.Masilamani contended that when the appellant Bank was not satisfied with the performance of respondent, the borrower cannot compel the Bank to act to suit to the borrower's conveyance and advantage by compelling the Bank to adjust amount of Rs.4.80 Crores towards working capital. The learned Senior Counsel would submit that all the remedy has to be worked out only in the application filed by the appellant Bank in O.A.No.273 of 2010 before Debt Recovery Tribunal-I and the suit itself is not maintainable. It was also submitted that the interim injunction sought for has no connection with the relief sought for in the suit.

9. Countering the submissions, Mr.S.A.Rajan, learned counsel for respondent would submit that in the meeting held on 4.7.2008, Consortium of Banks agreed that the amount payable to the Consortium of Banks is for reduction of working capital limit. The learned counsel would further submit that though other members of Consortium of Banks are co-operating with the respondent, only the appellant bank did not provide necessary support, which is reflected in minutes of various meetings. It was further submitted that pending the suit and settling the other issues by keeping the amount in 'No Lien Account', no prejudice would be caused to the appellant Bank.

10. Upon consideration of the rival contentions, the following points arise for determination:

1. Whether the respondent/plaintiff has proved prima facie case that the appellant Bank is not justified in seeking to adjust Rs.4.80 Crores towards interest?

2. Whether the order of learned single Judge directing that the amount of Rs.4.80 Crores be kept in 'No Lien Account' suffers from any perversity warranting interference by the Appellate Court?"

11. Re-contention: Maintainability of the Suit:- Claiming a sum of Rs.16,10,79,284, the respondent bank filed O.A.No.273 of 2010 before Debt Recovery Tribunal I, Chennai on 3.9.2010. Learned Senior Counsel for the appellant contended that O.A. has already been filed for recovery of a sum of Rs.16,10,79,284 along with interest accrued and the learned judge did not properly appreciate that under Section 9 of the Recovery of Debts due to Banks and Financial Institutions Act the Tribunal is not only empowered to adjudicate upon the claims of the Bank against the borrower, but also the counter claim and set off, if any, to be borrowed by the borrower against the bank. While that being the legal position, suit itself is not maintainable and the learned judge erred in allowing O.A.No.756 of 2011.

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informing the respondent that they would be termed as willful defaulter, the respondent had filed a writ petition in W.P.No.7343 of 2010 on 2.4.2010. Till that date, the lead Bank was retaining the sum of Rs.4.80 Crores payable to the appellant bank. In the writ petition, the respondent offered to deposit the amount with the appellant bank and prayed for an order that the amount would be kept in deposit with the appellant bank in No Lien Account until the dispute was settled. Recording the statement of respondent, in the writ petition, on 9.4.2010, an interim order was passed stating that the respondent/borrower gave an undertaking to deposit the sum of Rs.4.80 Crores in a separate No Lien Account. Later, recording the memo by the respondent, the writ petition was disposed of on 20.9.2011 permitting the respondent to withdraw the writ petition with liberty to pursue the

remedy in the suit. It was thereafter the suit- C.S.No.606 of 2011 came to be filed. Thus, the Court has granted liberty to file Civil Suit. However, the issue of maintainability of the suit in the light of Section 19 of Recovery of Debts due to Banks and Financial Institutions Act is left open to be agitated in the suit.

13. The respondent availed financial facilities/working capital term loan (WCTL) from

(a) State Bank of India, Overseas Branch, Chennai 35%

(b) Canara Bank, Overseas Branch 30%

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m) The Lead Bank and the Second Lead Bank shall meet at quarterly intervals to assess the performance of the Borrower based on the Statement from the Borrower under the Quarterly Information System (QIS) and fix at such Meeting the Operating Limits/Individual Bank's Share thereof for the next Quarter which shall be binding on the Members of the Consortium. n) 1) In the first instance, such member bank desiring to opt out, and/or to reduce its share should offer its share to one or more amongst the other member banks in the consortium and/or to one or more new banks willing to join the consortium, and in the event of such share being taken up by either the existing members and/or new banks to be admitted into the consortium, such member bank will be permitted to either opt out or to reduce its share.

14. In 2005-2006, there was a slump in the export activity all over India and the respondent also went through difficult period basically due to anti-dumping duty levied by United States authorities and also Tsunami. This has affected the performance of the Company both in the area of exports and domestic sales. Therefore, the respondent sought for working capital term loan of Rs.9 Crores. Consortium of Banks interalia wanted the Company to fulfill the conditions viz., (i) to settle the loans due to other financial institutions amounting to Rs.20 Crores; (ii) after settling the loans, the Company has to give first charge of the fixed assets to the Banks; and (iii) the promoters to bring in Rs.2.25 Crores as their share of the working capital term loan and the Banks share would be Rs.6.75 Crores. Thus, totally, Rs.9 Crores.

15. The share of the Banks - Rs.6.75 Crores as additional working capital term loan is to be shared between the Consortium of Banks. Case of respondent is that they complied with all the conditions to avail additional working capital term loan of Rs.9 Crores and that they deposited Rs.2.25 Crores with the lead Bank and Consortium of Banks viz., State Bank of India, Union Bank of India and State Bank of Hyderabad also sanctioned the working capital loan. Further case of respondent is that the appellant - Canara Bank did not provide additional working capital of Rs.2.20 Crores and the same was not informed to the Lead Bank and therefore other consortium Banks were also prevented from providing additional capital. Grievance of respondent is that as additional working capital was not provided by all the Banks, due to the non-cooperative attitude of the appellant Bank and the respondent has to suffer. The merits of the above contention has to be seen only at the time of trial. At this juncture, suffice it to note that the relationship between the appellant Bank and the respondent was not cordial even in 2006.

16. Since the respondent was finding it difficult to proceed with the operations and since the working capital term loan was not released, the Consortium of Banks held meeting on 19.6.2007 and, 26.10.2007. In the meeting, Consortium of Banks suggested that the respondent could sell a portion of fixed assets 460 acres and would discharge liabilities to an extent of Rs.21 Crores to the other creditors of the respondent Company and would discharge Rs.16 Crores to the Consortium of Banks for reducing the over all limit of the working capital. Accordingly, the

respondent sold 460 acres for Rs.37 Crores. From out of 37 Crores, Rs.16 Crores is payable to the Consortium of Banks for reduction of limits and the respondent Company to discharge Rs.21 Crores to their creditors. In the meeting on 4.7.2008, the appellant bank was also a party. Out of Rs.16 Crores payable to the Consortium of Banks, appellant bank has to receive Rs.4.80 Crores, being 30% of Rs.16 Crores.

17. The Contention of appellant bank is that the said amount of Rs.4.80 Crores cannot be adjusted towards the working capital and that it has to be adjusted only towards interest. The learned Senior Counsel for appellant contended that owing to the act of default by the respondent in meeting repayment obligations, respondent has allowed the loan account to be a Non Performing Asset (NPA) and once a loan account becomes a NPA, any recovery made thereafter shall statutorily first be accounted towards accrued interest and only thereafter to the principal. The learned Senior Counsel would further submit that as per the prudential norms prescribed by Reserve Bank of India, the plea of respondent to adjust the sale proceeds against the reduction of working capital limit could not be complied with/acceded to, being contrary to the guidelines prescribed by Reserve Bank of India/Policy of the Bank. It was submitted that the request of the respondent to adjust any working capital limit would be against the prudential norms prescribed by Reserve Bank of India and the learned judge ought to have kept in view the norms prescribed by Reserve Bank of India.

18. In so far as direction to keep the amount in No Lien Account, the learned Senior Counsel for the appellant submitted that in case of the amount kept in No Lien Account, the said amount is only a suspense credit as it is a float fund without even a nomenclature, held in a suspense account and no useful purpose could be accomplished by keeping the money in suspense account. The learned Senior Counsel would urge that the appellant Bank may be permitted to adjust the amount of Rs.4.80 Crores towards the loan liabilities of the respondent as per Reserve Bank of India guidelines and suitable direction could be passed that any such adjustment could be subject to the result of the suit.

19. Per contra, the learned Counsel for respondent would submit that the adjustment of the amount towards the interest would not be in line with the decision taken by the Consortium of Banks. The learned counsel would further submit that because of the attitude of the appellant bank in attempting to declare the respondent as willful defaulter, the respondent is subjected to serious prejudice. As per the norms prescribed by Reserve Bank of India, any recovery has to be accounted towards accrued interest and not to the principal.

20. In minutes of the meeting held on 04.07.2008 that the Consortium of Banks is said to have agreed to adjust the amount towards reduction of limits. Learned counsel for Respondent has drawn our attention to the minutes of meeting held on 04.07.2008 in which the Consortium of Banks advised the Company to sell the land to find a way of reducing the working capital limits. The relevant portion of the minutes of meeting dated 04.07.2008 runs as under:- "Mr.Ashok Nanjapa (CEO of respondent) welcomed the bankers and then briefed as under:

a and b.

c. In the last Consortium meeting, held on 26.03.08, the bankers have advised the Company to find a way of reducing their working capital limits. One of the suggestions made was to dispose some of the unutilized excessive lands at Nellore." (underlining added) The same is reiterated in the very same meeting stating the proposed distribution of the amount, which is as follows:

"(a) Rs.16 crores payable to the consortium of banks for reduction of limits to the extent of approximately 50% of the limits." (underlining added)

21. Contention of Respondent is that the above minutes prima facie shows that the sale proceeds was meant only for reduction of the working capital limits and it was expected that it would help the Company to restore the operation.

22. Ofcourse the minutes of meeting dated 04.07.2008 indicate that the amount payable to the Consortium of Banks was for reduction of working capital limits. Even though the officials of Canara Bank participated in the meeting held on 04.07.2008, by perusal of the Proceedings of the subsequent meeting, it is seen

that the Appellant Bank has been insisting on payment of Rs.4.80 Crores unconditionally.

23. Even in September 2007, the loan account of Respondent was classified as "NPA". Case of Appellant is that only with a view to helping the Respondent in overcoming the financial difficulties, the Appellant gave a consent/no objection to the Respondent to sell a portion of the mortgaged property. Grievance of Appellant is that Respondent had sold the common security of land in September 2008 for Rs.37 Crores and the Lead Bank received the entire consideration only on 19.12.2008 long after the decisions to sell. Further grievance of Appellant is that from out of Rs.16 Crores, a sum of Rs.5.60 Crores was given to State Bank of India, a sum of Rs.3.20 Crores was paid to the Union Bank of India and a sum of Rs.2.40 Crores was given to the State Bank of Hyderabad. Appellant's share of Rs.4.80 Crores was retained by the Lead Bank on the basis of the request of the Respondent. As per the minutes of meeting held on 04.07.2008, even though the amount of Rs.4.80 Crores was readily available with the Lead Bank, Respondent has retained the said amount.

24. In the subsequent meeting held on 19.12.2008, the members of Consortium Bank discussed the Company's operation and also the matter related to resumption of normal working between the Canara Bank and the Company. In the meeting held on 14.5.2009, the Appellant Bank did not participate. From the minutes of the meeting on 14.5.2009, it is seen that the appellant Bank has been insisting on payment of Rs.4.80 Crores unconditionally. As per the minutes of the meeting, the meeting was stated to be convened on 14.5.2009 mainly to review the situation prevailing due to non-participation of Canara Bank and the difficulties thereon and the urgent need of the respondent for additional letter of credit of Rs.9 Crores to overcome the difficulties.

25. We may usefully refer to the relevant minutes of the meeting dated 14.5.2009, which reads as under:

"The Meeting was specifically convened to review the situation prevailing due to non participation of Canara Bank and the difficulties thereon and the urgent need or Additional letter of Credit of Rs.9 Crs to overcome the difficulties arising

thereon. b. Since the Company could not utilize a part of the credit limits, including the LC limits with Canara Bank, the Company was not able to import RM meant for feed production, which in turn affected the execution of orders which had an adverse effect on the Company's sales and the profits. The Company has therefore requested Canara Bank to find ways and means to compensate the Company adequately.

However Canara Bank has been insisting on payment of Rs.4.80 crores unconditionally." (underlining added)

26. Since additional LC requirement was not sanctioned by the Canara Bank, the other Banks decided that the sharing of additional LC requirement will be in the same sharing pattern as per the existing sharing pattern viz., State Bank of India (50%); Union Bank of India (28%) and State Bank of Hyderabad (22%).

27. When Appellant Bank has classified the loan account of Respondent as NPA way back in September 2007 and when the Appellant Bank insisted on payment of Rs.4.80 Crores unconditionally and when the Appellant was not inclined to give credit of the sale proceeds towards the reduction in working capital limits of the Respondent, the Respondent was not justified in falling back upon the minutes. Respondent being a borrower is not justified in compelling the Appellant Bank to give credit to the sale proceeds towards the reduction in working capital limits of the Respondent.

28. In the meeting held on 20.01.2010, the Consortium Banks felt that Canara Bank should have sanctioned WCTL and the general consensus among the Consortium Banks was for Canara Bank to go in for OTS. When the loan account of the Respondent with Canara Bank was not properly serviced and when the Canara Bank classified the loan account of the Respondent as NPA, the opinion of the Consortium Banks would not help the Respondent Company.

29. As pointed out earlier, share of the Canara Bank from out of the sale proceeds of Rs.4.80 Crores was not paid to the Appellant Bank. Hence, the Appellant Bank sent a letter to the Respondent on 30.03.2010 putting them on specific notice that "the act of default of the Respondent in meeting their repayment obligations,

despite having capacity to honour its obligations is an act of willful default"; and any further delay on the part of the Respondent in remitting the realized dues of Rs.4.80 Crores to the Appellant would constrain the Bank to classify the Respondent as "willful defaulter". As against the letter of demand dated 30.03.2010, the Respondent has filed W.P.No.7343 of 2010 and obtained interim order of injunction restraining the Appellant from notifying them as "willful defaulter". As pointed out earlier, in the said Writ Petition, the Respondent volunteered to deposit the amount with the Appellant Bank in "No Lien Account". Learned Senior Counsel for Appellant has submitted that in the course of arguments in W.P.No.7343 of 2010, the Court felt that Writ Petition could not be sustained. Recording the undertaking to deposit the amount in "No Lien Account", Respondent was permitted to withdraw W.P.No.7343 of 2010.

30. Case of Appellant Bank is that owing to the act of default in meeting repayment obligations, the outstanding loan amount of Respondent was classified as "NPA". As per the norms prescribed by RBI, any recovery thereunder shall statutorily first be accounted towards accrued interest and to the principal thereafter. Plea of Respondent to adjust the sale proceeds against the reduction in working capital limits cannot be complied with/acceded to, being contrary to the guidelines prescribed by RBI/Policy of Bank.

31. Learned single Judge partly allowed the application in directing the Appellant Bank to keep the amount in "No Lien Account". The amounts held in "No Lien account" are only a suspense credit and do not serve the purpose and usefulness for which the moneys are deposited in the Bank. As rightly contended by the learned Senior Counsel for Appellant Bank that the amount deposited in "No Lien Account" is only a suspense account and the Bank cannot have any planning for deployment of such funds. When the Appellant has filed O.A.No.273 of 2010 before DRT-I, Chennai, any direction to keep the amount in "No Lien Account" would be contrary to the norms prescribed by RBI and therefore, the impugned order cannot be sustained.

32. In the suit, respondent/plaintiff sought for:- (a) declaration that the proposal of the defendant Bank to declare the plaintiff as "willful defaulter" is illegal

and improper and (b) directing the appellant/defendant to pay damages of Rs.25 lakhs to the respondent/plaintiff. In the injunction application, respondent/plaintiff has sought for interim injunction restraining the appellant Bank from transferring a sum of Rs.4.80 Crores deposited by the respondent in "No Lien Account'. The interim injunction sought for seems to have no nexus with the prayer sought for in the plaint.

33. It is fairly well settled that the interim relief sought for in an interlocutory application should be aimed at protecting the suit relief or subservient to the suit. The relief of interim injunction should fall within the ambit and scope of the suit relief. The relief sought for in the injunction application O.A.No.756 of 2011 is beyond the scope of the suit relief. The learned judge did not keep in view that the interim injunction sought for in O.A.No.756 of 2011 is beyond the scope of the suit relief. The three factors governing grant of temporary injunction are (i) prima facie case; (ii) balance of convenience and (iii) irreparable loss, if injunction is not granted. The applicant must prove prima facie case i.e., substantial question to be tried in the suit. For granting temporary injunction there must be violation of an enforceable right and that violation must be of substantial character. When the relief sought for in the injunction application is beyond the scope of the suit, it cannot be said that the plaintiff has established a prima facie case in respect of the relief sought for in the interlocutory application.

34. Normally, Appellate Court will not lightly interfere with the interim order granted by the trial Court. But in exceptional cases where on being satisfied that the findings are unreasonable and are arrived in ignoring the material evidence, it is open to the Appellate Court to modify the order. The order of learned Judge directing the amount to be kept in "No Lien Account" is against the norms prescribed by RBI and the same cannot be sustained. The amount of Rs.4.80 Crores could be adjusted against the loan account of the Respondent.

35. In the result, the order of learned Judge in O.A.No.756 of 2011 in C.S.No.606 of 2011 dated 28.09.2011 directing the Appellant Bank to keep the amount of Rs.4.80 Crores in "No Lien Account" is set aside and this appeal is allowed. However, there is no order as to costs in this appeal. Consequently,

connected M.Ps. are closed.

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