
2008 eGLR_HC 10005601,2008 CC (143)115

Before the Hon'ble MR KAPUJ, JUSTICE

THE KALUPUR COMMERCIAL CO-OPERATIVE BANK LTD - APPLICANT(S) Vs. O.L. OF NAVRANG SYNTHFAB PVT. LTD. AND 2 - RESPONDENT(S)

COMPANY APPLICATION No: 583 of 2007 , Decided On: 20/02/2008

Nanavati Associates, Mrugesh Jani, Chetan Pandya, Sudhir Mehta

MR.JUSTICE K.A.PUJ

1. The applicant - Kalupur Commercial Co-operative Bank Ltd., has taken out this Judges Summons praying for the following orders; (A) Your Lordship may be pleased not to confirm the sale of the property of the company (in liquidation) situated at Plot No.267/P i.e. land admeasuring 20,639 sq.meters, situated at Mouje - village Iyava (Vasna), Taluka: Sanand, Dist. Ahmedabad and further be pleased to restrain the Official Liquidator from executing the sale deed or any other documents in favour of any third person, since the said property has been conveyed in favour of the applicant Bank by executing an irrevocable Power of Attorney dated 4.9.2001 and 16.4.2004 in favour of the applicant Bank as security towards the credit facilities.

(B) Your Lordships may be pleased to further hold and declare that, by virtue of the said charge being created by the said persons, the applicant Bank has become the sole secured creditor of the company (in liquidation) qua the subject property and this Honble Court may be pleased to further direct the O.L. to transmit the sale proceeds, if any, qua the subject property to the applicant bank to be appropriated towards the outstanding dues of the Company (in liquidation)

(C) Pending the admission and final disposal of the present application, Your Lordships may be pleased to restrain the Official Liquidator from executing sale deed or any other document conveying the subject property in favour of the successful bidder, if any, or any other party.

2. An affidavit is filed by K.S.Kavina, as Manager (Recovery) of the applicant Bank in support of the Judges Summons. After filing this application, the applicant Bank has prayed for impleading Suresh Dhansiram Agrawal and Jagrut Jantilal Bhagdev as party respondent. Accordingly, the Court has granted leave to join Suresh Dhansiram Agrawal and Jagrut Jantilal Bhagdev as party respondent Nos.2

and 3 and has also granted leave to add para-7.1 after para-7 of the application. The Court has, thereafter, issued notices to the respondents including these newly joined respondent Nos.2 and 3. On service of notice, Mr.Chetan K. Pandya, learned advocate appears for respondent No.2 and Mr.Sudhir Mehta, learned advocate appears for respondent No.3. The respondent Nos.2 and 3 have also filed their separate affidavit to which rejoinder affidavits are filed by the applicant Bank.

3. Mr.Nandish Chudgar, learned advocate is appearing for Nanavati Associates for the applicant. It is the case of the applicant Bank that the applicant Bank had granted certain financial facilities to M/s.Navrang Synthfab Pvt. Ltd., Company in liquidation, M/s.Ashit Fashion Pvt. Ltd., and S.G.Fashion Makers Pvt. Ltd., a group of companies administered and managed by the same group of persons. The applicant Bank had granted the credit facilities to the company in liquidation to the tune of Rs.1,81,32,115/- To secure the repayment of the outstanding amount, the Director of the Company in liquidation had executed an irrevocable power of attorney in favour of the applicant for the subject property being Plot No.267/P land admeasuring about 20,639 sq.mtrs., situated at Mouje Village - Iyava (Vasna), Tal.Sanand, Dist. Ahmedabad. It is also stated that the applicant Bank has to recover an amount of Rs.83,86,836/- as on 30.3.2007. Mr.Chudgar has further submitted that since the authorised persons of the Company as well as the group of companies had committed gross irregularities and offences, the applicant Bank was constrained to file various criminal complaints before the competent authority. Pursuant to the said complaint Mr.Suresh D. Agarwal, who was the prime accused and the responsible person, managing and administering the affairs of the companies, was arrested on 30.9.2003. Subsequently, upon a bail application moved by said Mr.Agarwal, this Court vide order dated 11.3.2004 passed in Criminal Misc. Application No.886/2004, has granted conditional bail on certain conditions. The said condition contained direction to deposit Rs.25 lacs with the applicant Bank as condition for releasing the accused, a further amount of Rs.25 lacs by 15.5.2004, and another amount of Rs.25 lacs by 15.12.2004 with the applicant Bank. This Court has also imposed a condition directing the accused to execute all necessary documents, including the power of attorney and other documents as may be desired by the Bank for the purpose of creating charge over the properties of the accused, which were to be given as security to the applicant Bank.

4. Mr.Chudgar has further submitted that pursuant to the said order of this Court, Mr.Agarwal executed a power of attorney dated 16.4.2004 in favour of the applicant Bank for the subject property. The Director of the Company in liquidation, namely, Jagrut Jayantilal Bhagdev, has also executed an irrevocable power of attorney dated 4.9.2001 for the property in question, in his capacity as such, as security against obtaining the credit facilities from the applicant Bank. He has further submitted that from the irrevocable power of attorney dated 4.9.2001 executed by the respondent No.3 it appeared that the said power of attorney has been executed by him in capacity of Director of the Company. He has also stated that he has been authorised by the Board of Directors of the company to execute such power of attorney. He has also averred that the subject property is belonging to the Company in liquidation whereas in the irrevocable special power of attorney dated 16.4.2004

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executed by the respondent No.2 he has stated that the subject property is not belonging to the Company in liquidation and that he is the owner of the subject property. As such, on the above documents, the respondent Nos.2 and 3 have created charge of the applicant Bank over the subject property. However, from the averments made in their respective power of attorneys, it appeared that there was some confusion with regard to real title and ownership of the subject property and hence only with a view to clarify the said aspect of the matter, the applicant Bank has joined respondent Nos.2 and 3 as party respondents.

5. Mr.Chudgar has further submitted that the applicant Bank has only come to know from the advertisement published on 12.10.2007 with regard to the same property for public auction and hence the applicant Bank wrote a letter to the Official Liquidator on 16.10.2007 wherein it had registered objection against holding of auction of the subject property. The applicant Bank, thereafter, wrote further letter dated 23.10.2007 and 25.10.2007 reiterating its contention that by virtue of the power of attorneys dated 4.9.2001 and 16.4.2004 executed by the Director of the Company in liquidation and Mr.Agarwal, who projected himself as the owner of the property, the applicant Bank has got exclusive charge over the property in question. Such charge also reflected in 7/12 abstract of the said property. Hence, it can reasonably be said that the applicant bank is the secured creditor of the Company qua the subject property and hence the said property cannot be sold and if the sale is confirmed and the sale proceeds are appropriated towards the dues of all other secured creditors, the same will result in huge monetary loss and great prejudice to the applicant Bank. He has, therefore, filed present application before this Court seeking appropriate order as indicated in the prayer clause of Judges Summons.

6. In support of his submission he invited Courts attention to the order passed by this Court in Criminal Misc. Application No.886 of 2004, power of attorneys executed by the Director of the Company as well as Mr.Agrawal and other documents attached with the application.

7. Mr.Chudgar has further submitted that subsequent to filing of this application the applicant Bank has also filed Appeal before the Court challenging the order passed by the Official Liquidator whereby the applicants claim regarding secured creditor was rejected by him. This application/appeal was decided by this Court on 19.2.2008 whereby this Court has issued certain directions to the Official Liquidator to allow the applicant Bank to participate in the sale proceeding and all other legal proceedings qua the property in question. He has further submitted that the applicant Bank is also contemplating to file an application before the Company Law Board under Section 141 of the Companies Act, 1956. Since the applicant Banks charge was not got registered under Section 125 of the Companies Act, 1956, an application was required to be filed before the Company Law Board. He has, therefore, submitted that in view of the order passed by the Court on 19.2.2008, at this stage, the present application does not

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basis of outcome of Company Law Board on the applicant banks application. He has further submitted that the issue would assume significance only at the time of disbursement of the money.

8. Mr.Chetan Pandya, learned advocate appearing for the respondent No.2 has mainly relied on the averments made in the affidavit filed by the respondent No.2. He has submitted that in Criminal Misc. Application No.886 of 2004 the Kalapur Commercial Co-operative Bank was the party respondent and after hearing the Bank this Court has passed an order. He has further submitted that the respondent No.2 has never claimed ownership of the property in question. Since the Director of M/s.Navrang Synth Fab Pvt. Ltd., has executed irrevocable power of attorney in favour of the Bank and has tendered original sale deed by creating mortgage, the respondent No.2 has executed irrevocable power of attorney in favour of the applicant Bank and in the said power of attorney it was also made clear that the land belongs to Company in liquidation. He has, therefore, submitted that there was no concealment or mis-representation of the fact before this Court in Criminal Misc. Application No.886 of 2004. He has, therefore, submitted that the respondent No.2 has been wrongly joined as party in the present proceeding and no action can be taken against him nor any observation can be made against him which will prejudice his case before the Criminal Court.

9. Mr.Sudhir Mehta, learned advocate appearing for the respondent No.3 has also mainly relied on the affidavit filed by the respondent No.3. He has submitted that he joined Ashok Fashions Ltd., in June 1992 as Electronic Data Processing Manager and was promoted to General Manager in 1994 and he was working for the said Company till 1998. He has further submitted that Suresh Agarwal was the key person, Chairman and Managing Director, of the said Company and because of family differences, the partition took place in the year 1994 and Ashok Fashions Ltd., was taken over by the elder brother Dayaram Agarwal and other brothers Sushil Agarwal and Ashok Agarwal. He has further submitted that the respondent No.3 had worked with Suresh Agarwal for two years before partition took place and in the year 1998 left the Company and had joined as Finance Manager with Suresh Agarwal Group, who were holding Navrang Synth Fab Pvt. Ltd., Navrang Silk Mills Pvt. Ltd., Ashima Fashions Pvt. Ltd., Icem Garments Pvt. Ltd., but by virtue of his employment as Finance Manager he was positioned as Director in Navrang Synth Fab Pvt. Ltd., with effect from 1.9.1998. He has further submitted that there was no promotion but to fill in the vacancy in the group companies as per the requirement of the Companies Act, 1956, he was under the compulsion to accept it. He has further submitted that the respondent No.3 had submitted several documents as per instruction of Suresh Agarwal to many of the government and other officials including the applicant Bank. He has further submitted that the Company vide its letter dated 29.8.2000 handed over all the original papers of land at Sanand and the title of the land was verified by the bank officials and was clear from the entire encumbrance etc., on the date of handing over of the property. He has further submitted that the Bank wanted irrevocable power of attorney for the purpose of sale of the property, because of the heavy pressure to file M Case against the respondent No.3 by the Bank and pressure by Suresh Agarwal he has signed the irrevocable power of attorney, which was prepared by the

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Bank. He has, therefore, submitted that the respondent No.3 has no option but to sign the papers though he was not in employment in the said Company at that time. Moreover, he was jobless and facing financial difficulty and mental disturbance. He has, therefore, submitted that no action be taken against him.

10. Mr.Mrugesh Jani, learned advocate appearing for the Official Liquidator has submitted that the respondent Nos.2 and 3 both have executed irrevocable power of attorney in favour of the Bank after the Company went into liquidation. He has further submitted that even the documents were given to the Bank for the purpose of creating equitable mortgage in favour of the applicant Bank, during the pendency of winding up petition and hence the said transaction squarely falls within the ambit of Section 536(2) of the Act as it was entered within one year prior to the date of winding up. He has, therefore, submitted that the relief prayed for in the present application cannot be granted.

11. Having regard to the facts and circumstances of the case and considering the averments made in the application as well as the affidavit-in-reply filed by the respondent Nos.2 and 3, this Court is of the view that the relief prayed for in the present application no longer survives in view of the order passed by this Court on 19.2.2008 in Company Application No.71 of 008. In that order the Court has clearly indicated that the applicant Bank would be permitted to participate in the Sale Committee meeting as well as all proceedings for property in question of the Company in liquidation. The applicant Bank's status would be decided only on the outcome of the application that may be filed before the Company Law Board. This question will be decided at the time of disbursement of the amount realised on the sale of the property in question.

12. In view of the above discussion, the relief prayed for in the present application cannot be granted. However, role of the respondent Nos.2 and 3 and allegations made therein are required to be considered in this application. Admittedly, both the irrevocable power of attorneys were executed after the date of winding up order. It is practically impossible to presume that the respondent Nos.2 and 3 are not aware about the winding up order. The respondent No.3 has executed power of attorney way back in 2004 i.e. after more than 4 years from the date of winding up order. It was nowhere stated before the Court taking up the criminal matter that the property in question belongs to the Company and Company went into liquidation. The ex-management has no right to mortgage the said property of the Company in liquidation and despite this fact the property was mortgaged as security to the applicant Bank and on that ground, the respondent No.2 has obtained bail from this court. It, therefore, appears that the respondent No.2 has misled the Court at the time of obtaining bail and true and correct facts were not presented before the Court. Since this Court is not seized with the said criminal matter the Court is not passing any order adverse to the respondent Nos.2 and 3. However, it is open for the applicant Bank to take note of this order and take out appropriate proceeding, if

they think fit. Likewise, the respondent No.3 was the Director of the

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Company and he has signed the power of attorney in 2001 i.e. after the date of winding up order. He is well educated and qualified person. He is supposed to know that the company went into liquidation and it is not proper for him to execute power of attorney whereby the powers are given to the Bank to sell the property of the Company in liquidation. The Banks version that it came to know only when an advertisement has appeared in the newspaper is also not satisfactory.

13. Be that as it may, since the Court has not granted any relief prayed for in the present application, in view of the discussion made hereinabove, no further direction is required to be issued at this stage. The present application is accordingly disposed off.

Appeal dismissed

