

K.T. Thomas vs Indian Bank And Ors. on 9 November, 1984

Equivalent citations: 1984(2)SCALE753, 1984(SUPP)SCC703, 1985(17)UJ416(SC), AIRONLINE 1984 SC 16, 1984 SCC (SUPP) 16

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Bench: A.N.Sen, D.A. Desai

ORDER

D.A. Desai, J.

1. Special leave granted.

2. In our anxiety to reach the heart of the problem, and not to be lost in the maze of interlocutory orders, we examined the case from various angles though we must confess that the petition for special leave to appeal was directed against an order removing the petitioner from the receivership of Poonmudi Estate of which he was the proprietor. Keeping aside the narrow question brought to this Court in the petition for special leave we ventured into wider ramifications of the problem awaiting adjudication by the High Court. Confess, we must, that we have not been able to hit the bull's eye, but at best the dreary litigative journey would be shortened.

3. A brief resume of the facts leading to the present petition for special leave will illumine the contours of controversy. The first respondent-the Indian Bank ('Bank' for short) had advanced a medium term loan in the amount of Rs. 5,50,000/- to the petitioner Shri K.T. Thomas, who is the proprietor of Poonmudi Tea Estate ('Estate' for short). On his failure to repay the loan in time, a suit being O.S. No. 62 of 1976 was filed by the Bank against the petitioner which ended in a decree on June 22, 1976. The Bank moved a petition for execution of the decree being E.P. No. 251 of 1976 and prayed for bringing the mortgage property to court auction to realise the decretal amount. The Bank also moved E.A. No. 1023/76 for appointment of a receiver to manage the estate during the pendency of the execution application. There were some other interlocutory orders with which we are not concerned in this petition. The Executing Court extended to the petitioner the benefit of satisfying the decree by paying quarterly instalment of Rs. 50,000/- commencing from October 1, 1976 till the decree is satisfied but added a default clause by providing that in the event of default in payment of any instalment, the Bank would be at liberty to move for the appointment of a receiver. The petition for appointment of a receiver moved by the Bank was accordingly rejected. It appears that the petitioner defaulted in payment of the very first instalment. The Bank appeared not to have taken any step to enforce the default clause between October 1, 1976 and January 1, 1979. The Bank realised towards the decretal amount a sum of Rs. 1,83,963.38p during the aforesaid period. Ultimately, the Bank moved a petition on August 13, 1979 for appointment of a receiver of the estate.

The Executing Court in the meantime had given one more opportunity to the petitioner to pay the balance of the decretal amount by quarterly instalment of Rs. 50,000/- commencing from October 1, 1980. On the failure of the petitioner to take advantage of this concession the executing court ultimately appointed respondent No. 2 as the receiver. The petitioner questioned this order in an appeal to the High Court of Kerala. The High Court by its order dated November 15, 1982 set aside the appointment of the second respondent as receiver and appointed the petitioner as the receiver. The appointment was subject to the condition to pay Rs. 1 lakh to the decree holder within one month from the date of the order failing which his receivership would stand terminated and the executing court would be at liberty to appoint a new receiver. The court also directed payment of the balance of the decretal amount by instalment. The petitioner moved a petition for review of the aforementioned order which was rejected on January 17, 1983. The petitioner thereupon filed a petition for special leave against the orders dated November 15, 1982 and January 17, 1983. When this petition came up for hearing in this court, the petitioner was asked whether he was prepared to deposit Rs. 1 lakh as directed by the High Court. The petitioner was hesitant to give the undertaking whereupon the court declined to entertain the petition and accordingly it was disposed of as withdrawn. In the meantime, pursuant to the order of the High Court dated November 15, 1982 removing the second respondent as receiver and appointing the petitioner as receiver, he was put in the physical possession of the estate in February, 1983. Admittedly, since then the petitioner is in the active management of the estate.

4. Thereafter, the second respondent who was removed from receivership moved a petition requesting the court to expunge certain remarks made by the High Court in its order dated November 15, 1982. During the pendency of this petition, the Secretary, District Labour Congress sought permission to intervene and the High Court granted the permission.

5. The High Court while examining the petition of the second respondent for expunging the remarks proceeded to re-examine its earlier order whereby the second respondent was removed from the office of the receiver and the petitioner was appointed a receiver subject to certain conditions. The High Court took notice of the fact that the petitioner was appointed a receiver subject to the specific condition that he pays or deposits for payment Rs. 1 lakh to the decree holder but as the petitioner had failed to comply with the conditions subject to which he was appointed, CMP No. 2882/83 moved by the Secretary of the State Labour Congress was allowed and the petitioner was removed from the office of the receiver and respondent No. 2 was reinducted as receiver on the same terms and conditions as he was originally appointed by the executing court. The present petition for special leave questioned the correctness of the order reinducting the second respondent as receiver of Poonmudi Estate on March 18, 1983.

6. This court on April 14, 1983 while issuing a notice to the respondents and staying the operation of the order of the High Court under challenge recorded a statement of Mr. K.K. Venugopal, learned Counsel who appeared for the petitioner that the petitioner was willing to give an undertaking as set out in paragraph 6 of the petition for special leave if he was continued as a receiver, Mr. Venugopal also, agreed that the petitioner will deposit Rs. 1 lakh within 15 days from the date of the order.

7. One Malayadi Vijayan, General Secretary of the Trivandrum District Estate Labour Congress filed a counter-affidavit inter alia contending that the petitioner is not a person fit to be appointed as a receiver of the estate and he had grave apprehension that the interest of the workmen would be in jeopardy if the petitioner was continued as a receiver.

8. One K.G. Balakrishnan, an officer of the first respondent Bank filed a long counter-affidavit setting out the entire history of the litigation and emphatically asserted that having regard to the conduct of the petitioner as extensively set out in the counter-affidavit, the petitioner should not be granted any more indulgence and the Bank may be permitted to proceed with the execution application by bringing the mortgage property to court auction.

9. Respondent No. 2 also filed his counter-affidavit and contested the petition. We propose to take no note of the averments made in this counter-affidavit. The matter was thereafter adjourned to various dates to work out a time bound scheme for satisfying the decree of the Bank keeping in view the interests of the workmen employed by the estate, the decree-holder Bank and general public interest.

10. On October 31, 1983 it was pointed out to the court that M/s. J. Thomas & Co. Pvt. Ltd., Willington Island, Cochin owes Rs. 2.2 lakhs to the petitioner and therefore, this Court on a proper application being moved in this behalf issued notice to M/s. J. Thomas & Co. to state as to what amount it owes to the petitioner and to deposit the same in this court. In response to the notice, one Mr. George Varkey, Chartered Accountant in employment of M/s. J. Thomas & Co. Pvt. Ltd. appeared and filed an affidavit in which it was admitted that Rs. 1,57,188.49p stood to the credit of the Poonmudi Estate in the books of accounts of M/s. J. Thomas & Co. Pvt. Ltd. He also pointed out that in M.P. No. 10/82 in PWA 39/82 made by the workmen Poonmudi Estate before the authority under the payment of Wages Act, Quilon the authority in exercise of the power conferred by Section 17-A of the Payment of Wages Act was pleased to attach the amount of Rs. 2 lakh due to the petitioner and M/s. J. Thomas & Co. Pvt. Ltd. was restrained by an injunction from paying the amount till further orders.

11. This Court on January 6, 1984 enquired from the General Secretary, Trivandrum District State Labour Congress whether it was willing to raise the attachment levied at its instance by the authority under the Payment of Wages Act. An affidavit was filed by the General Secretary conceding that the attachment be raised. Thereupon M/s. J. Thomas & Co. Pvt. Ltd. appearing through learned Counsel Sh. G.B. Pai was directed to deposit the aforementioned amount with the Registrar of this Court.

12. A further direction was given by which the petitioner was permitted to sell either by private treaty or public auction as convenient to him 200 acres of land out of the estate (non-planted area) for a price not less than Rs. 7 lakhs within six months from the date of the order. If the sale as permitted takes effect, the consideration received shall be paid to the Bank within two days from the receipt of it and the same would be appropriated by the Bank towards satisfaction of the decretal liability. Consequential directions were also given. On April 30, 1984, Mr. G.B. Pai, learned Counsel appeared and stated that in compliance with the direction of the court made on January 6, 1984, the amount of Rs. 1,57,188.49p has been deposited with the Registrar of the Supreme Court. The Court

awaited the outcome of the attempt undertaken by the petitioner to sell a portion of the estate as herein-above indicated.

13. By the order dated September 17, 1984, State of Kerala and Kerala State Plantation Corporation were joined as respondents to the petition.

14. An attempt undertaken with best of motives has not met with the desired success. The end product is far from satisfactory. The petitioner apart from being untrustworthy appears to be either an inefficient person or he is interested in delaying the final disposal of the matter. He is continuing as the receiver under the order of this court. Even though way back on January 20, 1984, he was permitted to sell 200 acres of non-planted area from the estate, he has not been able to find a purchaser. The Bank is also not making a serious effort to find a solution. The burden of its song is pay me my money'. What happens to workmen and the estate is hardly its concern. At one stage Mr. M.S.K. Sastri, learned Counsel appearing for the Bank had stated that the market price of the land included in the estate is very high and even if a small portion of the area of the estate is disposed of, the Bank can be paid off. It may be mentioned that the total area comprising in the estate admeasures 872 acres.

15. Leaving the management exclusively to the petitioner is hardly conducive to the interest of the Bank, the secured creditors, the workmen whose livelihood is inextricably intertwined with the continuing operation of the estate and the general well-being of the society as also the national interest in the sense that tea is an important commodity earning scarce foreign exchange.

16. The court has granted undeserved indulgence to the petitioner. His bona fides now appear suspect. More so because every time' liberty was given to him to pay a portion of the debt by installment, default is the only known end product.

17. Having examined all the aspects of the matter we modify the order of the High Court under appeal and we direct that the first respondent Bank shall appoint a senior officer from the upper echelons of service and posted at a place having easy access to the Poonmudi Estate to act as joint receiver with the petitioner. The petitioner and the officer so appointed shall forthwith proceed to carve out a contiguous area not exceeding 200 acres in measurement from the Poonmudi Estate and sell the same either by public auction or private treaty. The sale shall be subject to prior approval and subsequent confirmation of the High Court of Kerala by moving an appropriate petition in the matter in which the order under appeal was made. If the sale goes through, the consideration shall be paid to the Bank towards balance of the decretal amount. Balance shall be paid towards the dues of the workmen engaged in the estate. The direction herein given must be carried out within six months with liberty to move the High Court for appropriate orders. In the circumstances of the case, there will be no order as to costs.