

# State Of Bank Bikaner & Jaipur vs National Iron & Steel Rolling ... on 14 December, 1994

**Equivalent citations: 1995 SCC (2) 19, JT 1995 (2) 14**

**Author: S.C. Agrawal**

**Bench: S.C. Agrawal**

PETITIONER:

STATE OF BANK BIKANER & JAIPUR

Vs.

RESPONDENT:

NATIONAL IRON & STEEL ROLLING CORPORATION AND OTHERS

DATE OF JUDGMENT 14/12/1994

BENCH:

MANOHAR SUJATA V. (J)

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MANOHAR SUJATA V. (J)

AGRAWAL, S.C. (J)

FAIZAN UDDIN (J)

CITATION:

1995 SCC (2) 19                      JT 1995 (2)                      14

1994 SCALE (5) 249

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SUJATA V MANOHAR, J.- Leave granted.

2. The appellant, namely, the State Bank of Bikaner and Jaipur had given cash credit facilities to Respondent 1, National Iron and Steel Rolling Corporation. Respondents 2 to 5 are the partners of Respondent 1. As a security for repayment of the amounts advanced to Respondent 1 by the appellant-bank, Respondent 1 created a mortgage of their factory premises situated at Industrial Area, Bharatpur by a Deed of Mortgage dated 18-10-1977. They have also, by a Letter of Promise

dated 10-6-1981, pledged the plant and machinery installed in the said premises to the bank as a security for the said advances. There is also an agreement for the pledge of movables dated 7-1-1980 executed by the first respondent in favour of the appellant-bank.

3. The appellant-bank filed Civil Suit No. 5/86 in the court of the Additional District Judge II, Bharatpur against the respondents for the recovery of a sum of Rs 3,79,672 due and payable under the above cash credit facility and for future interest @ 16.25% p.a. with quarterly rests. In this suit the appellant-bank also asked for the realisation of the mortgage security under Order 34, Rule 4 of the Code of Civil Procedure.

4. While the suit was pending, the Commercial Taxes Officer, Bharatpur got himself impleaded in the suit on 18-5-1990 on the ground that he had a prior claim for the recovery of a sum of Rs 1, 19,122 as sales tax dues from Respondent 1 and was entitled to realize it by sale of the mortgaged property.

5. The property which is the subject-matter of the mortgage has been sold by auction under the orders of the court for a sum of Rs 4,02,000 to one Smt Kamlesh Goel. Under the orders of the court the sale proceeds have been deposited in court. It was contended by the Commercial Taxes Officer, Bharatpur that the sales tax dues of the first respondent were liable to be paid first out of the sale proceeds. The claim of the appellant-bank could be satisfied only out of the balance amount. The trial court by its judgment and order dated 18-5-1990 accepted this claim of the Commercial Taxes Officer.

The revision petition of the appellant-bank was dismissed by the High Court by the impugned judgment and order. Hence this appeal by special leave.

6. The claim of the Commercial Taxes Officer, Bharatpur rests on the provisions of Section 11-AAAA of the Rajasthan Sales Tax Act, 1954. Section 11-AAAA has been introduced in the Rajasthan Sales Tax Act, 1954 by way of an amendment in 1989. Section 11-AAAA is as follows:

" 11-AAAA. Liability under this Act to be the first charge. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person."

Under this section the amount of sales tax or any other sum due and payable by a dealer or any other person under the Rajasthan Sales Tax Act, 1954, is a first charge on the property of the dealer or of such person. It is on account of the provisions of this section that the Commercial Taxes Officer claimed priority for the recovery of the sales tax dues from the sale proceeds of the mortgaged property. The appellant, however, contended that since the mortgage in their favour is prior in point of time, their claim will have precedence over the claim of the sales tax authorities.

7. It is, therefore, necessary to consider the effect of Section 11-AAAA of the Rajasthan Sales Tax Act, 1954 on an existing mortgage in respect of the property of the dealer or the person liable to pay sales

tax or other sums under the Rajasthan Sales Tax Act, 1954. Section 100 of the Transfer of Property Act deals with charges on an immovable property which can be created either by an act of parties or by operation of law. It provides that where immovable property of one person is made security for the payment of money to another, and the transaction does not amount to a mortgage, a charge is created on the property and all the provisions in the Transfer of Property Act which apply to a simple mortgage shall, so far as may be, apply to such charge. A mortgage on the other hand, is defined under Section 58 of the Transfer of Property Act as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced as set out therein. The distinction between a mortgage and a charge was considered by this Court in the case of *Dattatreya Shanker Mote v. Anand Chintaman Datar*<sup>1</sup>. The Court has observed (at pages 806-807) that a charge is a wider term as it includes also a mortgage, in that, every mortgage is a charge, but every charge is not a mortgage. The Court has then considered the application of the second part of Section 100 of the Transfer of Property Act which inter alia deals with a charge not being enforceable against a bona fide transferee of the property for value without notice of the charge. It has held that the phrase "transferee of property" refers to the transferee of entire interest in the property and it 1 (1974) 2 SCC 799 does not cover the transfer of only an interest in the property by way of a mortgage.

8. In the present case we have to consider whether the statutory first charge which is created under Section 11- AAAA of the Rajasthan Sales Tax Act over the property of the dealer or a person liable to pay sales tax and/or other dues under the Rajasthan Sales Tax Act, is created in respect of the entire interest in the property or only the mortgagor's interest in the property when the dealer has created a mortgage on the property. In other words, will the statutory first charge have priority over an earlier mortgage. It was urged by Mr Tarkunde, learned counsel for the appellant-bank that at the time when the statutory first charge came into existence, there was already a mortgage in respect of the same property. Therefore, the only property which was possessed by the dealer and/or person liable to pay tax or other dues under the Rajasthan Sales Tax Act, was equity of redemption in respect of that property. The first charge would operate, therefore, only on the equity of redemption. The argument though ingenious, will have to be rejected. Where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. The first charge, therefore, which is created under Section 11-AAAA of the Rajasthan Sales Tax Act will operate on the property as a whole and not only on the equity of redemption as urged by Mr Tarkunde.

9. We find support for this conclusion in the observations made in *Fisher and Lightwood's Law of Mortgage*, 10th Edn. at page 33 where the statutory charges are discussed. In dealing with a statutory charge in favour of rating authorities in respect of rating surcharges for unused commercial buildings under the General Rate Act, 1967, it is stated that "a statutory charge has priority to the interest of the mortgagee under a mortgage existing when the charge arose". In the case of *Westminster City Council v. Haymarket Publishing Ltd.*<sup>1</sup> the English Court of Appeals was

required to consider whether a statutory charge on the property under the General Rate Act would have priority over a legal mortgage on the property existing when the charge came into being. It was argued that the charge would be only on the mortgagor-owner's interest in the property i.e. on the equity of redemption. The court negatived this contention. It held that "charge on the land" imposed for an unpaid surcharge was not confined to a charge on the owner's interest in the premises when the charge arose, but extended to a charge on all the estates and interests in the premises existing when the charge arose.

1 (1981) 2 All ER 555 The rating authority's charge would have priority over the bank's interest as a mortgagee.

10. In the present case, the section creates a first charge on the property, thus clearly giving priority to the statutory charge over all other charges on the property including a mortgage. The submission, therefore, that the statutory first charge created by Section 11-AAAA of the Rajasthan Sales Tax Act can operate only over the equity of redemption, cannot be accepted. The charge operates on the entire property of the dealer including the interest of the mortgagee therein.

11. Looked at a little differently, the statute has created a first charge on the property of the dealer. What is meant by a "first charge"? Does it have precedence over an earlier mortgage? Now, as set out in *Dattatreya Shanker Mote* case<sup>1</sup> a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage.

12. No other contention has been urged before us. We, therefore, agree with the conclusion arrived at by the High Court. The appeal is, therefore, dismissed. In the circumstances, however, there will be no order as to costs.