Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 554 OF 2015
WITH
CIVIL APPLICATION NO. 696 OF 2015 IN A.O. NO. 554 OF 2015

M/s. Global Packaging ... Appellant/Applicant
Vs.
Gujarat Nitrate Limited & Ors. ... Respondents

Mr. M.M. Vashi, Senior Advocate a/w. Ms. Aparna Devkar and Mr. Parthi Desai i/b. M.P. Vashi and Associates for the appellant/applicant.
Mr. S.P. Bharti, Advocate for respondent no. 4.
Mr. H.V. Ramchandani, Advocate for respondent no. 5.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **22nd SEPTEMBER, 2015**

P.C.:

Admit. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. This Appeal from Order is directed against the order dated 4th April, 2015 passed by the Civil Judge Senior Division, Daman in S.C.S No. 24 of 2015 thereby rejecting the Application Exhibit 5. Hence, the appellant/plaintiff has filed this Appeal.

3. The appellant/plaintiff is in the business of manufacturing yarn. The appellant is a partnership firm and one of the partners of this firm has purchased a property and land from respondent no. 4, who had purchased

the said property from respondent no. 3/Development Credit Bank Ltd.. Respondent no. 3 had purchased the said property and the land from respondent no. 2, as the land was mortgaged with the bank by respondent no. 2 Gujarat Industrial Investment Corporation Ltd. Respondent no. 2 provided finance to respondent no. 1/Gujarat Nitrate Ltd. earlier for carrying on and development of the business on the said land and establishment. Respondent no. 1/Gujarat Nitrate Ltd. was running the business of manufacturing yarn, however, respondent no. 1 could not repay the loan, therefore, respondent no. 2 had taken action as per State Financial Corporation Act, 1951 and took over the said business along with the property as having first lien over it. It is the case of the appellant that one of the partners of the appellant purchased this property from respondent no. 4 on 8th February, 2011 and thereafter on 16th March, 2015 the appellant received notice from the Employees Provident Fund Organization, which was addressed to Bank Manager, Bank of Baroda for recovery of the Provident Fund amount of Rs.19,63,214/- inclusive of principal amount with interest for the period from September, 1997 to May, 2010.

4. It is the case of the appellant that they were never having business in respect of the said establishment and in the year 2011 the property was

purchased by the appellant, therefore, they are not liable to pay earlier amount due to respondent no. 5. Hence, the suit for declaration and injunction was filed challenging the said notice-cum-order dated 16th March, 2015 issued by the Assistant Provident Fund Commissioner, Sub-Regional Office , Vapi. The said Application was rejected by the learned Judge of the Civil Court mainly on the ground that it is a statutory liability hence the appellants are responsible to pay the said amount. In support of this reasoning, reliance is placed on the judgment dated 12th July, 2014 in the case of **Mcleod Russel India Ltd. vs. Regional Provident Fund Commissioner, Civil Appeal No. 5927 of 2014 (Arising out of SLP(Civil) No. 7704 of 2008)**

5. The learned counsel for the appellant has submitted that the facts in the present case are different than the case in **Mcleod Russel India Ltd**. (*supra*). He submitted that in the present case, the establishment of the property was taken over by respondent no. 2 which is the Financial Corporation, funded respondent no. 1 and therefore, the said Corporation has acted under the State Financial Corporation Act, 1951. He placed reliance on Section 29 of the said Act under which the financial Corporation has given right to recover the loan which is given for the property which is mortgaged, hypothecated or assigned. He also relied on

Section 46B which states about the "Effect of the Act on other laws". He submitted that under the State Financial Corporation Act, the Financial Corporation who has given loan or finance to industry has first lien over the property of the borrower industry than the other under Section 46 of the Act.

6. The learned counsel for respondent no. 5/Corporation relied on sections 14(b) and 17(b) of the Employees Provident Fund and Miscellaneous Provisions Act which state about the power to recover the damages if the party is in default. He further submitted that if a property or the establishment is transferred by way of sale, then the transferee is liable to pay the damages or penalty as claimed by the Provident Fund. He submitted that it is a statutory liability and under section 17(b) it is recoverable from the transferee with whom presently business and property lie.

7. it is true that under the Employees Provident Fund Act, the transferee cannot escape from the liability to pay, as it is a statutory liability under section 17(b) of the Provident Fund Act and Section 14(b) gives power to respondent no. 5 to recover the damages. However, there are some arguable points especially on the point of delay and recovery of the

said amount from the partnership firm, i.e., appellant. Mr. Vashi pointed out that the property was actually purchased by the registered agreement by Kshitij Yadav in his personal capacity and it was not purchased by the partnership firm. There appears to be some substance in the submissions of the counsel. Section 17(b) of the Act especially about the term "in respect of period to the date of such transfer" is also required to be properly interpreted. For which period the transferee is liable to pay is also to be considered on the background of delay. In view of this, the Appeal is disposed of with the following order:

(i) The appellant is directed to deposit the principal amount of Provident Fund, i.e., Rs,7,09,000/- with the Civil Court within four weeks without prejudice and subject to the outcome of the suit.

(ii) The said amount is to be invested in some nationalized bank by the Trial Court.

8. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.