IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO.8 OF 2015
IN
APPEAL (L) NO.398 OF 2014
IN
CHAMBER SUMMONS (L) NO.960 OF 2014
IN
ARBITRATION PETITION NO.62 OF 2013

Varun Passary Petitioner
(Org.Appellant)

versus

L & T Finance Limited and others Respondents

Mr.Rohan Cama with Mr.Gobinda Mohanty i/by Mohanty & Associates for Petitioner.
Mr.Anand Poojari with Ms.Shakuntala Joshi and Ms.Nikita Pawar i/by S.I.Joshi & Co. for Respondent no.1.
Mr.S.S.Deshpande, Court Receiver present.

CORAM : MOHIT S. SHAH, C.J. AND
B.P.COLABAWALLA, J.

DATE : 01 April 2015

PC :

This petition seeks review of the judgment dated 25 February 2015 of this Court by which we had declined to interfere with the order of learned Single Judge dated 27 June 2014 directing the Court Receiver to take over possession of the hypothecated assets for which the respondent no.1 had advanced loan to M/s.Spotlight Tradecom Private Limited (principal borrower) and for which transaction, the petitioner herein (original appellant) was a guarantor.

2. We had passed the above order in view of the fact that the Court Receiver was appointed as far back as on 1 July 2013 and he had taken over possession of the hypothecated assets on 13 August 2013. The principal borrower had in fact entered into an agency agreement with the Court Receiver and thereafter possession of the assets remained with the principal borrower as an agent of the Court Receiver. The agency agreement was executed by the principal borrower long prior to filing of the winding-up petition in the Company Court of Calcutta High Court in November-2013 and obviously prior to passing of the winding-up order by the Company Judge of Calcutta High Court on 10 March 2014.

3. We have considered all the decisions which were cited by the learned counsel for the petitioner at the hearing of the Appeal (L) No. 398 of 2014 on 25 February 2015. The learned counsel for the petitioner, however, now seeks to rely upon the decision of Supreme Court in **Industrial Credit and Investment Corporation of India Limited Vs. Srinivas Agencies and others**[1], and particularly relies upon the following observations in paragraph 6 of the judgment :

1 (1996)4-SCC-165

> "6. ... ... a secured creditor who has initiated a suit or proceeding in civil court is interested in realisation of his debt only, whereas the company court looks after the interest of all the creditors; so too, the workmen's dues, which rank pari passu with debts due to secured creditors. This is brought home not only by Section 529-A, which was inserted by the Companies (Amendment) act, 1985, but also by the proviso to sub-section (1) of Section 529 inserted by the same Amendment Act. The winding-up court does these acts through a liquidator, who has been given wide powers by Section 457 of the Act. As against this, a receiver appointed by a civil court on being approached by secured creditor would basically look after the interest of that creditor, whose interest may in many cases be in conflict with that of the liquidator, as was acknowledged in Karamelli & Barnett Ltd. 2(1917) 1 Ch. 203 : 86 LJ Ch 207 : 115 LT 753. We feel no difficulty in stating that in case of such conflict, the interest of liquidator has to receive precedence over that of the receiver inasmuch as the former looks after the interest of a large segment of creditors along with that of workmen, whereas the latter confines his concern to the interest of the secured creditor on whose approach the receiver has been appointed."

4. We are also informed that the respondent no.1 has already filed an application under Section 446 of the Companies Act, 1956 before Calcutta High Court seeking to continue the arbitration proceedings against the company in liquidation.

5. The only question which was raised in the appeal, which has been dismissed by our judgment dated 25 February 2015, was whether the petitioner/appellant, a director of the company in liquidation and a guarantor for the loan advanced by the respondent, had any right to object to the Court Receiver in taking over possession of the hypothecated assets of the company for the breach of agency agreement by it in making payment of royalty, which agreement was entered into by the company before the winding-up petition was filed before Calcutta High Court. After hearing the learned counsel for the petitioner herein- guarantor and the respondent no.1 finance company, we found no merit in Appeal (L) No.398 of 2014.

6. Now, relying on the aforesaid decision of Supreme Court in **Industrial Credit and Investment Corporation of India Limited Vs. Srinivas Agencies and others (supra)**, the petitioner prays for review of the order.

7. In our view, the petitioner has not made out any case for review as the petitioner is a guarantor, whereas the company in liquidation is the principal borrower and, therefore, the petitioner does not have any right or locus standi to make any grievance. The Official Liquidator or the company in liquidation has not made any grievance before us.

8. We are also of the view that the review petition has no merit because we have not passed any order which would come in the way of Official Liquidator taking all necessary steps, actions or proceedings in respect of the machineries in question, which are hypothecated to respondent no.1 company. At present we see no conflict between the powers of Official Liquidator under Section 457 of the Companies Act and the powers of the Court Receiver, who may be submitting a report to the learned Single Judge who has passed the order under Section 9 of the Arbitration & Conciliation Act, 1996. The Court Receiver who is present in the Court states that before seeking any further orders regarding the sale of the hypothecated assets, he will give notice to the Official Liquidator of Calcutta High Court.

9. In this view of the matter, we dismiss the review petition.

(CHIEF JUSTICE)

(B.P.COLABAWALLA, J.)

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