

Debt Recovery Appellate Tribunal - Delhi

Rajat Pangaria vs State Bank Of Bikaner And Jaipur ... on 24 October, 2007

Equivalent citations: 2008 141 CompCas 323 NULL

Bench: M Jain

ORDER M.C. Jain, J. (Chairman)

1. The dispute in this Miscellaneous Appeal relates to Shop No. 42, Palika Market, Near Information Centre, Bhilwara (Rajasthan). The necessary background facts are narrated for the sake of clarity.

2. The respondent-bank herein filed O.A. No. 576 of 1998 against five defendants, namely, M/s Rajat Fabrics (Pvt.) Ltd., Mr. Gyanmal Pangaria, Mrs. Shobha Pangaria, Mr. Sohan Lal Pangaria and Rajasthan State Industrial Development and Investment Corporation Ltd., for the recovery of Rs. 67 lakhs and odd. Mr. Gyanmal Pangaria and his mother Mrs. Shobha Pangaria (defendants Nos. 2 and 3 respectively in the O.A.) were the directors of the main borrower--M/s. Rajat Fabrics (Pvt.) Ltd., which was a company registered under the Indian Companies Act. The defendants Nos. 2 and 3 had given personal guarantee against the loan facilities availed of by the defendant No. 1. Defendant No. 2 Mr. Gyanmal Pangaria had also mortgaged the property in question (belonging to HUF whereof he was the karta) as security for the repayment of the loan. Some property had been mortgaged by the defendant No. 4 Mr. Sohan Lal Pangaria also, but we are not concerned with the same in this appeal, because the appellant Rajat Pangaria, son of the defendant No. 2 Mr. Gyanmal Pangaria is staking his claim to the aforesaid HUF property only. The suit was decreed by the Tribunal below on March 1, 2001, in the following terms:

Thus, the plaintiff-bank is entitled to recover the amount of Rs. 67,63,564.74 paise from the defendants with cost. In this matter, defendant Nos. 2 and 4 have kept their personal properties mortgaged and defendant No. 1 has created second charge on his factory. In these circumstances, since defendant Nos. 2 and 4 have kept their properties situated in Sanganer, mortgaged to the bank and defendant No. 1 company has also created second charge on his property, I think it justified to allow interest at 6 per cent. per annum as per the decision of the hon'ble Supreme Court reported in N. M. Veerappa v. Canara Bank . If defendants Nos. 1, 2 and 4 deposit the above amount within 6 months along with interest at 6 per cent. from the date of institution of the suit till the date of recovery with cost, then the defendants will be entitled to their documents, otherwise the plaintiff-bank will be entitled to sell the properties after a period of 6 months and can recover its loan by selling the above properties. The plaintiff-bank will be entitled to recover its whole amount along with interest from the defendants jointly and severally and if this amount is not compensated by the mortgaged properties, then the plaintiff-bank will be entitled to recover the amount by selling the properties of defendants Nos. 2 to 4. The defendant No. 5 is RICCO and after selling the properties of defendant No. 1 whatever surplus amount is being received, RICCO can deposit surplus amount in the account of the plaintiff-bank.

3. As a natural consequence of the above decree, the respondent-bank 3 proceeded to recover the due amount by putting to auction the aforesaid mortgaged property. At this juncture, the appellant came in picture and preferred objections before the recovery officer. The gist was that he was the owner of the undivided portion of the property in question in which his share was one third as

co-sharer alongwith the defendant No. 2 Mr. Gyanmal Pangaria and the defendant No. 3 Mrs. Shobha Pangaria (his grand mother). Thus, each of the three had one third share in the said joint Hindu family property. The title deed was also said to be in the name of HUF known as Gyanmal Rajat Kumar. He (Rajat Pangaria) was not defendant or JD. He was in no way liable for payment of any liability related to the OA in question. For all practical purposes, he was a stranger to the proceedings. His objections did not find favour with the recovery officer who rejected the same by order dated 26.2.2002. He preferred Appeal No. 6 of 2002 before the Presiding Officer, but did not meet with better luck there also. The Presiding Officer of the Tribunal below dismissed the appeal on February 13, 2004. Aggrieved, he has preferred this second appeal.

4. I have heard Mr. M. Dutta, learned Counsel for the appellant as also Mr. Jai Mohan, learned Counsel for the respondent-bank. Reply has also been filed by the respondent-bank against the appeal.

5. Learned Counsel for the appellant in support of the appeal has urged that the joint Hindu family property in question had been mortgaged by the defendant No. 2, Mr. Gyanmal Pangaria, with the respondent-bank on March 5, 1990, when the appellant herein was a minor (he being 21 years on April 19, 2004, as per the verification made by him of the present appeal). As karta of the HUF, his father Mr. Gyanmal Pangaria could not mortgage his undivided share in the property with the bank. He also submitted that as per Section 8 of the Hindu Minority and Guardianship Act, 1956, natural guardian of a Hindu minor cannot mortgage or charge any part of the property of the minor without the permission of the court and in the instant case, the karta of HUF had not taken any prior permission of the court before mortgaging or charging the property of the appellant with the bank. Another argument for the appellant is that there was nothing to show that the property in question had been mortgaged by Mr. Gyanmal Pangaria for the benefit of the estate or for legal necessity. If the karta of a joint Hindu family sells or mortgages property without any legal necessity or otherwise than for the benefit of the members, then, the same is illegal and not binding on other members.

6. Learned Counsel for the respondent-bank has countered the submissions of counsel for the appellant advanced in support of this appeal by contending that the appellant had been enjoying good relations with his father and mother and had been under the natural and legal guardianship of them till attaining majority. His father had been the karta of the HUF throughout including at the time of creation of mortgage in favour of the bank. The appellant could not claim any specific share in the HUF till it remained joint and he utterly failed to establish that the mortgage was not for legal necessity or otherwise than for the benefit of the joint HUF including himself. The property in question was mortgaged to avail loan for the business of the defendant No. 1 (M/s. Rajat Fabrics (Pvt.) Ltd.) wherein his father and grandmother were the directors. There was nothing illegal or immoral in the raising of such loan and mortgaging of the property in question by his father in favour of the bank.

7. A short discussion about the joint Hindu family, coparceners and copar- cenary property would be helpful and in the fitness of things. A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A daughter ceases to be a member of her father's family on marriage and becomes a member of her husband's family. The

joint and undivided family is the normal condition of Hindu society and an undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family, and a family which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation. Hindus get a joint family status by birth and the joint family property is only an adjunct of the joint family. A joint or undivided Hindu family may consist of a single male member and widows of deceased male members. The property of a joint family does not cease to be joint family property belonging to any such family merely because the family is represented by a single male member (coparcener) who possesses rights which an absolute owner of a property may possess. Thus, for instance, a joint Hindu family may consist of a male Hindu, his wife and his unmarried daughter. It may similarly consist of a male Hindu and the widow of his deceased brother. It may consist of a male Hindu and his wife. It may even consist of two female members. However, there must be at least two members to constitute it. An unmarried male Hindu on partition does not by himself alone constitute a Hindu undivided family.

8. A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons and great-grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder in unbroken male descent.

9. The property belonging to a joint family is ordinarily managed by the father or other senior member for the time being of the family. The manager of a joint family is called the karta. So long as the members of a family remain undivided, the senior member of the family is entitled to manage the family property. The karta or manager has the power to contract debts for family purpose and family business. A joint Hindu family may have no business at all, and yet debts may be contracted by the manager for a joint family purpose. Such debts are binding on other members. Besides the power to contract debts for the family business, the manager has the power of making contracts, giving receipts, and compromising or discharging claims ordinarily incidental to the business. Indeed, without a general power of that kind, it would be impossible to carry on the business. The power of the manager of a joint Hindu family to alienate the joint family property is analogous to that of a manager for an infant heir. The manager of a joint Hindu family has the power to alienate for value, joint family property, so as to bind the interest of both adult and minor in the property, provided that the alienation is made for legal necessity or for the benefit of the estate.

10. In the case at hand, it is not in dispute that the appellant was a minor on March 5, 1990, when the property in question had been mortgaged by his father--defendant No. 2--Gyanmal Pangaria with the respondent-bank as manager and karta of the joint Hindu family to secure the repayment of the loan in question. The main borrower was M/s. Rajat Fabric (Pvt.) Ltd.--defendant No. 1/respondent No. 2. Though in the shape of a private limited company, it was a joint Hindu family business, the directors being Mr. Gyanmal Pangaria--defendant No. 2/respondent No. 3 and his mother Smt. Shobha Pangaria--defendant No. 3 in the O.A. The said business was the source of livelihood of the joint Hindu family including the appellant--Rajat Pangaria, son of Mr. Gyanmal Pangaria (one of the directors). The other director was Mr. Gyanmal Pangaria's mother--Smt.

Shobha Pangaria--defendant No. 3. Credit and financial facilities were availed of by Mr. Gyanmal Pangaria for the said joint Hindu family business. To say in other words, the appellant being minor son of Mr. Gyanmal Pangaria at the time of contracting the loan, was being fed, nourished and reared up by the income of the family business carried on under the name and style of M/s. Rajat Fabric (Pvt.) Ltd. This being so, it is not open to the appellant to question that his father Gyanmal Pangaria as karta of joint Hindu family could not mortgage his undivided share in the property in question with the bank.

11. Learned Counsel for the appellant has greatly relied on the case of *Amirtham Kudumbah v. Sarnam Kudumban* AIR 1991 SC 1256, to contend that as his natural guardian his father could not mortgage or charge any part of his property without the permission of the court in view of Section 8 of the Hindu Minority and Guardianship Act, 1956. It is to be pointed out that Section 8 of the Hindu Minority and Guardianship Act, 1956, applies to the individual or personal property of a minor, i.e., a property which is owned by him to the exclusion of others. But, the point of the matter is that the appellant was not the exclusive owner of the property in question and as such Section 8 of the Hindu Minority and Guardianship Act, 1956, would not at all be applicable. In the ruling referred to by learned Counsel for the appellant, the facts were different in that the exclusive property of the minor had been transferred by her natural guardian without permission of the court during the minority of the former. The transferee in his turn sold the property to another person. Subsequently, the minor, on attaining majority, executed a sale deed in favour of another person who instituted a suit against the transferee to whom the property had been sold by the person who had purchased it from the natural guardian of the minor. The hon'ble Supreme Court held that the purchaser of the property from minor after the latter attaining majority could file a suit within three years of the minor attaining majority to set aside the sale by minor's guardian. But here the situation is totally different.

12. The other three rulings, *Santha v. Cherukutty* ; *Dar-42 bara Singh v. Karminder Singh and Sundari Animal v. Thilakavathi Animal* , cited for the appellant also do not come to his rescue under the facts and circumstances of the present case which stands on entirely different footing that here the undivided share of the appellant in the joint Hindu family had been mortgaged by his father (karta of joint Hindu family) for family business and for legal necessity. It was not at all tainted with any illegal or immoral purpose.

13. Section 6 of the Hindu Minority and Guardianship Act, 1956, provides 13 as to who are the natural guardians of a Hindu minor in respect of the minor's person as well as in respect of the minor's property. It clearly excludes his or her undivided interest in joint family property. Similarly, Section 12 clearly provides that guardian is not to be appointed for minor's undivided interest in joint Hindu family property. It reads as under:

Where a minor has undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

14. The hon'ble Supreme Court has, in the case of Sri Narayan Bal v. Sridhar 14 Sutar , held as under (page 2372):

Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the court under Section 8 for disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its karta and other adult members of the family in management of the joint Hindu family property. Thus, Section 8 in view of the express terms of Sections 6 and 12, would not be applicable where a joint Hindu family property is sold/disposed of by the karta involving an undivided interest of the minor in the said joint Hindu family property.

15. Explaining further in para. No. 5, the apex court observed that the natural guardian of the property of Hindu minor, other than the undivided interest in joint family, is alone contemplated under Section 8, whereunder his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed, but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the joint Hindu family property may be a male or a female, not necessarily the karta. The power of the High Court otherwise to appoint a guardian in situations justifying, has been preserved.

16. In the case at hand, the appellant's father--Mr. Gyanmal Pangaria defendant No. 2/respondent No. 3 was the karta of the joint Hindu family. The undivided share of the appellant in the said property had been mortgaged for legal necessity, i.e., for family business. The appellant is bound thereby.

17. The hon'ble Supreme Court in the case of Venkatesh Dhonddev Deshpande v. Kusum Dattatraya Kulkarni , has held that where father is the karta of a joint Hindu family and the debts are contracted by the father in his capacity as the manager and head of the family for family purposes, the sons as members of the joint family are bound to pay the debts to the extent of their interest in the coparcenary property. It has further been held that where the sons are joint with their father and the debts have been contracted by the father for his own personal benefit, the sons are liable to spay the debts provided they were not incurred for illegal or immoral purposes.

18. In the present case, the debt had not been raised by the father (karta) for his personal benefit. It had not at all been taken for immoral or illegal purposes. Rather, the joint Hindu family property including the share of the appellant had been mortgaged for legal necessity, i.e., family business. The appellant could challenge the mortgage with regard to his share only on establishing that the

mortgage had been created without legal necessity or it was tainted with illegality or immorality. Far from this being the situation, the reality was that the loan and credit facilities had been availed of by his father (karta of the joint Hindu family) very much for legal necessity, i.e., family business. The same was binding on the appellant. The appellant seemingly had cordial relations with his father (karta of the joint Hindu family) through out. There is nothing to indicate that there was any discordance between 'them. It appears that after attaining majority he, in collusion with his father, started challenging the mortgage of his undivided share on untenable grounds.

19. I see no merit in this appeal and it is hereby dismissed with costs.

May be, the recovery proceedings are pending. The same shall be carried ahead in accordance with law without delay consequent upon the dismissal of the appeal.

Copy of this order be supplied to the parties and be also sent to the recovery officer/Tribunal below for further proceedings.