

**BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI**

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 335/2015

Between

State Bank of India ... Appellant/s
V/s.
Canara Bank & Ors. ... Respondent/s

And

Appeal No. 339/2015

Between

State Bank of India ... Appellant/s
V/s.
M/s. S.J. Poly Plast Pvt. Ltd. & Ors. ... Respondent/s
Mr Pravin Patel, Advocate for Appellant.

:- Common Order dated: 16/10/2023:-

The State Bank of Hyderabad which later merged with the State Bank of India (SBI) is the Appellant in both these appeals. Appeal No. 335 of 2015 arises from Original Application (O.A.) No. 58 of 2007 filed by Canara Bank while Appeal No. 339 of 2015 arises from Original Application (O.A.) No. 118 of 2010 filed by the State Bank of Hyderabad. The first Defendant in O.A. No. 58 of 2007 was a company named Dynamic Plast-O-Pack Pvt. Ltd. while the first Defendant in O.A. No. 118 of 2010 was a company named S. J. Poly Plast Pvt. Ltd. Both these companies are sister concerned owned by common Defendants read as Defendants Nos. 2 to 5 in O.A. No. 58 of 2007 and Defendants Nos. 2 to 4 in O.A. No. 118 of 2010.

Defendants Nos. 4 & 5 in O.A. No. 58 of 2007 are not parties in O.A. No. 118 of 2010 while Defendant No. 4 in O.A. No. 118 of 2010 is not a party to O.A. No. 58 of 2007. The State Bank of Hyderabad was arrayed as the sixth Defendant in O.A. No. 58 of 2007 filed by the Canara Bank while in O.A. No. 118 of 2010 filed by the State Bank of Hyderabad, the Canara Bank is arrayed as the fifth Defendant.

2. Both the companies had availed loans from the respective banks and had executed documents of mortgage and hypothecation. The Canara Bank advanced loan to M/s Dynamic Plast-O-Pack Pvt. Ltd. in the year 2005 whereas M/s S.J. Poly Plast Pvt. Ltd. had obtained loan from the State Bank of Hyderabad in the year 2008.

3. The dispute in these appeals is confined to the hypothecation goods over which both banks claim right. The immovable properties were already sold in execution by the Canara Bank. The State Bank of Hyderabad sought to proceed against the hypothecated machinery in the factory which it claims was hypothecated to it. The Canara Bank had in the execution of the Recovery Certificate obtained by it sold the hypothecated machinery which it claims to have been hypothecated by M/s Dynamic Plast-O-Pack Pvt. Ltd.

4. The only point that arises for consideration in these appeals is regarding the rival claims of the banks over the hypothecated goods. The Ld. Presiding Officer vide impugned judgments and orders allowed the O.As but refused to acknowledge the hypothecation in favour of the State Bank of Hyderabad and decided it in favour of the Canara Bank holding that the hypothecation in its favour was prior in

point of time. The State Bank of Hyderabad is aggrieved and hence, in appeal.

5. The contention of the Ld. Counsel appearing for the Appellant SBI is that the property consisting of the machinery was purchased only in 2007 in the name of S.J. Poly Plast Pvt. Ltd as is borne out from the invoices produced. The said machinery could never have been hypothecated to Canara Bank for the loan that was availed in 2005. The Ld. Presiding Officer found fault with the hypothecation deed produced by S.J. Poly Plast for the reason that it does not contain the details of the machinery hypothecated. On the other hand, the hypothecation deed executed in favour of Canara Bank gives the details of the machinery. Hence, the hypothecation in favour of Canara Bank will have to be upheld, holds the Ld. Presiding Officer.

6. The Ld. Counsel appearing for the Appellant points out that when the machinery was purchased only in 2007, it could never have been hypothecated in the year 2005.

7. It is pertinent to note that the hypothecation in favour of the Canara Bank gives the details of the machinery which were hypothecated. It is also possible that the machinery was modified and renewed in the year 2007. When the machinery was already there in 2007 and hypothecated to the Canara Bank, it could never have been hypothecated to the State Bank of Hyderabad in the year 2008. The hypothecation of the year 2005 in favour of Canara Bank makes it clear in clause (vi) which reads thus:

“(vi) that hypothecated articles whether present or future, whether now belonging to the borrower or which may be manufactured or acquired in future are and shall be the absolute and unencumbered property of the borrower with full and absolute power of disposition over all such goods including the right to hypothecate and/ or create any charge thereon in any whatsoever manner and the borrower undertakes not to deal with/dispose of any part of the said hypothecated articles otherwise than in the ordinary course of business but the manner only in and to the extent stipulated herein.” (emphasis supplied)

From this recital, it is adequately clear that the goods to be acquired in future are also subject to hypothecation. Hence, the Appellants do not have any right to claim hypothecation over the goods which has already been sold by the Canara Bank. I find no irregularity or error in the findings of the Ld. Presiding Officer in the impugned judgments requiring interference.

The appeals are, therefore, without any merits and hence, are dismissed.

Sd/-
Chairperson