

PETITIONER:
UNITED BANK OF INDIA

Vs.

RESPONDENT:
B.T.W. INDUSTRIES LTD. & ORS.

DATE OF JUDGMENT: 10/12/1997

BENCH:
S.C. AGARWAL, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:
(WITH CIVIL APPEALS NOS 8596 & 8597 OF 1997 arising other
S.L.P.(C) Nos. 9726 of 1997 and 9792 of 1997})

J U D G M E N T

S.C. AGARWAL, J.
Special Leave granted.

These appeals are directed against the orders dated July 16, 1996 passed by the Calcutta High Court on the applications submitted by the United Bank of India [hereinafter referred to as the appellant-Bank'] in pending appeals. The appellant-Bank had extended credit facilities to the three companies who are respondent No. 1 in these appeals against hypothecation of stocks, book debts movable assets and personal guarantees of the other respondents in the appeals. Three suits (O.S. No. 306 of 1993, O.S. No. 309 of 1993 and O.S. No. 308 of 1993) were filed by the appellant-Bank against the respondents in these appeals on the original Side of the Calcutta High Court. In these suits the learned single Judge was pleased to appoint a Receiver, inter alia, over the hypothecated movables. The Receiver was subsequently redesignated as Special Officer and was directed to make an inventory of hypothecated movables and inspect the accounts of respondent No. 1 in these appeals. The appellant-Bank also submitted an application before the learned single Judge for appointment of a Chartered Accountant and a Timber Expert to assess the value of securities. On January 10, 1994 the learned single Judge passed decrees in all the three suits upon admission and awarded interest at the rate of 6% per annum of the decretal amount and it was directed that the amount shall be paid in quarterly instalments and that the defendants will go on paying the said instalment together with interest on reducing balance and that in the event of defendant falling to pay and two instalments, the plaintiff-Bank will execute the decretal amount then remaining due and in that event the balance decretal amount will carry interest 16.5% per annum. It was also directed that the Special Officer would continue until the entire payment is made and if the defendants make any default as stipulated therein, the Special Officer will take possession of the assets charged. Since the amount claimed by the appellant-Bank was much more than the amount of

decree passed in each suit, the appellant-Bank filed appeals against the said decrees passed by the learned single judge before the Division Bench of the High Court. In the said appeals the appellants-Bank has challenged the decrees on (i) the quantum of decree; (ii) the rate of interest, and (iii) the direction for payment of decretal dues by instalments. It appears that the defendants-respondents have failed to pay the decretal dues as directed by the learned single Judge and the appellant-Bank filed applications wherein the appellant-Bank has prayed that "the Special Officers be directed to take possession singly or jointly of the suit properties being the securities of the Bank with the direction to appoint Timber Expert, Chartered Accountant and Engineer as the Special Officer (s) may deem fit and proper for the purpose of making meaningful and complete inventory about quality, quantity and realisable value of the properties". The said applications filed by the appellant-Bank have been disposed by the Division Bench of the High Court by the impugned judgment dated July 16, 1996. The High Court has rejected the said applications as not maintainable and has observed:-

"Upon consideration of the contextual we deem it expedient to record that in the event of there being a challenge to the decree, question of further order from the Appellate Court on the basis of the decree itself does not and cannot arise. The Appellant shall have to exercise its option, to wit, either to accept the decree and then proceed to take steps to execute the decree or prefer an appeal against the decree the appellant having chosen the second course ought not to be allowed to move the Appellate Court with such an application which is solely based on the decree as passed by the Learned Trial Judge. Court can appreciate the blowing of hot or hotter but not blowing hot and cold and appropriate and reprobate at one in the same time. Since the decree is under challenge question of obtaining any benefit under the decree does not arise."

Shri V.R. Reddy, the learned Additional Solicitor General, has submitted that the High Court was in error in holding that the appellant-Bank could not move the application before the Appellate Bench of the High Court for a direction to the Special Officers to take possession of the suit properties during the pendency of the appeals. The submission is that such a direction is necessary in order to safeguard the security for the advance that was furnished by the residents to the appellant-Bank and that the High Court was in error in holding that such an application could not be moved in a pending appeal. Shri Shrish Kumar Misra, the learned counsel appearing for the respondents, has, on the other hand, supported the impugned judgment of the High Court and has urged that since the appellant-Bank is seeking to enforce a direction contained in the decree passed by the learned single Judge the proper course for the appellant-Bank was to move for the execution of the said decree and such an application could not be moved in the

appeals filed against the decree.

We find it difficult to accept the aforesaid submission of Shri Misra. Since the claim of the appellant-Blank exceeds the amount for which the decree had been passed by the learned single Judge and the appeal relates to the balance amount of the said claim of the appellant-Blank and the security furnished by the respondents is towards the entire claim, the appellant-Blank, in order to protect its interest as regards the claim in respect of which the appellant-Blank has filed the appeals, could have sought directions from the Appellate Bench of the High Court to direct the Special Officers to take possession of the suit properties which are the securities for the appellant-Blank so that the said securities remain available in the event of the appellant-Blank succeeding in the appeals. The fact that the appellant-Blank could seek such a direction by moving for execution of the decree passed by the learned single Judge could not, in our opinion, preclude the Appellate Bench of the High Court from giving an appropriate direction during the pendency of the appeals in order to protect the interest of the appellant-Blank.

As regards the preparation of the inventory of the stock of timber and appointment of a Timber Expert to assist the Special Officers for the purpose, it has been urged by Shri Misra that the said inventory had already been prepared by the Special Offers and no further inventories are required to be prepared. In this context, the learned additional Solicitor General has submitted that after the making of the said inventories there has been considerable change inasmuch as the goods mentioned in the said inventories have been sold and, therefore, fresh inventories are required to be prepared and that the appointment of a Timber Expert to assist the Special Offers would enable a meaningful and complete inventory about quality, quantity and realisable value of the suit properties being prepared. Having regard to the fact that the appellant-Blank is seeking direction that the Special Officers be directed to take possession of the securities, including the stock of timber, the High Court, if it gives such a direction, may also consider the request of the appellant-Blank for appointment of a Timber Expert to assist the Special Offers in preparing an inventory of the stock of timber of which possession is taken by them in pursuance of the direction given by the High Court.

The appeals are, therefore, allowed, the impugned orders of the Appellate Bench of the High Court are set aside and it is directed that the applications submitted by the appellant-Blank for direction to the Special Officers to take possession of the securities and for appointment of a Timber Expert to assist the Special Officers for the purpose of preparing an inventory of stock of timber shall be considered by the High Court merits. No orders as to costs.