YASODHA HOLDINGS (PRIVATE) LTD.

v.

PEOPLE'S BANK

SUPREME COURT
AMERASINGHE, J.,
PERERA, J.,
BANDARANAYAKE, J.
S.C. APPEAL NO. 129/97
H.C. COLOMBO (CIVIL) NO. 92/97 (1)
SEPTEMBER 15, 1998

Civil Procedure – Action for accounting – Interim Injunction and Enjoining Order.

The appellant instituted an action in the High Court against the People's Bank for an accounting and sought, *inter alia* , an interim injunction and enjoining order restraining the Bank from –

(a) transferring the appellant's facility in the Bank to the non-performing category; and

(b) reporting the plaintiff to the Sri Lanka Credit Information Bureau until final determination of the action instituted in the High Court.

The High Court refused this relief and the appellant appealed to the Supreme Court.

Held:

The claim that the appellant does not owe the Bank anything is not borne by the evidence on record. A *prima facie* case had not been made out in the sense that there is a *bona fide* contention between the parties on the question of indebtedness. The balance of convenience lies in allowing the normal banking laws and procedures to operate. The equities are in favour of the Bank. The submission that the Bank would not stand to lose anything is untenable having

regard to the fact that the loan portfolio, liquidity and profitability have been and will continue to be affected if it cannot take such measures as it is entitled in law to take to protect its interests. Moreover the appellant has failed to show that irreparable harm would be sustained unless the injunction was granted.

If the Bank, acting in accordance with the law, takes certain steps that might eventually harm the appellant's business, the harm sought to be prevented does not relate to acts that are unlawful or wrongful. The harm, if any, that might be caused would be that which the appellant has brought upon itself by failing to liquidate its debts.

Per Amerasinghe, J.

"The power which the court possesses of granting injunctions should be very cautiously exercised and only on clear and satisfactory grounds. An application for an injunction is an appeal to an extraordinary power of the court and the applicant is bound to make out a case showing a clear necessity for its exercise."

APPEAL from order of the High Court of Colombo.

L. C. Seneviratne, PC with *Desmond Fernando*, PC, *Suren Peiris*, *R. Y. D. Jayasekera* and *H. V. Situge* for appellant.

E. D. Wickremanayake with *Gomin Dayasiri*, *Kushan de Alwis* and *Ms. Priyanthi Gunaratne* for respondent.

Cur. adv. vult.

October 22, 1998.

AMERASINGHE, J.

The apppellant instituted an action in the High Court against the People's Bank for an accounting relating to transactions between the appellant and Bank. The appellant sought, *inter alia*, an Interim Injunction and an Enjoining order restraining the Bank from –

(*a*) transferring the appellant's facility in the Bank to the non-performing category; and

(*b*) reporting the plaintiff to the Sri Lanka Credit Information Bureau until the final determination of the action instituted in the High Court.

The High Court in its Order dated the 3rd of July, 1997, refused to grant the relief prayed for.

The appellant then applied for leave to appeal to the Supreme Court from that Order of the High Court. On 18.09.97, this court granted leave on the question whether the learned Judge of the High Court was in error by refusing to grant an Order that the plaintiff was eligible to the grant of facilities from the Bank in the normal course of business and in refusing the grant of the Interim Injunction and Enjoining order prayed for.

The appellant was an importer of sugar, cement and other items, and between December, 1991 and April, 1996, had been advanced very large sums of money, from time to time, by the Bank, in addition to being afforded the facility of opening Letters of Credit. At several meetings between the Chairman of the appellant and the Board of the Bank, it was agreed by the Chairman of the appellant to repay some of debts owed to the Bank by the appellant. By his letter dated 3rd January, 1997, the Assistant General Manager of the Bank pointed out that the appellant had failed to comply with the undertakings given with regard to the settlement of interest accruals and the finalization of securities. He also stated as follows:

> "It is needless to mention that a sum of Rupees 3,383.5 million lent to your group of companies by way of short-term advances are blocked, together with the interest due thus creating an immense problem to our branch."

From about February, 1997, the appellant was warned by the Bank, from time to time, that the Bank would be compelled to transfer the appellant's facility out of the performing category and to inform the Sri Lanka Credit Information Bureau of the situation. On the 12th of February, 1997, the General Manager of the Bank informed the Chairman of the appellant that the Central Bank of Sri Lanka had

refused to grant covering approval for the credit facilities extended by the Bank to the appellant, since the Single Borrower Exposure Limit in terms of the Banking Regulations, had been exceeded. The Chairman of the Bank on the 20th of February, 1997, reiterated the fact that the Central Bank had refused to grant covering approval for exceeding the prescribed amount of accommodation. He drew attention to the fact that the Chairman of the appellant had agreed to pay a sum of rupees 800 million initially and that the total facility outstanding had not been brought down to the agreed limit of Rs.1,100 million. The Chairman pointed out that the appellant's failure to comply with these undertakings had a "direct impact on the loan portfolio, liquidity and profitability of the Bank", and called upon the Chairman of the appellant company to discharge the obligations he had undertaken. The appellant was sent a detailed statement showing the liabilities of the appellant. On the 20th of March, 1997, the Chairman of the Bank wrote to the Chairman of the appellant observing that the appellant had failed to regularize matters and stated that if it did not do so by the 10th April, 1997, the Bank would be compelled to transfer the appellant's facilities to the non-performing category and that it would inform the Sri Lanka Credit Information Bureau of the position.

However, on 7th May, 1997, the Chairman of the Bank informed the Chairman of the appellant that, having regard to what the appellant had stated in his letter dated 2nd April, 1997, the Bank would neither transfer facilities of the appellant to the non-performing category nor report the matter to the Credit Information Bureau. The Bank agreed to accede to the appellant's request to extend the period for the payment of Rs. 810 million up to 30th June, 1997". However, the Chairman of the Bank drew attention to the fact that the non-payment of capital as well as interest amounting to Rs. 500 million "had badly affected the profitability and liquidity of the Bank. As such we will be compelled to take action to recover dues to the Bank by realizing the securities offered by the group of companies, and initiating legal action under the Debt Recovery Laws and report outstanding dues to the Credit Information Bureau, if you will fail to adhere to the proposals made in para 3 of this letter on or before 30th June, 1997".

The appellant maintains that if the Bank had granted credit facilities in excess of permitted limits, the appellant should not be penalized in any way. The appellant maintains that "on a balance of convenience" the relief prayed for should be granted for the defendant Bank would suffer no hardship either financially or in any form of restriction to its banking activity if the interim relief prayed for was granted; whereas the appellant would suffer grave and irreparable harm if the Injunction and Enjoining order were not granted.

The learned Judge of the High Court considered the question of "balance of convenience". He stated that permitting the appellant to utilize several billions of rupees which it admits it owes the defendant Bank without any security, thereby adversely affecting the loan portfolio, the liquidity and profitability of the Bank, placed the Bank in a superior position as far as "balance of convenience" was concerned.

I am of the view that the balance of convenience in this case lies in allowing the normal banking laws and procedures to operate. The equities are in favour of the Bank. The submission that the Bank would not stand to lose anything is an untenable proposition having regard to the fact that its loan portfolio, liquidity and profitability have been and will continue to be affected if it cannot take such measures as it is entitled in law to take to protect its interests. Moreover, the appellant has failed to show that irreparable harm would be sustained unless the injunction was granted. The letter of 26 February, 1996, from the Chairman of the (appellant to the General Manager of the Bank makes it abundantly clear that the appellant had persuaded other Banks to assist it in its business. If the Bank, acting in accordance with the law, takes certain steps that might eventually harm the appellant's business, the appellant should not be restrained, for the harm sought to be prevented does not relate to acts that are unlawful or wrongful, whatever the appellant's preference might be in the matter. The harm, if any, that might be caused would be that which the appellant has brought upon itself by failing to liquidate its debts.

The appellant contended that it did not owe the Bank anything and that the accounts of the Bank were unacceptable. This is a strange position to take at this stage having regard to the fact that

the appellant has never disputed the correctness of the accounts which he received on a daily basis. The letter of the Chairman of the Bank to the appellant dated 14th August, 1996, indicates the fact that the appellant owed substantial sums of money to Bank. The appellant had accepted the fact that it was indebted at discussions at Board meetings referred to in the letter of the Chairman of the Bank to the Chairman of the appellant dated 20th February, 1997. Its indebtedness is also accepted by the letter of the Chairman of the appellant in his letter dated 26th February, 1996, referred to above. The basis of the main action is that the appellant does not owe the Bank any sum of money.

This is not borne out by the evidence in the record and therefore the application for an injunction must also fail on the ground that a *prima facie* case had not been made out in the sense that there is *a bona fide* contention between the parties on the question of indebtedness. Of course a different view might well be necessary at the end of the trial when all the evidence has been let in. However, for the limited purpose of deciding whether an injunction should be granted, I hold that a *prima facie* case has not been made out and that an injunction should not be granted.

The power which the court possesses of granting injunctions should be very cautiously exercised and only on clear and satisfactory grounds. An application for an injunction is an appeal to an extraordinary ppower of the court and the applicant is bound to make out a case showing a clear necessity for its exercise. The appellant has failed to do so, and the appeal is therefore dismissed with costs. The decision of the learned Judge of the High Court dated 3rd July, 1997, is affirmed.

PERERA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal dismissed.