

KILLICK NIXON LTD. v. CUSTODIAN

643

(2010) 6 Supreme Court Cases 643

(BEFORE B. SUDERSHAN REDDY AND S.S. NIJJAR, JJ.)

- a* Civil Appeal No. 2724 of 2006[†]
KILLICK NIXON LIMITED .. Appellant;
Versus
CUSTODIAN AND OTHERS .. Respondents.
With
- b* Civil Appeals Nos. 4802-03 of 2008
LODESTAR SLOTTED ANGLES LIMITED .. Appellants;
AND OTHERS ..
Versus
CUSTODIAN AND OTHERS .. Respondents.
With
- c* Civil Appeals Nos. 4806-18 of 2008
KILLICK NIXON LIMITED AND OTHERS .. Appellants;
Versus
CUSTODIAN AND OTHERS .. Respondents.
- d* Civil Appeals No. 2724 of 2006 with Nos. 4802-03 and 4806-18 of 2008,
decided on April 27, 2010
- e* **A. Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3 and 10 — Appeal against interlocutory orders — Statutory prohibition — Directions for appropriation of sale proceeds by Custodian in terms of decrees — Held, orders of Special Court are interlocutory in nature as it did not decide rights of parties but merely passed orders for realisation of amounts under consent decrees — The procedure adopted for such realisation and manner of appropriation by itself does not amount to deciding any lis as such between the parties — Orders being interlocutory, appeals are specifically excluded under S. 10 — Thus, appeal not maintainable (Paras 15 to 17)**
Circo Properties (P) Ltd. v. Custodian, (2005) 3 SCC 708, followed
- f* **B. Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 11 and 9-A — Execution — Appropriation of sale proceeds by Custodian — Appropriation if to be made individually against each of the decrees or treating all decrees as a consolidated decree — Relevant factors — Judgment-debtors if single entity — Group of companies — Held, appellant and other companies always treated themselves as one group and it was found that they were nothing but front companies of notified company — Hence, Special Court was right in treating the decrees as a consolidated one — Civil Procedure Code, 1908 — Or. 21 Rr. 31, 50, 52 and 58 — Companies Act, 1956 — S. 4 — Group companies when a front for other company/ companies — Corporate Laws — Company Law — Corporate entity (Paras 14, 16 and 17)**
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[†] From the Judgment and Order dated 2-5-2006 of the Special Court, Bombay in Execution Applications Nos. 98-105 of 2001 in Misc. Petition No. 189 of 1995

D in its ordinary course of business had advanced interest-free loans to the appellant *K* and its group of companies. In the year 1992, the Special Court found that the company indulged in fraudulent securities transactions resulting in siphoning off of huge funds of various banks. *D* was therefore notified under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The Custodian, proceeded against the appellant *K* and its group companies for recovery of loans. The Special Court passed decrees against the appellant and its group companies which were consent decrees *qua invitum* the Custodian, whereby individually ascertained amounts were to be paid in instalments with the interest @ 15% per annum. However, the appellant and its group companies defaulted in payment of the said amounts. Left with no alternative, the Custodian filed execution applications against the judgment-debtors for recovery of dues. The sale proceeds were accordingly appropriated against dues of the entire group of *K*. a

The appellants submitted before the Special Court that the liabilities of the judgment-debtors under separate decrees were not joint liabilities inasmuch as each judgment-debtor is a separate entity in law having their separate properties and assets. The appellants submitted that merely because the judgment-debtors are group companies the amount of decree passed against them cannot be consolidated. The Special Court after a detailed consideration came to the conclusion that *K* and others are group companies controlled by *D* and public funds were siphoned off by the Directors of the company, and parked in the companies controlled by them. The Special Court accordingly upheld the appropriation of sale proceeds made by the Custodian against which the present appeals were filed. b

Dismissal of the appeals, the Supreme Court held as above. c

N-D/A/46095/CV d

Advocates who appeared in this case :

Dhruv Mehta, Senior Advocate (Alok K. Agarwal, Ms Sangita, Navin Chawla, T. Mahipal, Subramonium Prasad, Rana Mukherjee, Siddharth Gautam and Goodwill Indeevar, Advocates) for the appearing parties. e

Chronological list of cases cited

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1. (2005) 3 SCC 708, *CIFCO Properties (P) Ltd. v. Custodian* 647g

The Judgment of the Court was delivered by f

B. SUDERSHAN REDDY, J.— These appeals are directed against the orders of interlocutory nature passed by the Special Court constituted under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as “the Act”). They are being disposed of by this common order since the question that arises for our consideration is one and the same. g

2. *M/s Dhanraj Mills (P) Ltd.* in its ordinary course of business had advanced interest-free loans to the appellant *M/s Killock Nixon Ltd.* and its group of companies. In the year 1992, the Special Court found that *M/s Dhanraj Mills (P) Ltd.*, its Directors and their close associates indulged in fraudulent securities transactions resulting in siphoning off of huge funds of various banks. The banks had gone into liquidation as a result of those fraudulent securities transactions. The Special Court also held that the end h

a beneficiaries of the siphoned funds were the Directors of M/s Dhanraj Mills (P) Ltd. and the Director of Bank of Karad which bank was used as a conduit for the fraudulent transactions.

b 3. M/s Dhanraj Mills (P) Ltd. was accordingly notified under the provisions of the said Act. On and from the date of notification, the properties, movable or immovable, or both belonging to any person notified under sub-section (2) of Section 3 of the said Act shall stand attached, simultaneously with the issue of the notification. Be it noted that M/s Dhanraj Mills (P) Ltd. itself owned 33% of M/s Killick Nixon Ltd. and the person in ultimate control, ownership and management of M/s Killick Nixon Ltd. is one T.B. Ruia [who at all relevant points of time was the Managing Director of M/s Dhanraj Mills (P) Ltd.] who was also notified under the Act.

c 4. The Custodian, on behalf of M/s Dhanraj Mills (P) Ltd., proceeded against the appellant M/s Killick Nixon Ltd. and its group companies for recovery of loans totalling Rs 20,81,67,031. The amounts due to M/s Dhanraj Mills (P) Ltd. also stood attached with the issue of notification.

d 5. In the year 1995, the appellant M/s Killick Nixon Ltd. and its group companies filed separate applications before the Special Court for ascertaining their individual liabilities with a request to grant time for recompense. Simultaneously, the Custodian also filed applications for fixation of liability and demanding interest @ 24% per annum. In the year 1997, the Special Court passed decrees against the appellant and its group companies which are consent decrees *qua invitum* the Custodian, whereby individually ascertained amounts were to be paid in instalments with the interest @ 15% per annum. Similar consent decree was passed against the e 13th group company also.

f 6. M/s Dhanraj Mills (P) Ltd., in the meanwhile, made an application before the Special Judge contending that the amounts recovered from the group companies cannot be attached towards the debt payable by M/s Dhanraj Mills (P) Ltd. to the Custodian, since there was no nexus between loans advanced to the original judgment-debtors and the transactions with the banks. The prayer in the said application was that the amount so recovered was to be freed from attachment until to be paid back to M/s Dhanraj Mills (P) Ltd., by the Custodian. The Special Court dismissed the claim so made on the ground that the Directors of M/s Dhanraj Mills (P) Ltd. and its close associates were involved in fraudulent deals and have siphoned off funds belonging to banks. g

h 7. The Special Court found overwhelming evidence that M/s Dhanraj Mills (P) Ltd. is liable to make payment and all its assets fall within the purview of the Act. It is in this order the Special Court specifically held that this is a fit case “for the corporate veil to be torn off” as M/s Dhanraj Mills (P) Ltd. had no explanation whatsoever for how such large amounts of “loans” could have been advanced to the appellant and its group companies

when M/s Dhanraj Mills (P) Ltd. itself had been defunct for many years without any commercial activity of its own.

8. In the year 1999, the Special Court having considered the request of the original judgment-debtors, granted extension of time and directed the Custodian not to proceed with execution of the decrees, subject to payment of defaulted instalments. As usually, the appellant and its group companies defaulted in payment of the said amounts once again. Left with no alternative, the Custodian filed execution applications against the judgment-debtors for recovery of dues from M/s Dhanraj Mills (P) Ltd. a

9. It is not necessary to refer the facts, the subsequent events in detail and various objections raised from time to time as to the sale of properties in the process of realising the decretal amounts. However, one important fact that may be required to state is that the Special Court by its earlier order dated 30-11-2001 required the judgment-debtors to pay Rs 16 crores payable towards all decrees for considering the prayer for extension of time to which all of them agreed to do so. This singular fact establishes that even judgment-debtors were treating the separate decrees passed against each one of them as a consolidated common decree. The Custodian, at all points of time treated them as a group to which no objections were raised at any point of time. The sale proceeds were accordingly appropriated against dues of the entire group of M/s Killick Nixon Ltd. b

10. The dispute now raised by the appellants is that the sale proceeds or the properties of M/s Killick Nixon group companies ought to be apportioned individually decree-wise. This is contrary to its earlier stand. The material available on record also reveals that these group companies have always referred to the aggregate principal amount of alleged loan given by M/s Dhanraj Mills (P) Ltd. c

11. The appellants submitted before the Special Court that the liabilities of the judgment-debtors under separate decrees were not joint liabilities inasmuch as each judgment-debtor is a separate entity in law having their separate properties and assets. It was the case of the appellants that merely because the judgment-debtors are group companies the amount of decree passed against them cannot be consolidated. It was their case that the Custodian cannot be permitted to appropriate the amounts paid by the judgment-debtors as also the sale proceeds realised from the sale of properties towards a consolidated decree. It is not necessary to refer in detail the stand taken by the Custodian opposing the plea of the appellants. Various instances were pointed out by the Custodian as to how the appellants themselves were treating the decrees as a consolidated one. d

12. It was specifically demonstrated by the Custodian that the appellants not only treated them as one group but have themselves proceeded and agreed to have appropriation of the sale proceeds of the properties sold on group basis. The averment in the petition filed in the Special Court contained e

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figures relating to the aggregate dues of the group, the aggregate amounts received from the sale of properties and the aggregate balance amount.

- a **13.** The Special Court after a detailed consideration came to the conclusion that M/s Killick Nixon Ltd. and others are group of companies and they are all controlled by M/s Dhanraj Mills (P) Ltd.—notified party and the amounts that are being recovered in execution of the decrees are really public funds which were siphoned off by the Directors of M/s Dhanraj Mills (P) Ltd., and parked in the companies controlled by them. The Special Court accordingly held that the appropriation of sale proceeds made by the Custodian is proper and accordingly the Custodian should proceed further to recover the amount that remained in balance.

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- c **14.** In these appeals, the singular submission made by Shri Dhruv Mehta, the learned Senior Counsel for the appellants, is that the appropriation of sale proceeds ought to have been carried out individually against each of the decrees and not as done by the Custodian treating all the decrees as a consolidated decree.

- d **15.** Having heard the learned counsel for the appellants and the respondent, we are satisfied that an interference with the impugned order passed by the Special Court, which is purely interlocutory and does not decide any rights of any party, is unwarranted. The Special Court did not decide any rights of the parties but merely passed orders from time to time including the one under the appeals for the realisation of the amounts under the decrees passed which attained their finality. The procedure adopted for realisation of the amounts under the decrees and the manner of appropriation, in our considered opinion, by itself does not amount to deciding any lis as such between the parties. Under Section 10 of the Act an appeal shall lie to this Court from any judgment, sentence or order of the Special Court but not against the interlocutory orders. Appeals against interlocutory orders are specially excluded under the said provision.

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- f **16.** There cannot be any iota of doubt that M/s Killick Nixon and other companies were always treated as one group and there is a clear finding in this regard by the Special Court that the said group of companies are nothing but front companies of M/s Dhanraj Mills (P) Ltd.

- g **17.** The orders impugned in these appeals are purely interlocutory in nature against which no appeal lies to this Court under Section 10 of the Act. We are fortified in that view of ours by a decision of this Court in *CIFCO Properties (P) Ltd. v. Custodian*¹. Even on merits, we find that the Special Court having meticulously analysed the facts, arrived at a proper conclusion and rightly treated the decrees as a consolidated one.

18. We find no merit in these appeals and they are accordingly dismissed without any order as to costs.

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¹ (2005) 3 SCC 708