

UNION BANK OF INDIA
v.
OFFICIAL LIQUIDATOR H.C. OF CALCUTTA AND ORS.

APRIL 26, 2000

[M.B. SHAH AND R.P. SETHI, JJ.]

COMPANIES ACT, 1956 :

Winding up proceedings—Company under liquidation—Role of the Court—Held, the Court acts as a custodian for the interest of the company and the creditors :

Section 529 :

Sale of assets of company under liquidation—Sanction of—Role of Court—Before sanctioning the sale of its assets, the Court is required to exercise judicial discretion to see that properties are sold at a reasonable price—It is the duty of the Court to apply its mind to the valuation report for verifying whether the report indicates reasonable market value of the property to be auctioned even if objections are not raised—Unless the court is satisfied about the adequacy of the price the act of confirmation of sale would not be a proper exercise of judicial discretion.

Sale of assets/factory of Company as a going concern—Company closed 17 years ago—Attempt made by BIFR and AIFR, which are expert bodies under the Sick Industrial Companies Act to revive the sick unit failed—Order by Company court to sell the property as a going concern, relying on oral submission of workmen and without verification of the facts—Held, not justified—Sick Industrial Companies Act.

Auction sale of assets of company under liquidation—And confirmation of the sale—Without disclosing the valuation report to the creditors and without fixing its reserve price—Justification of—Held, not justified—Since it is against normal procedure—After winding up order, the properties of the Company are in the custody of the Court for the benefit of the secured creditors and thereafter if any thing remains, for other creditors and its share holders.

Indian Evidence Act, 1872—Section 45—Expert opinion—Valuation

A *Report—Of land—Based on enquiry from local people—Held, cannot be said be an opinion of an expert valuer.*

B In the Company Petition filed by the appellant-Bank, Company Judge issued direction for winding up of the Company and appointed official liquidator to take over the assets. A valuer was also appointed and directed to submit the valuation report. Thereafter order fixing the date of sale of the assets of the Company was passed and advertisement to that effect was also directed.

C An application was filed with the plea that 1200 workmen would be affected if the sale or the factory of the company does not take place as a going concern and workmen are not re-employed. Government submitted that the corporation was ready to purchase the entire company and re-employ the workmen. Court made fresh order ready to of sale of the company as a going concern by auction. Court while narrating the submission of the employees noted that more than 100 employees were starving to death and more than 100 employees had already died.

D Subsequently, Government withdrew its offer. In the valuation report the assets of the company were valued at around Rs. 67 lakhs. Respondent No. 2 offered Rs. 67 lakhs and agreed to take the company as a going concern and further agreed to employ the eligible workmen. Court accepted the offer of respondent No. 1. The appellant-Bank prayed for stay of the order but the same was rejected.

E 'S' then made an offer of Rs. 70 lakhs on the same terms. Court directed 'S' to deposit 20% of the amount with the official liquidator within a specific date, and ordered that on failure to do so, bid of respondent No. 2 would be accepted. 'S' failed to deposit the amount as directed by the Court. Therefore bid of respondent No. 2 was accepted with a direction to deposit the balance amount within a specific period.

F 'S' then made an offer of Rs. 70 lakhs on the same terms. Court directed 'S' to deposit 20% of the amount with the official liquidator within a specific date, and ordered that on failure to do so, bid of respondent No. 2 would be accepted. 'S' failed to deposit the amount as directed by the Court. Therefore bid of respondent No. 2 was accepted with a direction to deposit the balance amount within a specific period.

G Appellant-Bank filed a writ petition before Division Bench praying for the stay of the operation of the order of the Company Judge, contending that the price was inadequate. The writ petition was dismissed with the observation that in the meantime the whole amount was paid by respondent No. 1 and that price was not inadequate as it was matching with the valuation.

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In appeal to this Court, appellant contended that in sale of Company's property, it is the duty of the Court to see that the properties are sold at a reasonable price; that without there being anything on record, merely relying upon the oral statement by some person that he represents some workers, the orders were wrongly passed by the Company Judge, as the Company was closed since 1980, there was no question of 1200 employees working in the said Company; that BIFR & AIFR, both statutory expert bodies failed to restart the Company and thereafter the Company Judge without verifying any of these facts and the valuation report and without giving the copy of valuation report to the secured creditors for whose benefit properties were sold, directed the property to be sold and confirmed the sale.

Respondents contended that as the bank had not raised any objection before the Company Judge with regard to the inadequacy of the price or non-supply of the valuation report and for any other alleged irregularity in the conduct of the auction sale, the Court should not interfere in this appeal. In the alternative, it was contended that Respondent No. 2 be refunded the amount with 18% interest with additional amount invested.

Allowing the appeal, the Court

HELD : 1. In proceedings for winding up of the Company under liquidation, the Court acts as a custodian for the interest of the company and the creditors. Therefore, before sanctioning the sale of its assets, the Court is required to exercise judicial discretion to see that properties are sold at a reasonable price. For deciding what would be reasonable price, valuation report of an expert is must. Not only that, it is the duty of the Court to disclose the said valuation report to the secured creditors and other interested persons including the offerors. Further, it is the duty of the Court to apply its mind to the valuation report for verifying whether the report indicates reasonable market value of the property to be auctioned even if objections are not raised. [699-H; 700-A-B]

2. It was the duty of the Court to verify that the statement made by some applicant that sale of Company on "as is where is basis" will affect 1200 workers and for that proper notice was required to be issued to the secured creditors for whose benefit the property was to be auctioned. To straightaway rely upon such statement was not judicious. The Company Judge ought to have also considered the fact that an attempt made by the

A BIFR and AIFR, which are expert bodies under the SICA to revive the sick
unit had failed. In any set of circumstances, there was no material on
record before the Company Judge for holding that Company could be
revived and the employees would be reinstated in service by giving them
re-employment. Without indulging in any such exercise straightaway to
state that property would be sold as a going concern was totally without
B any basis and therefore, unjustified. [700-C-E]

3. The Division Bench was persuaded by the so-called sympathy for
workers, without verification of the fact that Company was closed 17 years
before the sale. Without there being any application on record and without
C there being proper verification of the facts that 100 workmen have died,
from the concerned parties, it is not just and proper to make observations
to that effect. It is not impossible that because of the lapse of 17 years, out
of 1200 workers who might have worked in the said factory 100 employees
might have died of natural death. It was unjustified to make a case over it
and to accept oral submissions and to dispose of the valuable properties of
D a Company by stating that the sale of the Company as a going concern was
for the benefit of the so called employees who were not in employment.

[700-F-H; 701-A-B]

4. Once a report was called for, it was the duty of the Court to see
E that copy of the said report is given to the secured creditors and other
affected persons. It was known to the Court that the appellant-secured
creditor was claiming more than Rs. 4 crores. After winding up order, the
properties of the Company are in the custody of the Court for the benefit
of the secured creditors and if any thing remains thereafter, for other
creditors and its share holders. In the present case, without disclosing the
F valuation report to the creditors and without fixing its reserve price, the
properties were auctioned and the sale was confirmed. This approach is
unjustifiable by any judicial standard and is against the normal procedure
for auctioning the immovable property of the Company which is to be
wound up. [701-B-D]

G 5. The valuer stating that for the purpose of valuation of the land he
has enquired from local people and that he understood that the land price
in this particular area varies between Rs. 2 lakhs to 2.5 lakhs per katta
cannot be said to be an opinion of an expert valuer. Company Judge has
simply noted the final figures mentioned in valuation report and accepted
H the same without applying his mind to the aforesaid facts. [702-B-C; E]

Allahabad Bank & Ors. v. Bangal Paper Mills Co. Ltd. & Ors., [1999] 4 SCC 383 and *M/s. Navlakha & Sons v. Sri Ramayana Das & Ors.*, [1969] 3 SCC 537, referred to. A

6. The contention that mere inadequacy of price cannot demolish every court sale is required to be rejected on the ground that the condition of confirmation by the court operates as a safeguard against the property being sold at inadequate price whether or not is a consequence of any irregularity or fraud in the conduct of the sale; court is required to satisfy itself that having regard to the market value of the property the price offered is reasonable; unless the court is satisfied about the adequacy of the price the act of confirmation of sale would not be a proper exercise of judicial discretion. The court has also observed that failure to apply its mind to the material factors bearing on the reasonableness of the price offered may amount to material irregularity in conduct of the sale. B C

[703-G-H; 704-A-B]

M/s. Kayjay Industries (P) Ltd. v. M/s. Asnew Drums (P) Ltd. and Other, [1974] 2 SCC 213, distinguished. D

M/s. Navlakha & Sons v. Sri Ramayana Das & Ors., [1969] 3 SCC 537, relied on.

7. If a sale is set aside in appeal, it can not be stated that purchaser is entitled to have refund of the amount with interest. E

(The Court directed the Official Liquidator to recover possession of the property sold as per the inventory and thereafter refund the amount deposited by respondent No. 2 - auction purchaser; and to resell the property after obtaining fresh valuation report from other reliable expert and after giving a copy of the said valuation report to secured creditors.) F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3109 of 1998.

From the Judgment and Order dated 24.12.96 of the Calcutta High Court in G.A. No. 708/96 in C.P. No. 316 of 1981. G

V.R. Reddy, G.L. Sanghi, A.K. Ganguli, Ravindra Bhat, Dhruv Mehta, Ms. Shobha, S.K. Mehta, Ms Shipra Ghose, Pranab Kumar Mullick, Sanjay Kumar Ghose, A. Bhattacharya and Rajiv Talwar for the appearing parties.

The Judgment of the Court was delivered by H

A **SHAH, J.** This appeal is filed against the judgment and order dated 24.12.1996 passed by the Division Bench of the Calcutta High Court dismissing the Appeal No. GA 708 of 1996 arising out of Company Petition No. 316 of 1981 whereby the learned Single judge had confirmed the auction sale of the property of Messrs. Kolay Biscuits Company Private Limited -
B Company under liquidation.

 In the present case, it is admitted fact that on 9th July 1965 Messrs. Kolay Biscuits Company Private Limited created a mortgage of its land and building in favour of Union Bank of India for the loan granted in its favour. The factory of the company was closed down in 1980. On 20th March 1991
C under the provisions of the Sick Industrial Companies Act (SICA), the company was declared as sick unit by the Board of Industrial and Financial Reconstruction (for short "B.I.F.R.") and thereafter application under the said Act was rejected by the Board. Appeal filed before the A.I.F.R. was also dismissed. It is the contention of the Bank that on 30th March, 1981, the
D borrowings by the Company increased to about Rs. 3 Crores and Company executed four balance confirmations in respect of the dues in various accounts. The bank also filed a title mortgage suit No. 103/1992 before the Assistant District Judge, Sealdah against the Company and five guarantors for recovering Rs. 4,11,21,411 along with interest after obtaining leave by the
E Company Judge under Section 446 of the Companies Act. By order dated 19th August, 1991 the Company Judge issued directions for winding up of the Company and appointing official liquidator to take over assets. On 16th February, 1996, the Company Judge appointed Mr. Pranoj Roy Chowdhary of M/s Chowdhary Associates as a valuer with a direction to submit a report within six weeks from the date. Official Liquidator has stated that he informed
F the appellants Bank about the said order by letter dated 29th February, 1998. Thereafter the matter was placed before the Company Judge on 21st June, 1996 and on the same date Company Judge passed an order fixing date of sale of Company's assets as 2nd August 1996 and directed the official liquidator to make advertisement for notice of sale of assets of the Company
G in newspapers, namely, the Statesman, Dainik Bishwamitra and Anand Bazaar Patrika inviting applications for purchase of the property on "as is where is basis" with a direction that purchaser will be bound to deposit 20 per cent of the tender amount along with the tender by Bank draft or bankers cheque or pay order.

H On 2nd August, 1996, one Advocate Mr. Dutta moved an application

stating that nearly 1200 workmen would be affected if the sale does not take place as a going concern and the workmen are not re-employed. The Company Judge observed:

“the fate of so many workmen nearly 1200 in number with their families depending upon them cannot be ignored by the Court.”

On that day on behalf of the State of West Bengal it was submitted that its Corporation (R. No.4) was interested to purchase the land and the entire Company and they were also interested in re-employment of workers so the Company be sold out as a going concern. Thereafter, the Court straightaway directed that the sale fixed on that day would not be held and Official Liquidator was directed to issue fresh advertisement in the same newspapers on 22nd August 1996 fixing the date for auction sale on 13th September, 1996 for the assets of the Company ‘as a going concern’.

On 20th September 1996, the matter was placed before the Court and it was stated on behalf of the State Government Corporation that it was not agreeable to purchase with the condition of re-employing workmen. Therefore, they withdrew their offer to purchase the Company as a going concern. The Court also considered the Valuation Report which was placed before it wherein the assets of the Company were valued at Rs.66,90,032. On the basis of the said valuation M/s Indrani Soft Drinks - respondent No.1 whose offer was Rs. 40 lakhs raised the same to Rs. 67 lakhs and agreed that they would take the Company as a going concern and all eligible employees would be re-employed. Hence, the Court accepted the said offer. The learned advocate appearing on behalf of the secured creditor - Union Bank of India prayed for stay of the operation of the order but the same was rejected on the ground that no useful purpose would be served if the stay of the operation of the order was granted. Thereafter, it appears that on behalf of Syndicate and Promising Exports Limited, one advocate appeared and submitted that it was ready and willing to purchase the Company as a going concern by paying Rs. 70 lakhs on the same terms and conditions as stated above. His offer was considered by the Court by giving a direction that offeror would deposit 20 per cent of the amount either by Bank draft or pay order, with the official liquidator on or before 23rd September 1996. The Court further directed that in the event of failure to deposit the said sum, the offer of M/s Indrani Soft Drinks will stand accepted without there being any further bid. The matter was kept for further orders on 27th September, 1996. On that date it was

A found that Promising Exports had neither sent any offer to the official liquidator nor had deposited any amount. The Court observed that the sale in favour of auction purchaser - M/s Indrani Soft Drinks remains accepted and directed them to pay the balance amount within 60 days. It also directed - "Official Liquidator will supply a copy of the valuation report to the secured creditor at their cost". The Official Liquidator was directed not to part with possession of the Company till the entire purchase price was paid.

Against that order appellant preferred an appeal before the Division Bench. Before the Division Bench a contention was raised with regard to the inadequacy of the price and the Court observed that the Court would be rather loath to interfere and intervene in a Court sale where a question of inadequacy of the price is to be considered by observing that:

D "Court sale has taken place for the benefit of the employees concerned and more than 100 employees were starving to death and the official liquidator was trying to sell the assets as a going concern so that the employment opportunities can be maintained in these hard days."

The Court also considered the fact that in the meantime after confirmation of the sale the entire purchase price has been paid by M/s Indrani Soft Drinks and the Official Liquidator has intimated to the purchaser that possession will be made over in the course of the day and at that stage Union Bank of India thought it fit to move this Court for staying the operation of the order which cannot be granted. The Court also observed that the offer obtained in Court matches with the valuation report and the grievance of inadequacy of price cannot be accepted and sale when taking place in a Court of law ought to be given a final shape, as quickly as possible, so that rehabilitation of the employees can be effected without any loss of time because Court was informed that "more than 100 employees have already died". Against that order this appeal is filed.

G Mr. G.L. Sanghi, learned senior counsel for the appellant-Bank submitted that the order passed by the Company Judge which is confirmed by the Division Bench is, on the face of it, erroneous and is based on total non-application of mind. He submitted that in sale of Company's property it is the duty of the Court to see that the properties are sold at a reasonable price and not at a throw away price. He pointed out that without there being anything on record merely relying upon the oral statement by some person

stating that he represents some workers the orders are passed by the Company Judge and confirmed in appeal by the Division Bench. It has been pointed out that Company was closed since 1980 and, therefore, there was no question of 1200 employees working in the said Company. He further pointed out that apart from the Company being closed since years the BIFR & AIFR, both statutory expert bodies failed to restart the Company and thereafter the learned Judge without verifying any of these facts and the valuation report and without giving the copy of valuation report to the secured creditors for whose benefit properties were sold, directed the property to be sold and confirmed the sale. It is also submitted that in the notice for sale issued by the liquidator the upset price is not stated and that at initial stage offer of respondent No.2 Messrs Indrani Soft Drinks Limited was only Rs.40 lakhs but in the Court after seeing the so called valuation report it was raised to Rs.67 lakhs which clearly indicates that there was something wrong with the offers. He also relied on the decision of this Court in *Allahabad Bank & Ors. v. Bengal Paper Mills Co. Ltd. & Ors.*, [1999] 4 SCC 383 and submitted that facts of the said case are similar and the law laid down in the said case would be applicable in the present case.

As against this, the learned senior counsel Mr. A.K. Ganguli for the respondents vehemently submitted that the Bank has not raised any objection before the Company Judge with regard to the inadequacy of the price or non-supply of the valuation report and for any other alleged irregularity in the conduct of the auction sale. Therefore, the Court should not interfere in this appeal. In any case in adequacy of price is no ground for interference in appeal. He pointed out that auction sale took place in the presence of the learned advocate for the Bank and at the time of the hearing of the matter he never represented to the Court that the oral statement made, at the time of hearing of the application, that 100 workers have died is incorrect or that said facts be verified, and therefore, said statement was rightly accepted by the Court. In the alternative, it is his contention that if the sale is set aside a bona fide purchaser should not suffer as he has invested large amount after the purchase of the property in the auction sale and, therefore, the liquidator should be directed to refund the amount with 18% interest with additional amount invested by Respondent no.2 and the expenses incurred by it.

At the outset, we would state that in proceedings for winding up of the Company under liquidation, the Court acts as a custodian for the interest of the company and the creditors. Therefore, before sanctioning the sale of its

A assets, the Court is required to exercise judicial discretion to see that properties are sold at a reasonable price. For deciding what would be reasonable price, valuation report of an expert is must. Not only that, it is the duty of the Court to disclose the said valuation report to the secured creditors and other interested persons including the offerors. Further, it is the
B duty of the Court to apply its mind to the valuation report for verifying whether the report indicates reasonable market value of the property to be auctioned, even if objections are not raised.

From the facts narrated above, it is apparent that the attention of learned Company Judge was not focussed to the fact that since 1980 Company was
C closed and that there was no question of selling the Company's assets as a going concern. Not only that it was the duty of the Court to verify the statement made by some applicant that sale of the Company on "as is where is basis" will affect 1200 workers and for that proper notice was required to be issued to the secured creditors for whose benefit the property was to be
D auctioned. To straightway rely upon such statement was, to say the least, not judicious. The Company Judge ought to have also considered the fact that an attempt made by the BIFR and AIFR which are expert bodies under the SICA to revive the sick unit had failed. In any set of circumstances, there was no material on record before the Ld. Judge for holding that Company
E could be revived and the employees would be reinstated in service by giving them re-employment. Without indulging in any such exercise straightaway to state that property would be sold as a going concern was totally without any basis and, therefore, unjustified. At the time of hearing of this matter it is admitted that after purchase of the Company, it was restarted only for one day i.e. on the day of inauguration.

F It also appears that the Division Bench was persuaded by the so-called sympathy for the workers, without verification of the fact that Company was
G closed before 17 years of sale. Court has noted in the beginning while narrating the submission of the Id. Counsel who appeared for the benefit of the employees that more than 100 employees were starving to death and in the later para stated that Court was informed by the learned advocate appearing for the employees' union that more than 100 employees have already died. Without there being any application on record and without there being proper verification of the facts from the concerned parties, it is not just and proper to make such observations. It is not impossible that because of
H the lapse of 17 years, out of 1200 workers who might have worked in the

said factory 100 employees might have died of natural death. But in any circumstances it was unjustified to make a case over it and to accept oral submissions and to dispose of the valuable properties of a Company by stating that the sale of the Company as a going concern was for the benefit of the so called employees who were not in employment.

Further, in the present case, it is admitted that valuation report was called for by order dated 16th February, 1996; once the report was called for, it was the duty of the Court to see that copy of the said report is given to the secured creditors and other affected persons. It was known to the Court that the appellant secured creditor was claiming more than Rs.4 crores from the Company. It appears that valuation report was kept as a secret, confidential document. After winding up order, the properties of the Company are in the custody of the Court for the benefit of the secured creditors and if anything remains, thereafter for other creditors and its shareholders. In the present case, without disclosing the valuation report to the creditors and without fixing its reserve price, the properties were auctioned and the sale was confirmed. This approach is unjustifiable by any judicial standard and is against the normal procedure for auctioning the immovable property of the Company which is to be wound up.

Further, it appears that learned Judge has not applied his mind to the valuation report itself. He has only considered the last figures given in the valuation report which says that total valuation of the property was Rs.66,19,032. Had the Court considered the report, it would have immediately noticed that valuation report was not at all reliable. This would be clear from the following facts narrated in the valuation report: -

“Valuation:

On enquiry from the local people, it is understood the land price in this particular varies between Rs.2 lakhs to 2.5 lakhs per Katta depending on size, position, Road Frontage, low and/or high land etc. However, after considering all aspects, it is felt fair and reasonable value at Rs.2 lakhs per katta is found reasonable but as a matter of fact the land is lease hold. So the value of land will be lease because of lease hold land.

As per lease beginning of the year of 1963 for the term of 99 years @ Rs.300 per month.

A So, the rent for 99 years @ Rs.300 = Rs.3,56,400. 15% Municipal Tax & Repairing of structure etc. = Rs.53,460. Total rent, tax etc. for 99 years = Rs.4,09,860 So, the value of land for 99 years = Rs.4,09,860

B (Rupees four lakhs nine thousand eight hundred and sixty only)''

B In our view valuer stating that for the purpose of valuation of the land he has enquired from local people and that he understood that the land price in this particular area varies between Rs.2 lakhs to 2.5 lakhs per katta cannot be said to be an opinion of an expert valuer. He has not relied upon any sale instance for arriving at the conclusion that the valuation varies from Rs.2 to 2.5 lakhs per katta. He has also not stated from whom he has verified the value of the land. Further, he has stated that after considering all aspects, he felt that fair and reasonable value would be Rs.2 lakhs per katta. Presuming that valuation of land is Rs.2 lakhs per katta then also the value of the land, admeasuring 67 katta and 8 chattak, would be more than Rs.1.35 crore. Thereafter, he stated the land is a lease hold land, so the value of the land would be on the basis of its rental income and he arrived at the conclusion that its value would be only Rs.4,09,860. It appears that the valuer has also not considered the material fact that lease period was for 99 years with the condition for its renewal. It is apparent that learned Company Judge has simply noted the final figures mentioned in valuation report and accepted the same without applying his mind to the aforesaid facts.

C

D

E

F In *Allahabad Bank v. Bengal paper Mills'* case (supra), dealing with a similar auction sale of the company in liquidation, the Court observed that instead of sale by the liquidator in Company matters sale is required to be confirmed by the High Court so as to ensure that best possible price is realised upon the sale of the assets and properties of the Company so that creditors of the Company can hope to recoup their dues. The Court relied upon the decision in *M/s Navlakha & Sons v. Sri Ramayana Das & Ors.*, [1969] 3 SCC 537 wherein (para 6) the Court has observed thus:

G "The principles which should govern confirmation of sales are well established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. *The condition of confirmation by*

H *the court operates as a safeguard against the property being sold at*

*inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal v. T. Sriman Kanthimathinatha Pillai*, AIR (1921) Mad. 286, it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the court is the custodian of the interests of the company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathy Pillai*, AIR (1925) Mad. 318 and *S. Soundararajan v. Roshan & Co.*, AIR (1940) Mad. 42. In *A. Subbaraya Mudaliar v. K. Sundararajan*, AIR (1951) Mad. 986 it was pointed out that the condition of confirmation by the court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud.”*

The learned senior counsel Mr. Ganguli relied upon the decision of this Court in *M/s Kayjay Industries (P) Ltd. v. M/s Asnew Drums (P) Ltd. and Others*, [1974] 2 SCC 213 and contended that Court should not go on adjourning the sale till a good price is received, as it being a notorious fact that court sales and market prices are distant neighbours; If auction sales are adjourned repeatedly, decree holders can never get the property of the debtor sold. He emphasised the observation “mere inadequacy of price cannot demolish every court sale”. In our view, this submission requires to be rejected on the ground that in the said case, the Court has reproduced paragraph which we have quoted above from the decision in *Navlakha and Sons* (Supra), wherein the court has specifically held that the condition of confirmation by the court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity

A or fraud in the conduct of the sale; the court is required to satisfy itself that
having regard to the market value of the property the price offered is
reasonable; unless the court is satisfied about the adequacy of the price the
act of confirmation of sale would not be a proper exercise of judicial
discretion. This aspect is reiterated by the court by holding that the aforesaid
B principles must govern every court sale. The Court has also observed that
failure to apply its mind to the material factors bearing on the reasonableness
of the price offered may amount to material irregularity in conduct of sale.

Thereafter the Court pertinently observed:

C “And where a court mechanically conducts the sale or routinely
signs assent to the sale papers, not bothering to see if the offer is too
low and a better price could have been obtained, and in fact the price
is substantially inadequate, there is the presence of both the elements
of irregularity and injury.”

D It is further observed -

E “what is expected of the Judge is not to be prophet but a
pragmatist and merely to make a realistic appraisal of the factors, and
if satisfied that in the given circumstances the bid is acceptable,
conclude the sale.”

As discussed above, in the present case, there is total non-application
of mind to the material which is required to be considered for auction sale
of the assets of the Company.

F Learned counsel for respondent No. 2 referred to the decision of this
Court in *Ram Maurya v. Kailash Nath & Ors.*, [1999] 9 SCC 276 and
submitted that as secured creditors have not brought appropriate pleading
before the learned Company Judge, this Court should not interfere in such
sale. In our view, the said decision has no bearing on the facts of the present
case as the case was decided on the basis of auction sale under Order 21 Rule
G 90 of the CPC and the Court has observed that judgment debtor did not
furnish adequate materials to substantiate the allegation of fraud and material
irregularity.

H Further, learned counsel relied on the decision in *Motors and Invests
Ltd. v. Union Bank of India & Ors.*, [1997] 11 SCC 271 and contended that

the Court in the alternative may direct refund of the amount deposited and invested by the bona fide auction purchaser with 18% interest. In that case, the Court has set aside the sale of 44 acres of land by holding that it was sold at too inadequate price. In the said case also the Court has observed: -

A

“Equally, though court sale is compulsive sale, equal endeavour should be made to fetch adequate price for the property sold so that the decree debt would get satisfied and surplus, if any, could be paid over to the judgment-debtor.”

B

The Court further ordered that in case the official assignee has kept the sale amount in any interest-earning security, the principal amount together with interest is directed to be refunded to the appellant. And, in case the amount was not kept in any deposit and was used to discharge outstanding debt due by respondents 2 and 3, the auction purchaser was entitled to get interest at 18% per annum on the amount deposited by him.

C

D

In the present case, the said judgment has no bearing mainly because as soon as the amount was deposited by respondent No. 2, possession of the property was handed over to him. Not only that, in our view, similar contention was dealt with in *Allahabad Bank v. Bengal Paper Mills'* case (supra) and is rejected by assigning following reasons:-

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“It could not have turned a blind eye to the many defects that it itself noted in the order of sale merely because the Banks had moved the appeals after five months; nor was there any justification for taking into consideration the expenditure that had been incurred by the second respondent subsequent to its possession of the assets and properties. In the first place, the Division Bench should have noted that the learned Single Judge had with unseemly haste ordered possession thereof to be handed over to the second respondent on the very next day. In the second place, the appeals had been filed within the period of limitation. Expenditure incurred during this period could not render the appeals, in effect, infructuous. The same should apply to expenditure incurred subsequent to the filing of the appeals and until the time that they were heard. The second respondent knew that the appeals were pending and that they could end in the order of sale being set aside. Such expenditure as it incurred with this knowledge

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A was at its risk. In the third place, and most important, the interests of the creditors of the Company, particularly the unsecured creditors, outweighed such equities, if any, as might have been considered to be in favour of the second respondent. It was, in our view, the obligation of the Division Bench to have struck down the order of sale, having regard to what it found wrong with it.”

B Thereafter the Court has directed refund of the amount without any interest and has permitted the auction purchaser to apply to the High Court and specify it firstly that expenditure was incurred and secondly that in law it was entitled to recover it.

C For the reasons stated, same would be the position in the present case. Further, in this case, there is a specific condition of the auction sale which reads thus:

D “The High Court may set aside the sale in favour of Purchaser/ Purchasers even after the sale is confirmed and/or purchase consideration is paid on such terms and conditions as the Court may deem fit and proper for the interest and benefits of creditors, contributories and all concerned and/or for public interest.”

E Hence, if the sale is set aside in appeal, it can not be stated that purchaser is entitled to have refund of the amount with interest.

F We also make it clear that we have not dealt with the contention of the learned counsel for the Bank that what was sold in auction was equity of redemption and not the rights of the mortgagee.

G In the result, the appeal is allowed. The impugned order passed by the Company Judge in Company Petition No.316/1981 confirmed in appeal GA No.708/96 is quashed and set aside with costs. Official Liquidator is directed to recover the possession of the property sold as per the inventory and thereafter to refund the amount deposited by the respondent No.2 - auction purchaser. It would be open to respondent No.2 to file proper application for recovering any other expenditure incurred by it after purchase of the said property if it is entitled to recover the same.

H The Official Liquidator is directed to resell the property after obtaining fresh valuation report from other reliable expert and after giving a copy of

the said valuation report to secured creditors. In the notice for sale reserved price be fixed and due advertisement be published in newspapers having circulation in commercial cities including Delhi, Mumbai and Chennai on the basis of the directions which may be issued by the High Court.

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The appeal stands disposed of accordingly. No costs.

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K.K.T.

Appeal disposed of.

A TAMIL NADU ELECTRICITY BOARD
v.
SUMATHI AND ORS.

APRIL 27, 2000

B [D.P. WADHWA AND SYED SHAH MOHAMMED QUADRI, JJ.]

C *Constitution of India, 1950—Article 226—Writ jurisdiction—Tortuous liability—Disputed questions of facts—Reference to arbitrator—No arbitration agreement between the parties within the meaning of Section 7 of Arbitration Act, 1996—Exercise of jurisdiction by the High Court in entertaining the petitions—Whether proper—Held, no.*

D *Article 226—Writ jurisdiction—Reference to arbitrator for adjudication of disputed facts—Thereafter on the basis of award passing decree—Whether correct—Held, no—There is no provision for referring the matter to arbitrator by intervention of the Court—If during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the Arbitration Act, 1998—Arbitration and Conciliation Act, 1996.*

E *Article 226—Writ jurisdiction—Scope of—When disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper—But when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under.*

F *Article 136—Discretionary jurisdiction—Scope of—Claim of compensation in writ petition—Exercise of writ jurisdiction by the High Court held to be unjustified—In the facts and circumstances of the case, whether it would be equitable to send the respondents to take proceedings in civil court—Held, No—Hence, appellant restrained from recovering any amount already paid to the claimants.*

G *Arbitration and Conciliation Act, 1996—Sections 2(e), 34 & 36—Award can be enforced as if it is a decree of a court.*

H **Respondents filed writ petition before High Court, seeking compensation against the appellant, for death by electrocution. Since there was disputed question of fact, the case was referred to the Arbitrator to decide the question of compensation, with the consent of both the parties. The**

award of the Arbitrator was made rule of the court, and High Court passed decree in favour of the respondents.

In appeal to this Court, appellant contended that High Court by referring the matter to Arbitrator has created a new jurisdiction to deal with the alleged negligence of the appellant and has also appointed a forum for adjudication of the same, that creation of such a forum and jurisdiction is legislative in character and it could not be done or assumed otherwise; and that adjudication of the disputed subject by the Arbitrator was not consented to by the appellant.

The respondents contended that since respondent's right to life under Article 21 has been violated because of the negligence of the public authorities, High Court under Article 226 has the power to award compensation; that since reference was made to the Arbitrator with consent of both the parties and the Arbitrator held proceedings in accordance with law, and decree was passed after examination of the award and the proceeding, the appellant was estopped from taking a contrary stand, and that in view of the facts and circumstances of the case, it would not be equitable to send the respondents to take proceedings in a civil court.

Allowing the appeal, this Court

HELD : 1. When disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. However it cannot be understood as laying a law that in every case of tortuous liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basis human right guaranteed under Article 21 of the Constitution. [716-D-E]

Chairman, Grid Corporation of Orissa Ltd. & Others v. Sukamani Das and Another, [1999] 7 SCC 298, relied on.

U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey & Ors., [1999] 1 SCC 741; *Shakuntala Devi v. Delhi Electric Supply Undertaking*, [1995] 2 SCC 369; *The Chairman Railway Board and Others v. Mrs. Chandrima Das*, [2000] 1 SCALE 279; *Nilabati Behra v. State of Orissa and Others*, [1993] 2 SCC 746; *Kumari (Smt.) v. State of Tamil Nadu and Others*, [1992] 2 SCC 223, referred to.

A 2.1. There is no provision in the Arbitration and Conciliation Act, 1998 (new Act) for referring the matter to arbitrator by intervention of the Court. However, if during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the new Act and when award is made it is a decree and it cannot be filed in the High Court and it has to be filed in the court as defined in clause (e) of Section 2 of the new Act for its enforcement as a decree under Section 36 of the new Act. If there is challenge to the award recourse has to be under Section 34 of the new Act. [716-B-C]

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C *P. Anand Gajapathi Raju and Others v. P.V.G. Raju (died) and Others*, [2000] 3 SCALE 330, relied on.

D 2.2. Exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Since disputed question of facts arose in the present appeals, the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. [718-G; E]

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F *A.R. Antulay v. R.S. Nayak*, [1988] Suppl. 1 SCR 1, referred to.

F 4. In view of the facts and circumstances of these cases when death occurred due to electrocution and all this time expired it would not be equitable to send the respondents to take proceedings in a civil court. [719-B]

Therefore, the appellant is restrained from recovering any amount from any of the respondents, which has been paid to them in terms of the impugned judgments of the High Court. [719-E]

G *Municipal Board, Pratabgarh v. Mahendra Singh Chawla and Others* [1982] 3 SCC 331, relied on.

H 5. The contention that the appellant did not consent to adjudication of the subject of dispute by an arbitrator; cannot be taken note of, as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator. [718-H; 719-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2981-82 of 2000 Etc. A

From the Judgment and Order dated 12.3.97 of the Madras High Court in W.P. No. 545/96 and W.M.P. No. 910 of 1996,

WITH B

Civil Appeal Nos. 2983-2995 of 2000.

From the Judgment and Order dated 12.3.97, 10.3.97, 12.3.97, 10.3.97, 12.3.97, 7.3.97 and 14.3.97 of the Madras High Court in W.P. No. 11326/96, W.M.P. No. 15162/96, W.A. No. 1838/92, W.P. No. 9153/92, W.M.P. No. 13209/92, W.P. No. 3874/96, W.M.P. No. 6216/96, W.P. No. 14887/95, W.M.P. No. 23730/95, W.A. No. 1285/94, C.M.P. Nos. 17986/96, 1548/97 and W.P. No. 5012 of 1996. C

R. Mohan, M.N. Krishnamani, M.A. Krishna Moorthy, R. Nedumaran, V.G. Pragasam, Ms. Sushma Manchanda, Ms. K. Sarada Devi, C.S. Ashri and B. Sunita Rao for the appearing parties. D

The Judgment of the Court was delivered by

D.P. WADHWA, J. We grant leave to appeal. E

The questions, which arise for consideration in this batch of eight appeals, are: (1) can the High Court under Article 226 of the Constitution award compensation for the death caused due to electrocution on account of improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board, the appellant and (2) whether the High Court while exercising jurisdiction under Article 226 of the Constitution can appoint an arbitrator under the Arbitration and Conciliation Act, 1996 (new Act) to decide the quantum of compensation and then make the award of the arbitrator Rule of the Court? F G

First question has recently been dealt with by judgment of this Court in *Chairman, Grid Corporation of Orissa Ltd. & Others v. Sukamani Das and Another*. In that case the deceased met his death due to electrocution. It was alleged that while the deceased was proceeding from his village to another place he decided to return back as dark clouds gathered in the sky and there H

A were thunderbolts also. While he was returning it started raining and while walking on the road he came in contact with an electric wire which was lying across the road after getting snapped from the overhead electric line. It was thus alleged that the electric wire had snapped because of the negligence of the appellant and its officers in not properly maintaining the electricity transmission line. Thus claim for damages was laid. Appellant Grid Corporation of Orissa submitted that there was no negligence and it was because of the thunderbolt and the lightning that one of the conductors of the 12 W LT line had snapped even though proper guarding was provided and further that as soon as information regarding the snapping of line was received from the line helper of the village concerned the power was disconnected. It was also contended that the deceased did not die as a result of coming into contact with the live electric wire but he met his death due to lightning. The appellant Grid Corporation objected to the jurisdiction of the High Court under Article 226 of the Constitution and said that proper remedy was a civil suit as disputed question of fact arose and evidence had to be led by both the parties. High Court, however, decided the matter on merit and awarded compensation of rupees one lakh. On appeal this Court said that High Court committed an error in entertaining the writ petition as it was not a fit case for exercising power under Article 226 of the Constitution. It was observed that High Court went wrong in proceeding on the basis that as the death had taken place because of electrocution as a result of the deceased coming into contact with snapped live wire of the electric transmission line of the appellants which "admittedly/*prima facie* amounted to negligence on the part of the appellants". This Court said that High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimant. This Court further said that it was a settled legal position that where disputed questions of facts were involved a petition under Article 226 of the Constitution was not a proper remedy. Reference was made to a decision of this Court in *Shakuntala Devi v. Delhi Electric Supply Undertaking*, [1995] 2 SCC 369 wherein this Court specifically exercised jurisdiction under Article 142 of the Constitution and it was said that the judgment was rendered on the facts of that case and would not be treated as a precedent in any other matter.

H *Shakuntala Devi* case was a petition under Article 32 of the Constitution where Shakuntala Devi had claimed compensation of Rs.5 lakhs on account of death of her husband, who got electrocuted by a live wire of electricity of the respondent. A live main electricity cable/wire which was

resting on an electricity pole had got snapped and was lying in the rainy and waterlogged village. Various complaints were made by the residents of the village to the officers of the respondent, which was statutorily bound to maintain electrical installation lines in proper conditions. Deceased was not aware of the electricity leakage and when he came in contact with the live cable he got electrocuted on the spot and died instantaneously. According to Shakuntala Devi this was on account of criminal negligence on the part of the respondent. The Court observed that as this disaster had left the petitioner and her young children destitute, the present petition was moved under Article 32 of the Constitution presumably relying upon petitioner's fundamental rights under Article 21 of the Constitution which had got adversely affected on account of the negligent act of the officials of respondent. In these circumstances this Court said that it was a fit case to exercise its jurisdiction under Article 142 of the Constitution and granted relief to Shakuntala Devi. This Court, however, did not go into the question of infringement of the rights of Shakuntala Devi guaranteed under Article 21 of the Constitution.

In the present cases, however, High Court went a step further. Here in some of the appeals High Court by consent appointed an arbitrator to decide the question of compensation. Till the arbitrator gave his award an interim compensation amounting to Rs.30,000 or so was awarded. Only in one of the appeals before us (SLP (C) Nos. 14421- 23/97) the arbitrator had given his award. In others during the pendency of these appeals the arbitrator gave his awards. The award, after hearing the objections of the appellant, was made Rule of the Court. High Court examined the evidence recorded by the arbitrator. A decree was passed in favour of the respondents, which was to carry interest at the rate of 12% per annum from the date of the filing of writ petition till the date of realisation. Similar is the result in other seven appeals.

It was contended by Mr. M.N. Krishnamani, Senior Advocate for the respondents that these appeals were distinguishable from the judgment of this court in Sukamani Das case inasmuch as matter was referred to the arbitrator, who recorded evidence in accordance with the provisions of the new Act and the award was subject to scrutiny by the High Court and only it was thereafter that a decree was passed. Reference was made to a decision of this Court in *The Chairman Railway Board and Others v. Mrs. Chandrima Das*, (2000) 1 SCALE 279 where the petitioner, a woman, was gang raped by the employees of the railway in a room of Yatri Nivas, maintained by the Central Government in the Ministry of Railways and it was held that the High Court of

- A Calcutta rightly invoked its power under Article 226 of the Constitution and awarded compensation of Rs.10 lakhs to the victim. This Court, while upholding the judgment of the High Court, said “the contention that victim should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of the fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law”. Reference was also made to another decision of this Court in *Nilabati Behra v. State of Orissa and Others*, [1993] 2 SCC 746 where this Court directed the State of Orissa to pay a sum of Rs.1,50,000 as compensation to the appellant, who was the mother of the deceased, who was the victim of a custodial death. Yet another decision to which reference is made is *Kumari (Smt) v. State of Tamil Nadu and Others*, [1992] 2 SCC 223. In that case a six years old boy died as a result of falling in a ten feet deep sewerage tank in the city of Madras.
- D The tank was not covered with a lid and was left open. Mother of the boy filed a petition under Article 226 of the Constitution before the Madras High Court seeking a writ of mandamus directing the respondents to pay Rs.50,000 as compensation. The writ petition was dismissed on the ground that in writ jurisdiction it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered. This Court awarded a compensation of Rs.50,000 saying “in the facts and circumstances of this case we set aside the High Court judgment and direct that respondent No. 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs.50,000 with interest at the rate of 12% per annum from January 1, 1990 till the date of payment”. It was left open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open.
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- G Respondents in these appeals before us have strongly relied on Article 21 of the Constitution to maintain their petitions under Article 226 of the Constitution. They referred to the following observations of this Court in the case of *Nilabati Behra*, where this Court held thus “adverting to the grant of relief to the heirs of a victim of a custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages
- H for the tortuous Act of the State as that remedy in Private Law indeed is

available to the aggrieved party. The primary source of the Public Law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in Public Law by moulding it according to the situation with a view to preserve and protect the Rule of Law". Further the Court goes to hold in para 33 of the judgment:

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations."

In was thus submitted that respondents' right to life under Article 21 of the Constitution had been violated because of the negligence of the public authorities and that it was a well settled legal proposition that High Court under Article 226 of the Constitution had the power to award compensation in case of violation of fundamental rights by State's instrumentality or servants and the award of compensation in proceedings for enforcement of fundamental rights under Articles 226 and 32 of the Constitution is a remedy available in Public Law. Finally it was submitted that the Public Law proceedings serve a different purpose than the Private Law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 226 by the High Court for infringement the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in Public Law. Therefore, when the Court moulds the relief by granting compensation under Article 226 of the Constitution, it does so under the Public Law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. It was, therefore, submitted by the respondents that the judgment of the High Court was right in law as compensation could be awarded under Article 226 for the infringement of fundamental rights of the citizens.

On the second question it was submitted that since reference was made to the arbitrator with the consent of both the parties and the arbitrator held proceedings in accordance with law and thereafter this Court also examined the award and proceedings and on that basis passed a decree it was impermissible for the appellant to contend otherwise and rather appellant was

A estopped for taking a contrary stand before this Court. It was submitted that the provisions of new Act had been fully complied with and there was no error in the award or High Court passing a decree on that basis.

B This Court in *P. Anand Gajapathi Raju and Others v. P.V.G. Raju*
(*dead*) and *Others*, (Civil Appeal No. 5351 of 1993 decided on 26.3.2000),
C has held that there is no provision in the new Act for referring the matter to arbitrator by intervention of the Court. However, if during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the new Act and when award is made it is a decree and it cannot be filed in the High Court and it has to be filed in the court as defined in clause (e) of Section 2 of the new Act for its enforcement as a decree under Section 36 of the new Act. If there is challenge to the award recourse has to be under Section 34 of the new Act.

D In view of the clear proposition of law laid by this Court in *Sukamani Das* case when disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot
E be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey & Ors.*, [1999] 1 SCC 741 where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of
F the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under
G Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed :

H “... [i]t may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226 there does not

appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass

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A the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226.

In the present case, disputed questions of facts did arise and the High Court was itself aware of the same. It was on that account that the High Court referred the disputes through arbitration for adjudication. It was submitted by Mr. R. Mohan, learned senior counsel for the appellant, that the High Court by referring the matter to arbitration has created a new jurisdiction to deal with the alleged negligence of the appellant and has also appointed a forum for adjudication of the same. It was submitted that creation of such a forum and jurisdiction is legislative in character and it could not be done or assumed otherwise. In support of his submission Mr. Mohan referred to a Constitution Bench decision of this Court in *A.R. Antulay v. R.S. Nayak & Anr.*, [1988] Supp. 1 SCR 1 where the Court had observed :

D "The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal"

E Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. Appellant had also raised plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Mr. Mohan also contended that the appellant did not consent to adjudication of subject disputes by an arbitrator. That the matter was referred to the arbitrator without the consent of the appellant as now being alleged can not be taken note of

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as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator.

It was submitted by Mr. Krishnamani that in view of the facts and circumstances of these cases when deaths occurred due to electrocution and all this time has expired it would not be equitable to send the respondents to take proceedings in a civil court. He referred to a decision of this Court in *Municipal Board, Pratabgarh v. Mahendra Singh Chawla and Others*, [1982] 3 SCC 331 where this Court made following observations:

“While exercising the discretionary jurisdiction under Article 136, law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extraordinary jurisdiction under Article 136 the discretion should be so exercised by the Court that justice may be rendered to both the parties.”

We are inclined to agree with the last submission of Mr. Krishnamani.

We answer both the questions in favour of the appellant. We would, therefore, allow the appeals and dismiss the writ petitions filed by the respondents. In the circumstances, however, we restrain the appellant from recovering any amount from any of the respondents, which has been paid to them in terms of the impugned judgments of the High Court. There shall be no order as to costs.

K.K.T.

Appeals allowed.