

RAM KRIPAL SINGH
v.
STATE OF U.P. AND ORS.

A

MAY 16, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

B

State Financial Corporation Act, 1951—s.29—Debtor-Company wound up—Recovery citation against the guarantor—Citation challenged by the guarantor in Writ Petition, on the ground that he could not be proceeded against, unless and until property of the debtor was not sold—Writ Petition dismissed by High Court—On appeal, held: Recovery proceedings against the guarantor was correct—If a company-debtor is wound up, State Financial Corporation has no right to unilaterally exercise its power to realize the mortgaged property without consent of Official Liquidator—Uttar Pradesh Public Money's Recovery of Dues Act, 1972.

C

D

Recovery proceedings were initiated against the debtor-company. The same was under challenge in another Writ Petition. The Company was wound up. Thereafter recovery proceedings were initiated against the appellant-Guarantor under Uttar Pradesh Public Money's Recovery of Dues Act, 1972. The recovery citation was challenged by the appellant in Writ Petition on the ground that the proceedings were without jurisdiction as the guarantor could not be proceeded against unless and until the property of the principal debtor is sold. High Court dismissed the petition holding that proceedings against the guarantor was right as the debtor-company had been wound up. Hence the present appeal.

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Dismissing the appeal, the Court

HELD:1. In the present case, the principal debtors-Company has already been wound up and official liquidator has been appointed. The position would be different if the company is under liquidation. The right of State Financial Corporation (SFC) unilaterally exercisable under Section 29 of the State Financial Corporation Act, 1951 is available against a debtor, if a company, only so long as there is no order of winding up. SFCs cannot unilaterally act to realize the mortgaged properties without the consent of the official liquidator. [Paras 6, 7, 9 and 10] [1189-D, G; 1190-A, B]

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A *International Coach Builders Ltd. v. Karnataka State Financial Corporation*, [2003] 10 SCC 482, relied on.

Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P., [2004] 6 SCC 758, distinguished.

B 2. It appears to be a classic case where the efforts for recovery of the amounts have been frustrated on some pretext or other. A recalcitrant defaulters' case deserves to be dealt with sternly.

[Para 8] [1189-G, H; 1190-A]

C *Orissa State Financial Corporation and Anr. v. Hotel Jogendra*, [1996] 5 SCC 357, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2675 of 2007.

From the final Judgment and Order dated 05.05.2005 of the High Court of Judicature at Allahabad in Writ Petition No. 1112 of 2005.

D Satya Mitra, Dharendra Pandey and Sanjay R. Hedge for the Appellant.

T.N. Singh, Rajeev Dubey, Kamendra Mishra, Aarohi Bhalla, Sunil Kumar Singh and Sujata Kurdukar for the Respondents.

E The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

F 2. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant. Challenge in the writ petition was to the recovery proceedings initiated against him under Uttar Pradesh Public Money's recovery of Dues Act, 1972 (in short the 'Act'). Prayer was to quash the citation issued by the Tehsildar principally on the ground that the proceedings are without jurisdiction as the respondent cannot proceed against the appellant as a guarantor unless and until the property of the principal debtor is sold. Since the recovery proceedings were initiated in the year 1993, recovery citation during the pendency of the earlier writ petition was illegal and therefore the appellant was entitled to get protection in view of what has been stated by this Court in *Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P.*, [2004] 6 SCC 758.

H 3. Respondents on the other hand supported the action taken relying

on a decision of this Court in *Kailash Nath Agrawal v. Pradeshiya Industrial and Investment Corporation of U.P.*, [2003] 4 SCC 305. It was also pointed out that the decision in *Pawan Kumar's* case (supra) is not applicable as the company had been wound up and the official liquidator has been appointed. A

4. Accordingly the High Court dismissed the writ petition holding that since that the company has been wound up and the proceedings against the guarantor i.e. appellant were perfectly in order. B

5. Stands taken before the High Court were reiterated by the parties in this appeal. At first glance the appellants stand appears to be in terra firma because of what has been stated by this court in *Pawan Kumar's* case (supra). C

6. On a closer scrutiny the finding of the High Court appears to be in order. Though it was urged that the recovery citation was issued after 24.1.2004 i.e. on 18th September, 2004, it is to be noted that the first recovery citation was issued on 3.9.1993. It is true that the same was under challenge in another writ petition. But the basic features are distinguishable. The present case is different from that of *Pawan Kumar's* case (supra) as principal debtors Company has already been wound up and official liquidator has been appointed. The company was declared as sick industry on 17.11.1994 by the Board for Industrial and Financial Reconstruction (in short the 'BIFR') where after the company has undergone winding up proceedings before the High Court. The BIFR submitted its recommendation for winding up and against the order of BIFR appellant had preferred an appeal before the appellate authority which was rejected on 9.1.1997. The company had filed a writ petition questioning orders of the BIFR and the appellate authority. By order dated 26.2.2003 the Writ Petition No. 14172 of 1997 was dismissed and in the winding up proceedings, Company Court has permitted official liquidator to proceed with the winding up. D E F

7. It appears that proposal for one time settlement was made and nothing concrete has been done by the appellant. In *International Coach Builders Ltd. v. Karnataka State Financial Corporation*, [2003] 10 SCC 482 it has been held that the position would be different if the company is under liquidation. G

8. It appears to be a classic case where the efforts for recovery of the amounts have been frustrated on some pretext or other. In *Orissa State Financial Corporation and Anr. v. Hotel Jogendra*, [1996] 5 SCC 357 it was H

A held that a recalcitrant defaulters' case deserves to be dealt with sternly.

9. The right of State Financial Corporation (in short 'SFC') unilaterally exercisable under Section 29 of the State Financial Corporation Act, 1951 (in short 'SFC Act') is available against a debtor, if a company, only so long as there is no order of winding up.

B

10. SFCs cannot unilaterally act to realize the mortgaged properties without the consent of the official liquidator.

C

11. If the official liquidator does not consent, SFCs have to move the Company Court for appropriate directions to the official liquidator. In any event, the official liquidator cannot act without seeking directions from the Company Court and under its supervision.

12. The inevitable result is that the appeal is without merit deserves dismissal, which we direct. Costs made easy.

D K.K.T.

Appeal dismissed.