(2004) 03 AHC CK 0207

In the Allahabad High Court

Case No : C.M.W.P. No. 22519 of 1998

Anshuman Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:
Companies Act, 1956 — Section 34
Electricity Act, 1910 — Section 24

Citation : AIR 2004 All 260 : (2004) 3 CivCC 19

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : S.O.P. Agarwal and Rohit Agarwal, for the Appellant; Anil Sharma and V.S. Misra, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for quashing the impugned recovery certificate dated 8-6-1998 in respect of electricity dues (Annexure-5 to the writ petition).

2. Heard learned counsel for the parties.

3. The petitioner alleged that the agreement for supply of electricity was between the company M/s. Bheem Cement Co. Ltd. and the U.P. State Electricity Board, and hence the dues cannot be recovered against the petitioner.

4. A counter-affidavit has been filed by respondent No. 2 and in para 4 it has been stated that the agreement (copy of which is Annexure-1 to the writ petition) was signed by the U.P. State Electricity Board on the one part, and by two persons namely (the petitioner) and (M/s. Bheem Cement Ltd. through its Managing Director Sri Anshuman Singh, the petitioner on the other part. Both these persons have been referred to in the agreement as the consumer. Hence the assertion that the petitioner signed the agreement only as director of the company and not in his individual capacity is false.

5. A similar controversy has been decided by a Division Bench of this Court in M/s. Nilgiri Cement Ltd. v. D. M. in Writ Petition No. 1272 of 1998 decided on 15-1-1998. Copy of the judgment is Annexure-CA 2 to the counter-affidavit. The plea of the petitioner has been negatived by this Court on similar facts.

6. Moreover it appears that M/s. Bheem Cement Ltd. had filed a writ petition No. 1063 of 1998 which was dismissed on the ground of alternative remedy on 15-1-1998 vide Annexure-CA 3 to the counter affidavit. This fact has been concealed in the writ petition, and hence the petitioner has not come with clean hands.

7. Apart from the above, we are of the opinion that the principle of lifting the veil of corporate personality should be utilized in this case.

8. The principle of lifting the veil of corporate personality has been discussed in Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others, Calcutta Chromotype Ltd. v. Collector of Central Excise AIR 1998 SC , New Horizons Limited and Another Vs. Union of India (UOI) and Others, The Commissioner of Income Tax, Madras Vs. Sri Meenakshi Mills Ltd., Ors., , Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, Juggi Lal Kamlapat Vs. Commissioner of Income Tax, U.P.,

9. In State of U.P. and Others Vs. Renusagar Power Co. and Others, the Supreme Court observed (at page 1757 of AIR) :

"It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must however, depend primarily on the realities of the situation. The horizon of the doctrine of lifting of corporate veil is expanding."

In Tata Engineering''s case (supra) the Supreme Court observed that the doctrine of the lifting of the veil thus marks a change in the attitude that the law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognized exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems the theory about the personality of the corporation may be confined more and more.

Thus the Supreme Court itself has stated that with the passage of time the exceptions to the rule of corporate personality can grow in number to meet the new requirements, and these exceptions have an expanding horizon.

The aforesaid decisions have been followed by this Court in a Division Bench decision in Civil Misc. Writ Petition No. 37833 of 2002 Sanjay Kumar Gupta v. District Magistrate, Fatehpur decided 249-2002 : 2002 (3) UPLBEC 2706.

16. The doctrine of piercing or lifting of the veil of corporate personality marks a

change in the attitude that the law had originally adopted towards the concept of the separate entity or personality of the Corporation as held by a Division Bench of this Court in Naresh Chander Gupta v. The District Magistrate, Etah in Writ Petition No. 382 of 2003 decided on 13-3-2003. A large number of decisions of the Supreme Court on the point have been elaborately discussed in the aforesaid decision and hence we are not repeating the same. We fully agree with the reasoning in that decision.

17. We further direct that the petitioner shall pay to the respondents interest at 12% per annum from the date when the amounts in question fell due to the date of payment and this payment shall be made within six weeks from today.

18. We may mention that there is a misconception about interest. Interest is not a penalty or punishment at all, but is the normal accretion on capital.

19. Money doubles every six years (because of compound interest). For instance, if A had to pay B a sum of Rs. 100/- in the year 1992 but he pays Rs. 100/- in the year 2004 then in fact A has pocketed Rs. 300 with himself. This is because Rs. 100 in 1992 becomes Rs. 200/- in 1998 and it becomes Rs. 400/- in the year 2004. Hence interest must also be directed to be paid, otherwise if a party has obtained a stay order from some Court, and the stay order continues for these 12 years (as it often happens nowadays) he will really have won the case (and three times over) even though technically he may lose it.

20. In South Eastern Coalfields Ltd. Vs. State of M.P. and Others, the Supreme Court observed (at page 4490 of AIR) :--

"Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See : Chitty on Contracts, Edition 1999, Vol. II, Para 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many."

21. Hence interest should always be directed to be paid when there is delay in payment, otherwise the person will really win a case (even though losing it) simply by getting a stay order from a Court and managing to continue it for a long time. The petition is dismissed with these observations. Petition dismissed.