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**(2006) 11 UK CK 0024**  
**In the Uttarakhand High Court**

Atiq Malik

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

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**Date of Decision :** 29-11-2006

**Acts Referred:**

COMPANIES ACT, 1956 — Section 10, 433, 434, 439

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34

**Citation :** AIR 2007 Utt 78 : (2008) 1 BC 345 : (2007) 139 CompCas 355 :  
(2008) 88 SCL 267 : (2007) 2 UC 965 : (2007) 1 UD 83

**Hon'ble Judges :** Prafulla C. Pant, J; Dharam Veer, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of certiorari quashing the impugned judgment and order dated 5-5-2005 (copy Annexure 14 to the writ petition), passed by District Magistrate, Champawat. A mandamus has also been sought not to interfere in petitioner's exercise of property rights over the property purchased by him through the proceedings taken by Recovery Officer, Debt Recovery Tribunal-II, Kolkata.

2. Heard learned Counsel for the parties.

3. Brief facts of the case are that an advertisement (Annexure-1 to the writ petition) was issued in the newspaper by Recovery Officer, attached to Debt Recovery Tribunal-II, Kolkata in T.R.C. No. 06 of 2002 Dena Bank v. KHSL Industries Limited, for sale of industrial units, one of which is located at Tanakpur, District Champawat in Uttaranchal. The petitioner in pursuance to said advertisement, submitted his tender complying the condition of sale notice. The bid of the petitioner being highest at Rs. 9,00,000/- was accepted and sale confirmation order dated 9-8-2004 (copy Annexure<sup>^</sup>) and sale certificate dated 9-8-2004 (copy Annexure-3) in respect of the movables of debtor company

(except for the item known as Bucket Elevator) was issued in favour of the petitioner. Also, the bid in respect of immovable property submitted by the petitioner was found highest. However, meanwhile one M/s. Kristina Vinimoy, a company participating in the auction filed its objection on which the Debt Recovery Tribunal stayed the proceedings in the matter. But later, the said order was modified and the sale of immovable property in favour of the petitioner was also confirmed (confirmation order and certificate are Annexure-7 and 8 to the writ petition). The receiver of the property was directed to handover the possession of the property to the petitioner and delivery of possession was made vide memorandum-dated 16-4-2005 (Annexure-11 to the writ petition) to the petitioner. Since then the petitioner is in actual physical possession of the property purchased by him in the aforesaid sale. It appears that in the year 1999, company petition No. 77 of 1999, was filed by Dena Bank and another for winding up of the company under Sections 433, 434 and 439 of the Company Act, 1956, before High Court judicature at Allahabad, wherein judgment and order-dated 15-10-2003 (Annexure-12 to the writ petition) was passed directing winding up of the company. In pursuance to said order, it appears that the Official Liquidator made request to the District Magistrate, Champawat to take charge of unit at Tanakpur. Consequently, a representative of the Official Liquidator accompanied by local Tehsildar, demanded possession of the premises from the petitioner. When the petitioner disclosed to said persons that he is the owner of the property, the District Magistrate without issuing notice and affording any opportunity of hearing to the petitioner unilaterally acted on the report of Tehsildar and passed the impugned order dated 5-5-2005 (Annexure-14 to the writ petition) restraining the petitioner from alienating or dissipating the movable and immovable property of the unit purchased by him. Aggrieved by said order, this writ petition has been filed relying on the principle of law laid down in Allahabad Bank v. Canara Bank and Anr. Judgment Today 2000 (4) SC 411 : AIR 2000 SC 1535. In other words, it is alleged by the petitioner that the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, has an overriding effect over the provisions of Companies Act.

4. Notices were issued to the respondents whereupon respondents No. 2 and 3 filed their joint counter affidavit in which it is stated that the impugned order has been passed by District Magistrate in pursuance to order dated 15-10-2003 of the Allahabad High Court on being asked by the Official Liquidator. Defending the impugned order, it is stated in their counter affidavit that the act on the part of the answering respondents was bona fide as the same was done to protect and preserve the subject matter of the property.

5. Respondent No. 4, Official Liquidator, filed his separate counter affidavit. In said affidavit also it is stated that the request was made to the District Magistrate, Champawat in pursuance to the order passed on 15-10-2003 by Allahabad High Court in company petition No. 77 of 1999 and appointing Official Liquidator for taking up of the winding proceedings. In the counter affidavit, filed on behalf of the Official Liquidator, it is further stated that u/s 10(1)(a) of

Companies Act, 1956, the Jurisdiction vests with the Allahabad High Court relating to the properties of the company under winding process as its registered office is situated in District Kanpur of State of U.P. Relying on said provision, it is stated by respondent No. 4 that the present writ petition is not maintainable and the petitioner should have approached High Court of Judicature at Allahabad, for seeking the remedy in the matter.

6. Before further discussions, it is pertinent to mention here the provisions applicable to the present case. Section 34 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, reads as under:

Section 34 Act to have overriding effect

(1) Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), and the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989.

The above provision clearly makes it evident that the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, have overriding effect over the provision of Companies Act, 1956. In Allahabad Bank Vs. Canara Bank and Another, , the Apex Court while interpreting the provisions of aforesaid two enactments have clearly held that the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, have overriding effect in the matter. That being so, what the petitioner has stated in the writ petition deserves to be accepted. The property purchased by the petitioner in pursuance to the advertisement made by the Recovery Officer in compliance of direction of Debt Recovery Tribunal-II, Kolkata in T.R.C. No. 06 of 2002 Dena Bank v. KHSL Industries Limited could not have been interfered by the District Magistrate, Champawat in pursuance of the request of the Official Liquidator, acting in compliance of order dated 15-10-2003 in company petition No. 77 of 1999.

7. Therefore, for the reasons, as discussed above, the writ petition deserves to be allowed and the impugned order dated 5-5-2005 (Annexure-14 to the writ petition) is liable to be quashed. Accordingly, the writ petition is allowed. The impugned order dated 5-5-2005, passed by District Magistrate, Champawat, is quashed. It is further directed that the respondents shall not interfere in the petitioner's exercise of propriety rights except in accordance with law in respect of the unit belonging to M/s. Khaitan Overseas Finance Ltd., located at Poornagiri. Tanakpur, District Champawat, purchased by him, under the proceedings of Recovery of Debts Due to Banks and Financial institutions Act,

1993. No order as to costs.