

**(1988) 05 PAT CK 0030**  
**In the Patna High Court**  
**Case No : A.F.O.D. No. 1979 (R)**

Bharat Coking Coal Ltd.

APPELLANT

Vs

United Commercial Bank and Another

RESPONDENT

**Date of Decision :** 13-05-1988

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11, 9  
Coking Coal Mines (Nationalisation) Act, 1972 — Section 23, 9

**Citation :** AIR 1989 Patna 153 : (1988) PLJR 936

**Hon'ble Judges :** Suresh Chandra Mookherji, J

**Bench :** Single Bench

**Advocate :** Vishwa Mohan Kumar Sinha, for the Appellant; Bhaskar Kumar Dey and P.D. Agarwal, for the Respondent

**Final Decision :** Allowed

## Judgement

Suresh Chandra Mookherji, J.—This appeal is directed against the judgment and decree passed by Sri D. D. Topno, Additional Subordinate Judge, 1st Court, Dhanbad in Money Suit No. 269/2 of 1974/78 on the 8th of Sept., 1979, whereby and whereunder the Court below decreed the plaintiff's suit.

2. In view of the points involved in this appeal, it is not necessary to state the facts in detail which are also otherwise not much in dispute. Suffice it to say that the plaintiff filed the aforementioned suit stating therein that defendant No. 1 respondent No. 2 had a current account with the plaintiff and used to enjoy overdraft facility in the account. During the operation of the said account on various occasions it appears that defendant No. 1 drew advances against the cheques deposited in course of collection. On or about 16-10-1971 defendant No. 1 deposited cheque No. 043455 dated 16-10-1971 for a sum of Rs. 15,000/- drawn by M/s. H. Roy and Co. in favour of defendant No. 1 for collection and defendant No. 1 drew Rs. 15,000/- by cheque No. 327298 dated 16-10-1971 as advance against the aforesaid cheque sent for collection. On or about 19-10-1971 when the said cheque was presented by the plaintiff to Bank of Baroda, Dhanbad for

payment, the same was dishonoured on the ground stated in the memo. In the said account of defendant No. 1, it is alleged that a sum of Rs. 16,899.73 paise remained overdrawn as on 19-10-1971. Defendant No. 1 deposited Rs. 7,000/- on 23-10-1971. The colliery of defendant No. 1 vested absolutely in the Central Government with effect from 1-5-1972. The plaintiff sent the dishonoured cheque to the Custodian General of the management for reimbursement of the amount but to no effect. After giving credit to defendant No. 1, still a sum of Rs. 12,561.39 paise inclusive interest remained due and payable by the defendant to the plaintiff for which sum, the plaintiff filed the aforesaid suit.

3. Defendant, No. 1 filed written statement, inter alia, challenging the jurisdiction of civil Court to try the suit. It is alleged that the plaintiff had been pursuing twofold remedies as it had also filed a claim petition before the Commissioner of Payments constituted under the provisions of the Coking. Coal Mines (Nationalisation) Act, 1972 (hereinafter to be called as "the Nationalisation Act"). Defendant No. 1 had further stated that the cheque which was dishonoured had not been sent to defendant No. 1 and had it been so sent, defendant No. 1 could have realised the said amount from the party. Defendant No. 2 had also filed a separate written statement and the short point which was stated therein was that it was not liable to pay any amount to the defendant as the transaction in question only took place prior to the appointed date within the meaning of the Act, i.e. 1-5-1972.

4. The court below by the impugned judgment passed a decree for a sum of Rs. 12,561.39 paise and directed that the said sum would carry interest pendente lite and future at the rate of 9% per annum.

5. In this appeal three important questions have been raised for consideration, which are as follows :

(i) Whether in view of the provisions of the Nationalisation Act, jurisdiction of the Civil Court is barred by necessary implication?

(ii) Whether in view of the order passed by the Commissioner of payment, the respondent is entitled to any decree or not?

(in) Whether in view of Section 9 of the Nationalisation Act the respondent is entitled to any relief?

6. Mr. B. K. Dey, learned counsel appearing on behalf of the respondent, has placed strong reliance upon the decisions in J. A. Trivedi Brothers v. Union of India 1975 MPLJ 335 : 1975 LabIC 629 1988 BLT 181 Gupteshwar Prasad Singh v. Allahabad Bank and also filed a xerox copy of the judgment of a Division Bench of the Calcutta High Court in Barakar Coal Co. Limited v. N. C. Mehta (AIR 1977 NOC 198). To me, it appears that the ratio of the aforementioned judgments are open to questions, as many facets of the provisions of the Nationalisation Act vis-a-vis the question of bar of jurisdiction of the civil Court have not been taken into consideration therein.

7. For the purpose of deciding the aforementioned issues, it is necessary to look into the history of the Nationalisation laws in respect of the Coal Mines/Coking Coal Mines. On or about 16-10-1971 the President of India promulgated an Ordinance in exercise of the powers conferred upon him under Article 123(1) of the Constitution of India, known as Coking Coal Mines (Emergency Provisions) Ordinance, 1971, whereby and whereunder management of 214 coking coal mines were taken over, on or about 23-12-1971 the Parliament enacted Coking Coal Mines (Emergency Provisions) Act, which was given retrospective effect with effect from 16-10-1971. The said Act received the assent of the President of India on 23-12-1971. Under that Act, the Coking Coal Mines (Emergency Provisions) Ordinance, 1971 was repealed and replaced. Thereafter, the Parliament enacted Coking Coal Mines (Nationalisation) Act, 1972 which although received the assent of the President on 17-8-1972, but the same was given retrospective effect and retroactive operation with effect from 1-5-1972, whereby the Coking Coal Mines mentioned in the schedule appended to the said Act vested absolutely in the Central Government free from all encumbrances.

8. By reason of aforesaid Coking Coal Mines (Nationalisation) Act a Commissioner of Payments was appointed for disbursing the amount awarded to each colliery owner in relation to the nationalisation of their coking coal mines and provisions have also been made therein for the mortgagees and other claimants to prefer their claim before the said Commissioner of Payments within the prescribed period. The Commissioner has been given wide power of regulating his own procedure as also the powers to entertain, investigate and adjudicate all such claims, which may be filed before him. The said Commissioner of Payments has also the power to disburse the claim admitted from the amount paid by the Central Government to the owner of the coal mines. From the tenor of the said Act it would be evident that new rights have been created and liabilities have been imposed thereby. By reason of provisions of the said Act, a complete machinery has been set up with regard to the adjudication of the claims. Any person who is dissatisfied with the order of the Commissioner of payments may prefer an appeal before the appropriate forum (See Section 23(2) of the Coking Coal Mines (Nationalisation) Act, 1972). In the event the Commissioner of Payments is the Judge of the High Court, an appeal lies before a Division Bench of the High Court. In any other case the appeal lies before the District Judge within the local jurisdiction where the colliery is situated. As the District Judge is a Court subordinate to the High Court, a further revision to the High Court would also be maintainable.

9. The Parliament thereafter enacted Coal Mines (Nationalisation) Act, which although received the assent of the President on 30-5-1973, the same was given retrospective effect and retroactive operation with effect from 1-5-1973. The Coal Mines (Nationalisation) Act also contains provision similar to that of the Coking Coal Mines (Nationalisation) Act, 1972 relating to filing of claim etc. In fact both the acts are in pari materia. In terms of the provisions of the Coal Mines (Taking over Management) Act, 1973 the Central Government took over

the management and the entire control of all the coal mines. The owners of the collieries had absolutely no say whatsoever relating to the management of the collieries, disbursement of the amount, receipt of the sale proceeds or any matter during the period, in which the collieries remained under the management of the Central Government and/or the custodian appointed under the said Act. As matter of fact, even the bank accounts were frozen and owners of the mines were deprived from operating the said accounts.

10. The proceedings before the Commissioner of payments is a judicial proceeding under both the Acts as would be evident from Section 23(6) thereof. In this context, reference may also be made to Sections 2(h). 3, 6, 8, 9, 10, 11, 12, 20 and 23 of the Coal Mines (Nationalisation) Act.

11. Now, the locus classicus in respect of bar of jurisdiction of the civil Courts is *Wolver Hampton New Water Works Company v. Hawkesford*, reported in (1859) 6 CB (NS) 336 at page 356-141 ER 486 at page 495 wherein Willes, J. held as follows :

"There are three classes of cases in which a liability may be established founded upon a Statute. One is, where there was a liability existing at Common law, and the liability is affirmed by Statute which gives a special and peculiar form of remedy different from the remedy which existed at common law there unless the statute contains words which expressly or by necessary implication exclude the common law remedy and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is where the Statute gives the right to sue merely remedy but provides no particular form of remedy, there the party can only proceed by action at common law. But where there is a third class, viz. where a liability not existing at common law is created by a Statute, which at the same time, gives a special and particular remedy tor enforcing it.....The remedy provided by the Statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

12. The aforesaid decisions has been followed in a large number of decisions including the Supreme Court of India, Some of them may be mentioned as follows :

(i) 1959 All England Law Reports 31 (sic).

(ii) AIR 1940 105 (Privy Council) at page 110.

(iii) AIR 1952 SC 64 at page 69.

(iv) *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , and

(v) AIR 1983 SC 603 at page 607.

13. In this connection, reference may also be made to the cases which were rendered in similar situation under the Bihar Land Reforms Act, 1950 where in

terms of Section 35 thereof, the jurisdiction of the Civil Court has been ousted. In similar circumstances, the Supreme Court and this Court held that the jurisdiction of the Civil Courts would be barred in view of the scheme and object of the Act (See Krishna Prasad and Others Vs. Gauri Kumari Devi, .

14. From the aforementioned authoritative pronouncements it is evident that it can be contended by the appellant that the plaintiff respondent was conferred a right to file a claim before the Commissioner of Payments so as to reimburse Himself from the amount paid to the owner of a coal mines in lieu of the nationalisation of coal mines, as in view of the fact that the said Act had also provided a forum, the jurisdiction of the civil Courts was barred by necessary implication.

15. It is true that Section 9 of CPC provides that the civil Courts shall have jurisdiction to try all suits of civil nature except those which are barred expressly or by necessary implication. Keeping in view the principles laid down in the decisions referred to above, if the issues involved are probed in a greater detail, it would be manifest that under the Nationalisation Act although no provision has been made expressly barring the jurisdiction of the Civil Courts, the legislature in its wisdom did not think it necessary to do so as the provisions are so explicit and clear that no other inference can be arrived at, but to hold that the jurisdiction of the civil Court is barred by necessary implication. If that be so it must be held that the suit instituted by the plaintiff was not maintainable.

16. From a perusal of the various provision of the said Nationalisation Act, it would be apparent that the Act is complete Code in itself. Not only it has created a right in favour of the plaintiff, but in the sense it has also created right in favour of the owner of the Coking Coal Mines, inasmuch as, it is provided therein that in the event the entire debt of the creditors cannot be met from the amount payable to the owner of the Coking Coal Mines, the debt of the creditors shall proportionately abate. It also provides a forum of appeal, the appellate Court being the District Court or a Division Bench of High Court as the case may be. If the appellate authority is the District Judge then a civil revision petition shall also lie before this Court.

17. It is a well settled principle of law that a person may have a right of action to enforce his claim, but has no right to enforce the same before a particular forum. Reference in this connection may also be made to the decision reported in New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, .

18. There is yet another aspect of the matter which cannot be overlooked. Even if it is assumed that the plaintiff's right was enforceable at common law it could either pursue the remedy by filing the claim petition before the Commissioner of Payments appointed in that regard or to file a suit. The question, therefore, that has to be posed and answered is as to whether the plaintiff having elected to pursue his remedy under the Nationalisation Act can also file a civil suit and thereby take recourse to two parallel remedies at the same time? As a logical

corollary, another question that will come up for consideration is whether in view of the fact that plaintiff's claim having already been admitted by the Commissioner of Payment which did not award any interest on the admitted amount can the plaintiff still prosecute its claim in civil court in respect thereof by filing a civil suit? The answer to both the questions aforementioned, in my opinion, must be answered in negative. In this connection, reference may be made to Crawford on Statutes and Statutory construction, para 268 at page 524 which reads as follows :

"But if the statute creates new remedy or right not known to the common law and prescribed certain remedy for its enforcement, it must be given mandatory construction."

19. In view of the fact that the plaintiff had elected to file and claim petition before the Commissioner of Payments in accordance with the provisions of the Nationalisation Act, it was not open to it to initiate/continue a parallel remedy by filing a civil suit. In this regard reference may also be made to a Division Bench decision of this Court in the case of Secy. of State Vs. Kameshwar Singh Bahadur and Another, , wherein the Division Bench held as follows :

"If a right is given to an individual by a statute and the mode of obtaining that right is provided in the statute itself, a suit to enforce the right is not maintainable in the Civil Court. There is no right to receive compensation for acts done under the authority of the law unless the law itself gives such a right. If the right to receive compensation exists independently of a statute and the statute only affirms it and provides a particular form of remedy, that remedy is exclusive and the jurisdiction of civil Courts is barred by implication,"

20. Apart from what has been stated above, in my opinion, the plaintiff's suit was also barred under the principles of res judicata. This view of mine is buttressed by the fact that the Parliament in its wisdom amended Section 11 of the CPC by inserting Explanation VIII by the CPC Amendment Act, 1976. Explanation VIII to Section 11 of the CPC reads as follows :

"An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try subsequent suit or the suit in which such issue has been subsequently, raised."

By reason of Explanation VIII of Section 11 of the Civil Procedure Code, therefore, the principles of res judicata also apply to the decision of a Court of a limited jurisdiction. This view of mine also finds support from the decisions reported in Nabin Majhi Vs. Tela Majhi and Another, and AIR 1981 Punj & Har 237 (FB) (particularly the minority judgment of Hon<sup>ble</sup> the Chief Justice S.S. Sandhawalia). Apart from the fact that the principle of res judicata can be invoked by virtue of the provisions of Explanation VIII of Section 11 of the Civil Procedure Code, the general principle of res judicata also be held to be applicable. It is now well settled by various decisions of the Supreme Court that

the general principles of res judicata is applicable to proceedings under the statutes. In this connection, reference may be made to the following decisions reported in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, , Koran Vs. Kamala Shetty, and Gulam Abbas and Others Vs. State of Uttar Pradesh and Others, .

21. In any event, it cannot be said that the remedy of the plaintiff in ventilating its grievances were two-fold, i.e. before the commissioner of payments and/or before the civil Court. In the instant case, however, the fact that plaintiff had already got the claim admitted before the Commissioner of payments not only the general principle of estoppel applies against the plaintiff in pursuing the remedy before the Civil Court but also the principle of estoppel by record and doctrine of merger in the judgment are attracted.

22. It is not the case of the plaintiff that the Commissioner of Payment has no jurisdiction to disburse his claim. Admittedly, it had jurisdiction and in fact, the plaintiff had benefited itself by getting the claim admitted by the Commissioner of payments. As a matter of fact, the decree of the court below was passed solely on the basis of the admission of defendant No. 1 before the commissioner of payments with regard to the dues of the plaintiff.

23. Apart from the aforementioned fact, the plaintiff could not have obtained any relief as against the defendant-appellant in view of the provision of Section 9(1) of the Nationalisation Act. Under the said provision all the liabilities of the owner, agent, manager or managing contractor of a coal mine or coke oven plant in relation to any period prior to the appointed day shall be the liability of such owner, agent manager or managing contractor and the same can be enforced only against such person and not against Central Government or a Government Company. The phraseology used in the said section is absolutely clear and unambiguous and as such in no circumstances the liability of the owner can be enforced as against the Central Government or a Government Company, provided the liability arose prior to the appointed day. In the instant case, the cause of action for the suit arose prior to the appointed day and in the statements made in the plaint itself it has clearly been stated that the liability was that of defendant No. 1 who also admitted its liability before the Assistant Commissioner of Payments. For these reasons also the suit was not maintainable as against the appellant and as such no decree could have been passed by the Court below.

24. The three decisions cited on behalf of the respondent, i.e. 1975 MPLJ 335 : 1975 LabIC 629 a xerox copy of the judgment of a Division Bench of the Calcutta High Court in Barakar Coal Company Ltd. v. N. C. Mehta (AIR 1977 NOC 198) and 1988 BLT 181 Gupteshwar Prasad Singh v, Allahabad Bank are not helpful in view of the fact that the Supreme Court decisions on the points involved in the case and the principles laid down therein have not been taken note of in the aforesaid three decisions.

25. In view of my findings mentioned above, all the questions framed in para. 5 of the judgment are answered in favour of the appellant. I, therefore, find and hold that the plaintiff's suit was not maintainable. The appeal is, thus, allowed with costs. Advocate's fee Rs. 300/- (three hundred). The judgment and decree of the Court below are, hereby, set aside.