
(1996) 07 SIK CK 0001
In the Sikkim High Court
Case No : Writ Petition No. 9 of 1995

Bhaskaranand Agarwal and Another	Vs	APPELLANT
State of Sikkim and Others		RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Citation : AIR 1998 Sikk 4

Hon'ble Judges : Malay Sengupta, J

Bench : Single Bench

Advocate : N.K.P. Sarraf and B. Sharma, for the Appellant; A.K. Srivastava, General, J.B. Pradhan, Asstt Govt. Advocate and B.K. Rai, for Respondents Nos. 1, 2, 3 and 4 and S.P. Wangdi, for Respondents No. 5, for the Respondent

Judgement

M. Sengupta, J.—Here is an application under Articles 226 and 227 of the Constitution of India.

2. The fact of the case, in short, is that respondent No. 6 is a Private Ltd. Co. with petitioners Nos. 1 and 2 and respondent No. 5 as its share-holders and Directors. The above Ltd. Co. took a loan from respondent No. 3 whose Managing Director is respondent No. 2. The respondent No. 3 is a Corporation started by the Government of Sikkim (respondent No. 1) with a view to promote industrial development in the State. The respondent No. 3 advances financial loan to the growing industries within the State of Sikkim. The Directors of respondent No. 6 applied for such a loan and it was duly provided by the respondent No. 3. The total extent of financial assistance was Rs. 19.3 lakhs. Besides that there was Bridge loan for Rs. 4.28 lakhs. The aforesaid sanctioned loan amount was released in several instalments in favour of respondent No. 6. The instalments started from 26-9-83 and ended on 30-10-86. The above loanees made repayment of certain amounts towards principal and interest, the last having been paid on 16-2-90. As per terms of repayment it was initially scheduled to be paid off by 16 instalments starting from 26-3-85 to 26-9-92 but ultimately the schedule was revised and the repayment was to be made from 13-3-87 to

15-3-93. The borrower executed mortgage deed with respect to some immovable properties. Besides that a bond of guarantee was executed by the Directors of the Firm (respondent No. 6) on 26-7-83. Again, the respondent No. 5 executed another bond of guarantee on behalf of respondent No. 6 on 16-8-83.

11. As the payments were not made as scheduled and as huge arrear was there, a certificate proceeding was started on 22-8-94 by the respondent No. 3 under Sikkim Public Demands Recovery Act. The Certificate Officer enquired into the matter and by his Order dated 7-4-95 issued certificate for the outstanding dues of Rs. 43,10,000.00 and odd. Being aggrieved by the aforesaid order two of the share-holders of respondent No. 6 have moved this Court with the present application under Articles 226 and 227 of the Constitution of India on the ground that since there is no provision under the Sikkim Public Demands Recovery Act for preference of any appeal or revision against any order of the Certificate Officer, the petitioners are to take recourse to such an application.

4. The matter has been contested by respondents Nos. 1 to 5 in two groups.

5. It is the admitted position that loan was taken from respondent No. 3 by respondent No. 6 being owner and represented by respondent No. 5 and petitioners Nos. 1 and 2. There is no dispute that payment was not made off by the impugned Firm as per agreed schedule. It is also the factual position that the registered deed of mortgage could not be produced by the lender (respondent No. 3). It is also not available from the record if such a deed was at all registered. But the record contains two unregistered bonds of guarantee as referred to above. The main plea of the petitioners is that the certificate proceeding was started with respect to time barred debts and that the enquiry prior to issuance of certificate was not completed within the time specified under the Recovery Act. It has also been contended that the Certificate Officer acted in an unjudicious manner causing prejudice to the debtors.

6. With regard to the time barred claim the contention of the learned Advocate General representing respondents Nos. 1 to 4 is that there is no provision under the Public Demands Recovery Act which bars issuance of certificate with respect to any claim which is otherwise barred under the Limitation Act. A reading of Section 4(1) would give out that Certificate Officer should sign a certificate only after being satisfied that the public demand is "due". This particular word "due" indicates that it should not include any amount which is barred by any law. It should be the amount justly recoverable and its recovery by suit is not barred by any law. Therefore, the Certificate Officer cannot issue any certificate with respect to any time barred claim.

7. The petitioners indicate that the last payment by respondent No. 3 was made on 30-10-1986 and that the last instalment paid by the petitioners towards repayment of loan was on 16-2-1990. Hence, the claim should have been preferred within three years from 16-2-1990 but it has been so done only on 22-8-1994. We cannot appreciate this argument or calculation. Though the

petitioners made last payment on their behalf on 16-2-1990, as per schedule of repayment as spelt out in the letter dated 19-2-1986, the time limit for payment of last instalment was up to 15-3-1993. It was obviously a running account and the respondent No. 3 might be waiting till the last date of repayment which was 15-3-1993. When no payment further to the payment made on 16-2-1990 was made by and on behalf of respondent No. 6 till 15-3-93, the respondent No. 3 initiated the certificate proceeding on 20-8-1994. Therefore, the claim was very much within time.

8. The petitioners took us through the entire order sheet of the certificate case being No. 57 of 1984 to show that the Certificate Officer acted recklessly in dealing with the matter. He referred to order No. 10 dated 17-12-1994 and order No. 11 dated, 28-2-1995 to show that orders were passed taking no care for the dates fixed by the Certificate Officer himself. Moreover, the Certificate Officer obtained signatures of the counsel at the margin of the order sheet even before the orders were passed. On 17-12-1994 (vide order No. 10) the next date was fixed on 16-1-1995. But the order passed on date was scored through. The order sheet indicates it like that. Again there are endorsement of lawyers dated 16-1-1995 at the margin of the order sheet but nothing appears to have happened on 16-1-1995 as reflected in the order sheet. It is not known as to how the matter was fixed on 28-2-1995. On that day also at the margin of the order sheet there are signatures of lawyers bearing the date of 16-2-1995. What happened on this date is a matter of guess to all of us. The Certificate Officer while performing judicial duties should be more diligent, careful and honest in dealing with such matters. Since the irregularities as pointed out do not affect the merit of the matter at issue, we need not discuss much about this but we would simply note our disapproval to the manner in which the Certificate Officer (respondent No. 4) dealt with the case at least on those days. We would wish that the government would take steps to tone up such Officers.

9. The next item of attack from the side of the petitioners is the impugned order dated 7-4-1995. It has been contended that the Certificate Officer acted in a perfunctory manner by not entertaining the prayer for adjournment. The Certificate Officer is alleged to have returned the application filed for adjournment but that is beside the point. The main question is whether the Certificate Officer can deal with the matter ex parte when the parties are not available at the time of hearing. Rule 7(4) of the Sikkim Public Demands Recovery Rules empowers the Certificate Officer to proceed ex parte in appropriate cases and to decide the case on merit. Hence, the act of respondent No. 4 in deciding the case on merit ex parte on 7-4-1995 cannot be said to be illegal.

10. It is the further contention of the petitioners that u/s 4(4) of the Recovery Act the enquiry proceedings before the Certificate Officer should be completed within three months from the date of issuance of notice. In this case the notice was issued on 22-8-1994 but the ultimate order was passed on 7-4-1995 which

is beyond the statutory limit of three months and, therefore, the result of the certificate enquiry proceeding ought to be held to be bad. In several Acts certain time limits are prescribed for disposal of some matters but that does not mean that non-disposal of the case within that period would nullify or cause stoppage of the proceedings as a whole. In such cases "shall" must have the effect of directory and not mandatory. Decisions in Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Regd.) and Others, and in Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, may be referred to in this context. We should also note that there is no provision like Section 167(5), Cr.P.C. in Section 4 of the Recovery Act to prescribe consequence upon failure to complete the job within the prescribed limit. The contention of the petitioners in this respect also is not acceptable.

11. The petitioners contended further that the Sikkim Public Demands Recovery Act should be held to be unconstitutional as it does not provide for any provision for Appeal or Revision against an order of the Certificate Officer. It is true that in the Public Demand Recovery Acts of almost all the States there are provision for revision, appeal etc. but nothing such has been provided in the Act of Sikkim. Learned Advocate-General representing respondents Nos. 1 to 4, however, pointed out that Proviso to Rule 7(4) makes provision for filing a petition for review which the petitioners could avail of, Though such a provision for review of an ex parte order does not cover any case of revision or appeal, we are afraid, that merely because of absence of such a provision in any Act, the same cannot be said to be unconstitutional or such an Act can be struck down on this ground. We may refer to the decision in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, where it was observed that in the Army Act there was no provision for any appeal (sic) revision before any judicial forum. In spite of, that the Act was not struck down. The Court simply recommended that such provision should be incorporated in the Act. In this particular case, in the like manner, we would recommend that provision for judicial review of the order passed by the Certificate Officer should be made in the Act.

12. In the above context it would be worth mentioning that the party, aggrieved by the order or conduct of the Certificate Officer, any approach the High Court under the provision of Articles 226/ 227 of the Constitution of India.

13. We have already stated that the petitioners have been fighting a technical battle. We could have understood if their contention was that they paid off the dues of respondent No. 3. That is not so. They argued on the point of limitation, on the point of enforceability of the bond of guarantee etc. but those are of little bearing as we have already found. Last but not the least is the point raised by the learned Advocate-General when he contends that to avail of equitable relief under extra-ordinary jurisdiction under Article 226 of the Constitution of India, the petitioners must show diligence on their part. The Supreme Court in Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, (at para 18) observed that a Court of Equity when exercising its equitable

jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. In short, the Court observed that the Courts should not come to the assistance of some parties who do not appear to have acted in good faith. The Court should see that such benevolent Corporations are not chocked by the defaulting debtors by adopting frustrating or dilatory tactics in the proceedings in the Court. Keeping these in view, we believe, this Court by its order dated 10-6-1995 vacated all interim restrictions imposed earlier on the respondents Nos. 3 and 4 over execution of the certificate.

14. From all which have been discussed in the preceding paragraphs, we find no merit in the petition. Hence, the petition is dismissed on contest. There would, however, be no order as to costs.