

(1987) 05 SC CK 0009
In the Supreme Court Of India
Case No : C.A. No. 1197 of 1987

Binod Mills Company Ltd.

APPELLANT

Vs

Shri Suresh Chandra Mahaveer Prasad Mantri

RESPONDENT

Date of Decision : 06-05-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 40, 42
Companies Act, 1913 — Section 171, 228, 233
Income Tax Act, 1922 — Section 29
Income Tax Act, 1961 — Section 46, 46(2)

Citation : (1987) JLI 790

Hon'ble Judges : V. Khalid, J;G.L. Oza, J

Bench : Division Bench

Advocate : K.K. Venugopal, for the Appellant; Y.S. Chitale, for the Respondent

Final Decision : Allowed

Judgement

V. Khalid, J.—Special leave granted.

2. This is an appeal by special leave against the Judgment and Order dated 5-1-1987, of the High Court of Madhya Pradesh, Bench at Indore, in Civil Revision No. 382 of 1986, by which the High Court affirmed the order dated 28-11-1986 of the District Judge, Ujjain in Civil Execution Case No. 1249/86, filed by the respondent against the appellant.

3. The appellant is a textile undertaking at Agar Road, Ujjain. The Madhya Pradesh Government enacted the Madhya Pradesh Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978 (No. 32 of 1978), for short the Act, with the object of giving relief to sick undertakings. Relief was given to the appellant-company first by notification No. F-17-87-79 XI-B-1, dated 15-11-80, extended from time to time by subsequent orders, the relief so given to continue till 15-11-1987.

4. The respondent filed a summary suit against the appellant in the Bombay High Court on its original side, as summary suit No. 124/86, claiming a decree for Rs.

12, 12, 327.50, with interest and costs. The appellant did not contest the suit. The suit was accordingly decreed. The respondent got the decree transferred for execution to the District Judge, Ujjain on 26-9-1986 and then applied for execution of the decree. The appellant resisted execution by filing objection pleading that it was a relief undertaking under the Act, the benefits under which Act were available till 15-11-1986 at the time the objection was filed (now upto 15-11-1987) and that the decree could not therefore be executed against it in view of the bar contained in Sec. 5 of the Act. The respondent admitted the appellant to be a relief undertaking. However, it was contended that the District Judge had no jurisdiction to entertain any objection to the execution of the decree, validly passed by the Bombay High Court, The Execution Court, it was contended, could not go behind the decree and the decree mandated execution on its terms.

5. The learned District Judge upheld the contentions of the respondent and held that the appellant could not take advantage of the notifications under the Act because the rights and liabilities of the parties had to be determined by the transferee Court in accordance with the substantive law bearing on the question in the Court that passed the decree. He further held that the execution of the decree could not be challenged before the transferee Court unless it was shown that the transferor Court had no jurisdiction to pass the decree. The objection of the appellant was thus rejected.

6. The appellant thereupon filed a revision in the High Court. The High Court rejected the revision and affirmed the order of the District Judge. Hence this appeal.

7. The questions of law raised before us are as follows:

(a) Whether on a true construction of Section 5 of the Act, execution of the ex-parte decree obtained by the respondent against the petitioner at Bombay can be instituted, commenced or proceeded with by the respondent against the petitioner, even though the petitioner's textile undertaking is admittedly a State Relief Undertaking under the Act ?

(b) Whether Section 5 of the aforesaid Act is substantive law or procedural law ?

8. The High Court considered this question and held that there was no bar against execution of the decree after considering the effect of Section 5 quoted above on the general law governing decrees and their execution as provided in the Civil Procedure Code. The High Court relied upon the settled position that the executing Court cannot go behind the decree even if it is erroneous on law or on facts. We extract below the finding by the High Court against the appellant in paragraph 20 :

"It may be stated that it was perhaps due to the position of the law as propounded in the Delhi decision that the suit in the Bombay High Court was not contested by the petitioner. With the determination of the rights of the parties by

the Bombay High Court according to the substantive law applicable to the State of Maharashtra, the non-applicant was manifestly clothed with the absolute right to execute the decree unless some express provisions of law in Maharashtra empowered the Court to restrain him from executing the same. Such right cannot again be subjected to and/or regulated by any law of the State of M.P. to which the decree is sent only for execution. Any provision to suspend such right of execution of a valid decree does partake of the character of substantive law and cannot be interpreted as merely a rule of procedure within the meaning of Sec. 40 of the C.P. C. prescribing the manner of execution. It has, therefore, to be held on the authority of Ramavtar's case (supra) that the provision in Section 5 of the Adhiniyam pertains to the domain of substantive law and cannot be said to relate to the realm of adjective or procedural law. The petitioner, therefore, has no locus standi to seek shelter u/s 5 of the Adhiniyam, against the execution of the decree passed by the Bombay High Court, it being a substantive law of the State of M.P. and not merely a procedural law, within the meaning of Section 40 of the C.P. C. or procedural power u/s 42 ibid governing the mode of execution. The suit in the Bombay High Court was not liable to be stayed and so is the decree therein passed".

9. It is evident from the above discussion that the High Court completely overlooked the purpose of the Act and the limited period of operation of Section 5. It has to be borne in mind that the Act in question was enacted with a specific purpose. The preamble to the Act states that the Act has been enacted "to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against, unemployment". It is necessary to note that the State Government and other financial institutions invest large sums of money to revive sick units or relief undertakings. The Government and such institutions are interested in seeing that the amount so invested are utilised for the purpose of running the relief undertakings so that it can be gradually revived and what is more important, to provide continuous employment to a large number of workers. The Government is interested in making sure that the relief undertakings do not incur burdon-some debts, engage in costly litigations and consequent attachment of their machineries and moveables thus gradually destroying the units completely. The Act has been enacted to safeguard the interest of the general public, the workers and the amounts invested. It is for this purpose that relief was given to the unit against execution of decrees for a maximum period of seven years. If creditors of the relief undertakings ingeniously manage to obtain decrees against them from Courts situated in areas where the Act is not in operation and thus try to circumvent the operation of the Act by getting such decrees transferred to the area where the Act is in operation and plead that their decrees are saved from the mischief of the Act, such actions would be to defeat the very purpose of the Act. When we say this, we do not want to encourage such relief undertakings not

to pay current liabilities. We are only concerned here with the interpretation of the Sections of the Act. We will presently refer to some of the relevant sections and consider their operation both for pre-, notification and post-notification debts.

10. Section 2 (3) defines Relief Undertaking and 2 (4) a State Industrial Undertaking, as follows :

"2 (3) "relief undertaking" means a State industrial undertaking in respect of which a declaration u/s 3 is in force :

2 (4) "State Industrial undertaking" means an industrial undertaking-

(a) which is started or which, or the management of which is under any law or agreement acquired or otherwise taken over by the State Government or by a Government company and is run or proposed to be run by, or under the authority of, the State Government or a Government company; or

(b) to which any loan, advance, or grant has been given, or in respect of any loan whereof, a guarantee has been given, by the State Government or Government company; or

(c) in respect of which a notified order under the Industries (Development and Regulation) Act, 1951 (No. 65 of 1951) is in operation."

Declaration of a relief undertaking is provided for in Section 3 which reads as follows :

"The State Government may, if it is satisfied that it is necessary or expedient so to do in the public interest, with a view to enabling the continued running re-starting of a State Industrial undertaking as a measure of preventing, or of providing relief against, unemployment, declare, by notification, that the State industrial undertaking shall on and from such date and for such period as may be specified in the notification, be a relief undertaking.

Provided that the period so specified shall not, in the first instance, exceed one year but may, by a like notification, be extended, from time to time, by any period not exceeding one year at any one time so however that such periods in the aggregate shall not exceed seven years."

Section 4 provides for suspension of certain enactments, contracts, agreements etc. to relief undertaking. The Section reads as follows :

"4. Application of certain enactments and contracts, agreements, etc. to relief undertaking-That State Government may, if it is satisfied that it is necessary or expedient so to do for the purposes specified in Section 3, direct, by notification,-

(a) that in relation to any relief undertaking all or any of the enactments specified in the Schedule to this Act shall not apply or shall apply with such adaptations whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments), as may be specified in such notification, or

(b) that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards standing orders or other instruments in force (to which any relief undertaking is declared to be a relief undertaking) immediately before the date on which the State Industrial undertaking is declared to be a relief undertaking, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification."

The schedule to the Act mentions the six following Acts :

- (1) The Industrial Employment (Standing Orders) Act, 1946 (No. 20 of 1946).
- (2) The Industrial Disputes Act, 1947 (No. 14 of 1947).
- (3) The Minimum Wages Act, 1948 (No. II of 1948).
- (4) The Madhya Pradesh Shops and Establishments Act, 1958 (No. 25 of 1958).
- (5) The Madhya Pradesh Industrial Relations Act, 1960 (No. 27 of 1960).
- (6) The Madhya Pradesh Industrial Employment (Standing Orders) 1961 (No. 26 of 1961).

11. Now we come to the important Section with which we are vitally concerned in this appeal and that is Section 5 which reads as follows :

"5. Suspension of suits or other legal proceedings against relief undertakings:

As from the date specified in the notification under sub-section (1) of section 3, no suit or other legal proceedings shall be instituted or commenced or, if pending, shall be proceeded with against the industrial undertaking during the period in which it remains a relief undertaking any law, usage, custom, contract, instrument, decree, order, award, settlement or other provisions whatsoever notwithstanding".

12. What we are called upon to decide in this case is whether proceedings taken in the Madhya Pradesh Court for execution of a decree validly obtained in the Bombay Court has to be or can be stayed under this Section. We have already seen that the maximum period of the stay is seven years and this period will expire on 15-11-1987. Section 7 deals with suspension or modification of certain remedies, rights etc. and reads as follows :

"7. Suspension or modification of certain remedies, rights, etc., stay of proceedings, their revival and continuance. -Any remedy for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of Section 4 and suspended or modified by a notification under that section shall, in accordance with the terms of the notification, be suspended, modified, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall accordingly be stayed or be continued subject to such modification, so however, that on the notification ceasing to have effect-

(a) any right, privilege, obligation or liability so suspended or modified shall revive and be enforceable as if the notification had never been issued; and

(b) any proceeding so stayed shall be proceeded with subject to the provisions of and law which may then be in force from the stage which had been reached when the proceeding was stayed".

13. A close scrutiny of the above section reveals that Section 5 has a free field of operation unfettered by any limitation. The section is not happily worded, What the section intends to convey, according to us, if the words are re-arranged, would be as follows :

"Notwithstanding any law usage, custom, contract, instrument, decree, order, award, settlement or other provisions, no suit or other legal proceedings shall be instituted or commenced or if pending shall be proceeded against the Industrial Undertaking as from the date specified in the notification under sub-section (1) of Section 3 during the period in which it remains a relief undertaking".

So read, the object of the section becomes clear. The section seeks to confer benefit to the relief undertakings from the ravages of litigation during the period it remains a relief undertaking. The expression 'decree' is very material for our purpose. Inclusion of 'decrees' in the section shows that the fact that decrees were validly obtained against a relief undertaking will not pose any danger to it during the period the declaration is in force. In other words, the section prevents execution of a decree validly obtained against the undertaking during the period mentioned above. That takes us to the question as to whether the words "other legal proceedings" in the section would take in execution proceedings. It is not disputed that the Section bars institution of suits and starting of other proceedings. What is disputed is that expression "other legal proceedings" will not take in execution proceedings. The contention is grounded on the general principle that the execution Court cannot go behind a valid decree and that the execution Court cannot, therefore, refuse to execute it. It is admitted that the decree obtained from the Bombay High Court is a valid decree. That being so, law should take its course and execution should proceed. It is by virtue of the enabling provisions contained in Section 40 and 42 of the CPC that this validly obtained decree got transferred to the Court in Madhya Pradesh. It is contended that by the mere transfer of this decree in accordance with the procedural law, its validity does not disappear nor its binding force cease to exist. We find difficulty in accepting this contention. If we are to accept this submission, it would be rendering section 5 of the Act nugatory and to destroy the benefits sought to be confirmed by that section. Nobody questions the validity of the decree. All that is sought to be done is to suspend its animation for the period mentioned in the notification. No Court in Madhya Pradesh can question its validity, nor can refuse to execute it after the period is over. To direct execution of the decree in the teeth of Section 5 would be to encourage filing of suits in Courts outside Madhya Pradesh, secure decrees and defeat the purpose of the Act. We do not think that such an abuse is permissible in the face of Section 5 of

the Act. We have, therefore, to answer this question in favour of the appellant.

14. For the disposal of this case, we do not think it necessary to refer to the lengthy discussion made by the High Court on substantive and procedural law. We have to construe and interpret the section as it stands. The section is unambiguous and full import has to be given to its words and its intent. The non-obstante clause in this section takes within its ambit, all the decrees passed against the relief undertaking. The bar of 'institution or commencement' takes within its ambit suits or other 'legal proceedings' which include execution petitions also.

15. An attempt was made by the Learned Counsel for the respondent to contend that the expression "other legal proceedings" cannot take in proceedings to execute validly obtained decrees. It was further contended that if we give such a wide construction to the expression "other legal proceedings" institution of even claims of workers under the Industrial Disputes Act and other similar beneficial legislatures, arising after the issue of notification, will be barred. On the wording of the section we feel such a conclusion is inescapable.

16. Reliance was placed by the counsel for the respondent on the decision in the case of State Bank of India Vs. Jaipur Udyog and Others, to contend that no objection can be raised to the execution of the decree validly obtained from the Bombay High Court. We find that the above decision has no application to our case. In that case, an attempt was made to block a suit filed in the Delhi Court against a relief undertaking under the Rajasthan Relief Undertakings (Special Provisions) Act 9 of 1961, based on Section 3 and 4. That contention was repelled and according to us rightly. There the State Bank of India brought a suit for the recovery of certain amounts against Jaipur Udyog Limited, the principal debtor, a company based in Rajasthan and the guarantors. This company had been declared by the State of Rajasthan as a relief undertaking u/s 3 of the Act. Section 2 of the Act barred institution or commencement of suit or other legal proceedings against a relief undertaking. This section contains an explanation as to what "legal proceedings" are. Relying upon this section, the company and the guarantors pleaded that the suit was liable to be stayed. The question before the High Court was whether the Act had extra-territorial operation. The case was heard by a Single Judge who referred it to a Division Bench in view of the conflict between the Allahabad High Court and the Punjab & Haryana High Court. The High Court referred to Section 1 (2) of the Act which stated that the Act "extends to the whole of the State of Rajasthan" which was an explicit declaration of the legislature about the territorial application of the Act and held that the contention of the debtors that the suit in Delhi Court ought to be stayed was unsustainable. We are here confronted with a different situation. If what is contended before us had been contended before the Bombay High Court, same result would have followed. We have here a situation entirely different and that is, steps to execute a decree in a territory over which the Madhya Pradesh Act has application. If the decree obtained by the Delhi High Court had been transferred to a Rajasthan

Court and a decision was rendered on an objection to its execution in favour of the decree holder, that would have helped the respondent. No support can be taken by the respondent from this case-

17. We may seek support for our construction of the words 'legal proceedings' to include execution proceeding from a Judgment of the Federal Court in the case *The Governor-General in Council v. Shiromani Sugar Mills Ltd* 1946 FCR 40 The factual details in brief are as follows :

18. The respondent-company was assessed to income tax for the year 1941-42 by an assessment order dated 25th February, 1943. In the meantime, however, a petition to wind up the company had been presented on the 26th November, 1941, a provisional liquidator had been appointed on the 7th December, 1941 and finally on the 17th April, 1942, a winding up order had been made by the High Court at Allahabad. On 10th March, 1943, a notice of demand was served on the official liquidator of the respondent-company u/s 29 of the income tax Act, 1922. The official liquidator pointed out to the income tax department that the proper procedure to be followed was to lodge a claim in the winding up in respect of the tax alleged to be due from the Company. Instead of adopting this procedure the income tax department adopted its statutory procedure u/s 46 and accordingly sent an arrear demand, informing the latter that the demand was recoverable as arrears of land revenue. The official liquidator thereupon made an application to the High Court under Sections 171, 228 and 233 of the Indian Companies Act, 1913, against the department asking for an order that the respondent be directed to put in a formal claim to the official liquidator in respect of the sum due. The Allahabad High Court restrained the department from proceeding accepting the plea of the company as the leave of the Court was not obtained u/s 171. We are only concerned with the manner in which the Federal Court understood the expression "other legal proceeding" occurring in Section 171 of the Indian Companies Act. That Section reads as follows :

"When a winding-up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding that be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose."

The Federal Court discussed this question at page 56 as follows :

"That still leaves open the question whether action u/s 46 of the Indian income tax Act is covered by the phrase "other legal proceeding". Clearly it is not a proceeding in an ordinary Court of law. But we see no reason why in British India no "legal proceeding" can be taken otherwise than in an ordinary Court of law, or when a proceeding taken elsewhere than in an ordinary Court of law, provided it be taken in a manner prescribed by law and in pursuance of law or legal enactment, cannot properly be described as a "legal proceeding". If it be considered that the effect of the income tax authorities putting the machinery of S. 46 of the income tax Act in motion for the collection of arrears of income tax

is to bring into operation all the appropriate legal enactments relating to the collection of land revenue in the Province concerned, it is, in our judgment, very difficult to say that they are not taking a "legal proceeding". In fact, in this very case, had the company not been in liquidation, the appellant would have had the choice at his option of (a) proceeding by "suit" in the ordinary Courts in respect of the arrears, or (b) by forwarding (under S. 46 (2) of the income tax Act) to the Collector the requisite Certificate, initiating and putting into force collection of the arrears as arrears of land revenue under and in accordance with the appropriate provisions of the U. P. Land Revenue Act (III) of 1901. Surely such last mentioned action on the part of the income tax authorities, would be the adoption of another legal proceeding for the collection of the arrears as opposed to the institution of a suit. The proviso to S. 46 (2) empowers the Collector, if he so chooses, to exercise all the powers which a Civil Court may exercise in respect of the attachment and sale of debts due to a judgment-debtor. If the income tax Officer will be taking a "legal proceeding" when he moves the Collector-as we think he must be held to do-to realize the tax by attachment and sale of debts due to the asses-see, it can make no difference in principle that the Collector is asked to exercise his summary powers under the land revenue law.

Accordingly, we agree with the learned Judges of the Allahabad High Court in holding that the words "other legal proceeding" in S. 171 of the Indian Companies Act, 1913, comprise any proceeding by the revenue authorities under S. 46 (2) of the Indian income tax Act, and that accordingly before forwarding the requisite certificate under S. 46 (2) of the Indian income tax Act."

There is no reason why the expression 'other legal proceedings' in section 5 should not include execution petitions also.

19. If we look into the scheme of the Act and the various sections, it will be evident that Section 5 is an independent section uncontrolled by Section 4, 6 and 7. Sections 4, 6 and 7, deal with suspension or modification of certain remedies, rights etc., stay of proceedings their revival and continuance. Section 5 does not make any reference to Section 4. It had been enacted with a definite object and that is to protect the relief undertakings from litigations and consequent actions. The object is clear. The Government want to relieve such undertakings from limitative pressure for a period of time. It is not a permanent relief. The Government are interested to see that the investments made by it and other financial institutions do not get frittered away by avoidable litigation and other legal proceedings. The bar contained in Section 5 by way of suspension of suits or other legal proceedings is thus an absolute bar but only for the period contemplated by the Act.

20. The limited question that we have to answer is as to whether Section 5 operates even against execution of decrees obtained against the relief undertaking by its creditors outside (he State of Madhya Pradesh.

21 The Learned Counsel for the respondent brought to our notice decisions

reported in *Inderchand Kajriwal Vs. Bansropan Sahu and Others*, and similar other decisions to contend (hat the execution Court cannot, while executing decrees, adopt a procedure under any special law available in the State in which the execution Court is situate, in relation to decrees obtained outside the States. For example, suppose a decree is obtained in Madras and it is transferred to Madhya Pradesh. Suppose again that in Madhya Pradesh, there is an enactment to scale down the decree amount either in installments or 10 wipe out the debt of an agriculturist; will it be open to the executing Court to take recourse to such enactments and give relief to debtors in the State in relation to a decree obtained in a Court outside the State. It is settled law that the transferee Court has to execute the decree in accordance with the law obtaining in the Court that passed the decree and determine the rights and liabilities of the parties in accordance with the substantive law obtaining in the State where that Court is situate. That being so the Judgment-debtor cannot move the execution Court and get the benefit of the procedure available in the State in which the transferee Court is situated.

22. Here we are not confronted with such a situation. Nobody contends that the executing Court has to change the terms of the decree. A11 that is that its execution has to be suspended for a speci6ed period. Section 5, therefore, does not come into conflict either with Section 40 or Section 42 of the Civil Procedure Code. In our view, the bar u/s 5 is an obsolete one for the duration of the period contemplated in the Act.

23. If the relief undertakings are not protected by a provision like Section 5, the position will be distressing. The creditors will proceed against them. Their properties and goods will be attached. The workers will he rendered jobless. In this case, this unit is said to employ nearly 2.CG0 workers. The creditors will not be in a more advantageous position either. If liquidation proceedings are initiated, the creditors will get only pro-rata from the sale proceeding of the assets. If creditors are permitted to proceed against the assets and the products of the undertaking, that would be detrimental to the heavy investment made by the State and other financial institutions. The concern of the Government in enacting this law is thus in the interest of the large number of workmen employed in these undertakings and in the revival, if possible, of a sick unit. It is to protect them and not to render them unemployed that such relief undertakings are financed by the State.

24. A contention was raised that Section 5 cannot apply to post notification liabilities. In other words, suits and other proceedings in relation to the debts incurred prior to the notification u/s 3 alone are barred and debts incurred subsequent to the notification u/s 3 are not barred u/s 5. In our view, the reading of the Sections does not permit such an interpretation. The object of Section 5 is to protect the relief undertakings from all suits and legal proceedings. This protection is to end on 18-11-1987. We hold that the High Court was in error in allowing execution to proceed.

25. Before parting with this case, we wish to observe that the powers that be will have to evolve a more acceptable procedure while dealing with sick units. We share the concern expressed in high places about the loss that Government incur in trying to rescue sick units. Invariably, the amounts pumped in are ultimately lost. The machineries of the unit in question are as old as 1920. One can easily imagine the nature of the products that come out of a unit like this. What purpose will be served by giving life to such units by providing artificial respiration. The concern for workers must be matched with the concern for modernisation also. The labour should not be left to the mercy of such sick units. The Government will have to evolve a more acceptable and intelligent policy, to help the labour and for modernisation of industry. These units like "flaring tapers brightening as they waste" with temporary financial blood transfusion must, in the interest of all concerned, be subjected to euthanasia. The situation created must be met boldly. Such units with discredit and antiquated machineries must be got rid of and public money must be saved. In their places new units must come into existence. We know that this would involve heavy financial liability. But in the long run, it would save public interest more. If Government find it difficult to pump enough money, at least a trial must be undertaken to entrust such units to the labour to (sic)est how they work with their cooperative efforts. In such a situation, there will not be siphoning of the funds of the unit by the entrepreneurs, for self aggrandisement, for, more often than not, sickness in such units sets in, because the funds of the units are diverted to defeat both the Government and the labour and only to benefit the owners of such units.

26. With these observations, we set aside the order of the High Court and allow this appeal, but with no order as to costs.