
(2014) 02 AP CK 0177
In the Andhra Pradesh High Court
Case No : WP No. 37381 of 2013

Deccan Chronicles Holdings Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 9
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 2(f), 2(m), 3
Transfer of Property Act, 1882 — Section 69, 69A

Citation : (2014) 123 CLA 395

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, Senior Counsel, Advocate for the Appellant; S. Ravi, Senior Counsel and S. Niranjana Reddy, Advocate for the Respondent

Judgement

1. This writ petition raises several questions of general importance, that arise in the course of implementation of different enactments, such as Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"), the Arbitration and Conciliation Act, 1996 ("the Arbitration Act"), and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the DRT Act"). The 1st petitioner is a public limited company, involved in the activity of running newspapers and petitioners 2 to 5 are associated with the management and administration thereof. The petitioners obtained two separate loans:

2. One loan of Rs. 50 crore on 8th December, 2011, and another of Rs. 50 crore on 5th January, 2012 from India Bulls Financial Services Ltd. ("IBFSL"), after necessary documentation. On 8th September, 2012, IBFSL issued a notice to the petitioners, requiring them to pay the outstanding amount within seven days from the date of receipt of the notice.

3. The petitioners got issued a reply. Thereafter, IBFSL filed OP No. 377 of 2013

against the petitioners in the Court of II Additional Chief Judge, City Civil Court, Hyderabad, under section 9 of the Arbitration Act, for the relief of injunction, to restrain the petitioners from alienating, encumbering, transferring or creating third party rights, vis-a-vis the properties that were offered as security and for a direction to the petitioners to jointly and severally furnish security for a sum of Rs. 48,60,77,778. Similarly OP No. 378 of 2013 was filed for similar relief in relation to another loan. Clause 25 of the Loan Agreement, which provides for arbitration was invoked in both the OPs.

4. According to the petitioners, about 10 crore was paid towards principal of the borrowed amount by June 2012. IBFSL was merged with its sister concern, India Bulls Housing Finance Ltd., the 4th respondent, on the basis of an order dated 12th December, 2012 in Company Petition No. 457 of 2012, passed by the Delhi High Court under the provisions of the Companies Act, 1956. The merger is said to have been effective from 8th March, 2013.

5. The 4th respondent got itself registered under the SARFAESI Act. Soon after the merger of IBFSL with it, the 4th respondent initiated proceedings under the SARFAESI Act against the petitioners in respect of the loans, that were borrowed from IBFSL. Possession notice dated 29th May, 2013 was also issued.

6. The physical possession of the properties is said to have been taken on 2nd August, 2013. It is also stated that the 4th respondent has sold away 50 per cent of the shareholding of the 1st petitioner-company and put to sale, an item of property.

7. The 4th respondent got issued a notice dated 21st November, 2013, to the petitioners proposing to sell two items of immovable property at Hyderabad. It is in this context, that the present writ petition is filed.

8. The petitioners contend that IBFSL, from which they obtained loan; was not registered as a "financial company", under section 3 of the SARFAESI Act, and the mere fact that the said agency has merged with its sister concern, the 4th respondent; does not bring about any change in the relations between themselves and the IBFSL. They submit that even if the 4th respondent has stepped into the shoes of the IBFSL, it can, at the most, take only those steps, that could have been taken by IBFSL, and not any more.

9. The second contention of the petitioners is that the 4th respondent is a housing finance company, governed by the provisions of the National Housing Bank Act, 1987 ("the NHB Act") and it cannot deviate from the procedure prescribed under that Act. It is also urged that once the proceedings under section 9 of the Arbitration Act have been initiated, it is not permissible for the 4th respondent to initiate proceedings of any other form, that are prohibited under section 8 of that Act.

10. On behalf of the 4th respondent a detailed counter-affidavit is filed. It is stated that the petitioners have borrowed about 100 crore from IBFSL, but failed

to repay the same. They contend that once IBFSL has merged into the 4th respondent, the procedure prescribed under the SARFAESI Act becomes applicable, and the contention of the petitioners cannot be accepted. They raised the objection as to the very maintainability of the writ petition. It is also urged that the merger of the IBFSL with the 4th respondent is complete in all respects, and the assets and liabilities that accrued on the merger would be governed by the provisions of law, that are applicable to the 4th respondent. The allegation as to the realisation of funds from other assets is denied. As regards the initiation of the proceedings under the Arbitration Act, the 4th respondent contends that the SARFAESI Act would have overriding effect on all other enactments and that no exception can be taken to the impugned sale notice.

11. Sri C.V. Mohan Reddy, learned senior counsel for the petitioners submits that though the petitioners could have borrowed amounts from Nationalised Banks and other similar agencies, they have chosen IBFSL only, on account of the reason that the proceedings of the SARFAESI Act are not applicable to it. He contends that the merger of IBFSL with the 4th respondent was effected with the sole objective of initiating proceedings under the SARFAESI Act against the petitioners and that the sequence of events discloses the same. He submits that whatever may have been the reason or justification for merger of the two companies, it cannot be permitted to bring about any onerous conditions, vis-a-vis the petitioners, in respect of the loan transactions, that too, without notice to them.

12. Learned senior counsel further submits that the very origin of the 4th respondent is under the provisions of the NHB Act and its affairs are predominantly governed by the provisions of that Act and not of the SARFAESI Act. He submits that the NHB Act prescribes a typical regime for recovery of loans, particularly under section 36(f); and section 36(y) bars the jurisdiction of not only the court, but also authorities under any other enactment whatever, and that the same has not been saved under the SARFAESI Act. It is also urged that the provisions of the SARFAESI Act cannot be applied indiscriminately in respect of a transaction, unless it was from an agency, which is governed by the provisions of that Act.

13. It is also argued that the loan agreements provided for arbitration and by invoking the same, OP Nos. 377 and 378 of 2013 were filed, under section 9 of the Arbitration Act, and in that view of the matter, initiation of any other proceedings either by the original lender, i.e., IBFSL or any successor thereof, are impermissible in law. Reliance is placed upon the judgments of various High Courts and Supreme Court, in support of his contention. It is pleaded that the 4th respondent has kept the petitioners in complete dark of the various steps, through which amounts have been realised by selling almost half of the shareholding of the 1st petitioner-company, or the manner in which, an item of immovable property at Gurgaon was brought to sale.

14. Sri S. Ravi, learned senior counsel has advanced arguments on behalf of the

4th respondent, and to certain extent, they have been supplemented by Sri S. Niranjan Reddy, learned counsel. They contend that the writ petition is not maintainable in law, and in case the petitioners feel aggrieved by any steps taken by the 4th respondent, the only course open to them is to approach the Debts Recovery Tribunal ("the Tribunal") by filing an appeal.

15. It has been argued that though the petitioners borrowed the amount from IBFSL, their liability stands transferred to the 4th respondent in view of the merger, and it being a company, registered under section 3 of the SARFAESI Act, is entitled to invoke the provisions of that enactment. Learned senior counsel submits that the SARFAESI Act contains non-obstante clauses that virtually override the provisions of any other law for the time being in force, and in that view of the matter, the objection raised by the petitioners for initiation of proceedings under that Act are untenable. He further submits that the initiation of proceedings under the Arbitration Act was at a time when the merger did not take place, and with the merger becoming complete, a totally different legal regime altogether came into existence and the 4th respondent became entitled to invoke the provisions of the SARFAESI Act.

16. As regards the NHB Act, learned senior counsel submits that though the 4th respondent is a company governed by the provisions of that Act, it has every right to choose or elect between the mechanisms under the NHB Act, or the SARFAESI Act, for recovery of the amounts, due to it. He too placed reliance upon quite a good number of precedents, in support of his contention.

17. In view of the complexity, which the writ petition presents, it becomes necessary to take note of the purport of different enactments in relation to the rights of the parties. On certain important aspects, an authoritative pronouncement from the hon'ble Supreme Court is yet to emerge, and there is a vertical division of opinions between the various High Courts. That is the reason why every possible care is taken to ensure that the various contentions urged by the parties are addressed, duly taking into account, the view expressed by the courts, in this behalf.

18. It is not in dispute that the petitioners obtained two loans of Rs. 50 crore each, from IBFSL, on 8th December, 2011 and 5th January, 2012, respectively. It is also not in dispute that the repayment of the loans was not as per the schedule, and the lending agency has already issued notices, proposing to take action. The steps contemplated under its notices dated 8th September, 2012, however, were not referable to the SARFAESI Act, obviously because it is not covered by the provisions of that Act. The relevant portion of the notice issued by it reads as under:

"....In view of the aforesaid and pursuant to provisions of the loan documents, without prejudice to our other rights and remedies, we hereby call upon you to forthwith pay us the aforesaid amount of Rs. 51,54,05,096 within 7 days from the date of this notice.

In case failure to comply with the aforesaid, without prejudice to our other rights and without any further notice to any of you,

(a) please treat this notice as a notice of/for sale, enforcement, disposing of, transfer, assignment and/or encumbrance of any/all of the Security/Securities (including any shares) provided in favour of the lender under the loan documents; and/or

(b) the lender shall be entitled to, inter alia, exercise all other rights and/or enforce remedies (at your costs and risk) available under the Loan Documents and/or law to recover all amounts payable by you under the Loan Documents.

Notwithstanding anything to the contrary, this notice shall prevail over and/or not be affected by any other correspondence, payments, actions, etc., in present or future, by or between you and the lender, unless this notice is specifically withdrawn/annulled by the lender in writing.

Capitalised terms used and not defined herein shall have the meaning as ascribed to such terms in the Loan Documents...."

19. It is also necessary to note that IBFSL filed Arbitration OP Nos. 377 and 378 of 2013 under section 9 of the Arbitration Act against the petitioners in the Court of II Additional Chief Judge, City Civil Court, Hyderabad. Clause 25 of the Loan Agreement, that was invoked by the IBFSL reads:

"25. Arbitration:

25.1 Notwithstanding anything to the contrary in the Loan Documents and herein, the parties agree that if any dispute/disagreement/differences (dispute) arises between the parties during the subsistence of the Loan Documents (including this agreement) or thereafter, in connection with, inter alia the validity, interpretation, implementation or alleged breach of any provision of the Loan Documents (including this Agreement), jurisdiction or existence of the arbitrator or of any nature whatsoever, then, the dispute shall be referred to a sole arbitrator who shall be nominated/appointed by the lender only. The parties expressly agree that, in any circumstances, the appointment of the sole arbitrator by the Lender shall be and shall always deemed to be sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment/nomination.

25.2 The place of the arbitration shall be New Delhi and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1995 and shall be in English language.

25.3 The arbitrator award shall be in writing. The arbitrator shall also decide on the costs of the arbitration proceedings.

25.4 The award shall be binding on the parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law."

20. By the time, the OPs were filed, Company Petition No. 457 of 2012 filed by IBFSL, seeking merger with the 4th respondent, was pending in the Delhi High Court. Judgment therein was rendered on 12th December, 2012, paving the way for merger. However, the merger was to come into force only on compliance with certain conditions. That occurred on 8th March, 2013.

21. On the same day, the 4th respondent swung into action and issued notice under section 13(2) of the SARFAESI Act, to the petitioners. A corrigendum was issued proposing certain amendments. This was followed by issuance of possession notice dated 29th May, 2013, and sale notices dated 8th November, 2013.

22. It is too well-known that the SARFAESI Act is a typical and special enactment, which has brought into existence, a legal regime, substantially different from the one, that existed before it. Mortgage is one of the modes of transfer of properties, and it is dealt with in detail, under the provisions of the Transfer of Property Act ("TP Act"). It is a mechanism for securing the interests of a person or agency, who lent the amount to another. The procedure for redemption of the mortgage, at the instance of the mortgagor or the foreclosure thereof, at the instance of the mortgagee, is prescribed in the TP Act itself. Even where a decree for foreclosure is passed, it is in the form of a preliminary step, giving an opportunity to the borrower to clear the debt, and to be followed by a final decree, on failure.

23. Citing the reason that the process of recovery of loans, particularly by Banks, on the strength of mortgages, through suits in the civil courts is time consuming, the Parliament enacted the DRT Act. The procedure was simplified and the jurisdiction of the civil courts was conferred upon the Tribunals. Gigantic Financial Agencies, which have sanctioned and paid loans of huge amounts were not satisfied with the mechanism provided for under the DRT Act also. The SARFAESI Act is a radical deviation from the settled principles of adjudication. The Parliament, which has to its credit, the enactment of debt relief laws, to protect the interests of innocent and gullible borrowers and relieved many from the indebtedness, has virtually taken a "U" turn, to protect the superlative corporate lenders. In the process, the lender was assigned the status of the adjudicator as well as the executing agency of the decree. Its word is treated as final not only in regulating a debt but also to straightaway take possession of the mortgaged property. The curious part of it is that the debt can be recalled and mortgage can be invoked, even if the time for complete repayment of the debt has not reached. Citing of default in payment of installments is sufficient to take the drastic step.

24. The validity of the SARFAESI Act has been dealt with by the hon'ble Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . It was upheld in all respects, observing that enough safeguards are provided in it. It was also observed that even if proceedings in relation to a loan transaction are pending before the Tribunal, the financial agency can invoke its

powers under the SARFAESI Act and proceed against the security. The reason that appears to have weighed with the hon'ble Supreme Court is that the amounts advanced as loan by banks and other agencies constitute public finance, and it is in the national interest that the procedure is streamlined for recovery of such amounts. Once the SARFAESI Act is upheld, any amount of argument, advanced by the petitioners, vis-a-vis its provisions, cannot be countenanced. Ultimately, it is for the Supreme Court to say anything further, if it comes to the conclusion that the beneficiaries under that Act are heckling at the age old legal system.

25. One of the contentions advanced by the petitioners is that the provisions of the SARFAESI Act do not apply to its transactions since, (a) they did not borrow any amount from the 4th respondent, and (b) IBFSL, from whom they borrowed money, was not under the purview of that Act. The gist of the arguments advanced by the learned counsel on these aspects has already been taken note of, in the preceding paragraphs.

26. It is trite that an individual or a corporate personality has the freedom to contract, and while taking a decision in the course of their business, several factors assume importance. If an individual intends to purchase an item, he would take into account, several factors, such as the quality of the item, its price structure, the reliability of the supplier and the like.

27. Similarly, if a person is in need of money, he has to take several aspects into account. Even where an agency is willing to lend the amount, the conditions subject to which, the money is lent, would assume importance. These conditions may range from the rate of interest to the method of recovery. If the method of recovery is stringent and the lender reserves to himself, the right to take steps, detrimental to the interests of the borrower, the latter may think twice. In a given case, he may even choose not to borrow the amount, than to face humiliation in the hands of a powerful and dominant lender.

28. This can be demonstrated from the financial transactions in the public field itself. Entrepreneurs with expertise at their disposal would choose to borrow the amount from the financial institutions that are under regulation by the Reserve Bank of India, though there may be several private money lenders, prepared to advance the amount. The reason is that a semblance of protection against indiscriminate levy of interest or undue squeezing of the borrower at the discretion of the lender is felt, in case the money is borrowed from regulated financial agencies. Even as between the financial agencies, that are controlled by Reserve Bank of India, there are specialised financial agencies, that are meant to serve the industrial sector, housing sectors, etc. Laws are made to suit the interests of the lending, as well as the borrowing agencies, keeping in view the purpose for which the money is borrowed. Instances are not lacking where the establishment of industries is treated as primary, and every effort is made to sustain them. The extreme steps taken in this regard can be discerned from the scope and ambit of the Sick Industrial Companies Act, which provides for framing

of schemes, to sustain an industry, than to close it, on account of its being sick. Various agencies that advanced finances are even made to re-schedule the loans, or to forego the component of interest.

29. The 1st petitioner is in existence for the past several decades and it is running a reputed newspaper. May be, for expansion or other purposes, it wanted some finances. By the time it has chosen to borrow the amounts, the SARFAESI Act has already come into force. It has deliberately chosen to approach a non- discredit financial agency, IBFSL, even while several Nationalised Banks were prepared to lend the amount, by taking the same security. What prompted the 1st petitioner to approach IBFSL appears to be that, it was not under the purview of the SARFAESI Act. It is also essential to mention that the 4th respondent, a sister concern of the IBFSL, was also in existence at that time. The reason why the choice has fallen upon the IBFSL and not its sister concern, the 4th respondent, appears to be that the latter is under the purview of the SARFAESI Act, whereas the former is not. When this is the state of affairs pertaining to the borrowing of amount by the 1st petitioner from IBFSL, any change in the conditions, that too, to its detriment, should not have been thrust upon it, without its consent. The sequence of events, in the instant case, discloses that the predominant purpose for which the IBFSL was merged with the 4th respondent, was to bring the loan transaction of the 1st petitioner-company, under the purview of the SARFAESI Act.

30. An argument is advanced on behalf of the 4th respondent to the effect that once the merger has taken place, a new legal regime has come into existence, and by operation of law, the petitioners have incurred the obligation to be regulated under the SARFAESI Act.

31. It is not uncommon that the relationship between the citizens and the state, or the citizens inter se undergoes change, whenever a new enactment is brought into existence. Even in such cases, the events, that have, already taken place, before the new law is made, are saved. The driving force, which compels a citizen to submit himself to a law, which is detrimental to him, is the sovereign power of the State. In case the subject-matter of the law, so enacted, is a step in the exercise of sovereign powers, the courts would be slow, to rescue the citizen. Where, however, the content of the law is not to strengthen the sovereign power, but to help one of the parties to a transaction, it would be the bounden duty of the court to ensure that a citizen is not forced to come under a regime, which he did not agree for. When this is the approach even to a law, the subsidiary step, such as merging of an agency, which was not under the purview of the SARFAESI Act, with the one, which is under it, cannot be taken so lightly, or in a routine manner. The well-settled principle, that what is not permitted to be done directly, cannot be done indirectly; gets attracted.

32. The question as to whether a loan transaction, which is outside the purview of the SARFAESI Act, can be brought under its purview, without the consent of the borrower, has not been examined by the hon'ble Supreme Court, so far, to

our knowledge. The opinion of the High Courts on this aspect is not uniform. The Orissa High Court in *Subash Chandra Panda Vs. State of Orissa and Others*, took the view that such a step is not permissible. The Allahabad High Court in *Yogendra Kumar Jaiswal v. CMM* took a different view.

33. In *Subash Chandra Panda (supra)*, a Division Bench of the Orissa High Court took note of the definition of the expressions "financial institution" under section 2(m) of the SARFAESI Act and its ramifications and ultimately held that if a borrower was not a financial institution, as defined under section 2(m), when the transaction took place, the lending agency cannot invoke the provisions of that SARFAESI Act on the basis of any subsequent arrangement. In *Yogendra Kumar Jaiswal (supra)*, a Division Bench of the Allahabad High Court, however, took the view that the SARFAESI Act is more procedural than substantive in nature and in the context of enforcement of security; the extant procedure can be followed. With great respect to the hon"ble Judges of the said High Courts, we are of the view that it would be an act of oversimplification to treat the entire gamut of the SARFAESI Act, as mere procedure.

34. In clear and categorical terms, the SARFAESI Act prescribes a new legal regime in the context of the foreclosure of mortgages, which is totally different from the one, under the TP Act.

35. Section 13, which is kingpin of the SARFAESI Act, commences with the non-obstante clause by making a specific reference to sections 69 and 69A of the TP Act. It is too have to contend that section 69 or 69A of the TP Act is procedural in nature. They create valuable substantive rights and create corresponding obligations upon the parties to a mortgage. Whenever a mortgage comes into existence, the parties thereto agree upon certain terms within the framework of law. If the law in relation thereto is altered, during the subsistence of mortgage, the rights of the parties to the transaction remain unaffected by the amendment. The change in law would only apply to the transactions, that take place after it has come into force.

36. Howsoever tempting it may be, to put all objections of this nature under the carpet, to receive the applause from the gigantic financial institutions, courts cannot be party to such an exercise.

37. It is only the prerogative of the Executive or the Legislature to take extreme postures, such as wiping off the loans to the tune of thousands of crore advanced from public funds; on the one hand, and to offer an ordinary borrower to the alter of neo-rich kabuliwalas, on the other hand. Directly or indirectly, the Parliament has provided for one procedure for recovery of amounts advanced to ordinary citizens, and another for affluent and highly placed financial institutions. Courts are supposed to view the changes in law from the strict principles of interpretation, not carried away by the other temptations. The intention of the Legislature becomes relevant on different occasions, and not when the complaint is that the rights of the parties are trampled.

38. It is not as if that the petitioners are extended any facility or favouritism on account of the 4th respondent being required to abide by the conditions, under which the loan was borrowed. Unfortunately, an impression is being created among the citizens, that approaching an ordinary court of law is a purposeless exercise, or a punishment to a party. The curious part of it is that even courts of higher order are giving this impression, may be subconsciously, in the course of deliberations outside the court for promoting alternative dispute resolution mechanisms, or making observations in some judgments. It is an indirect way of belittling the existing system and telling the people that, there is one legal system for elite, and the other, for ordinary and inconsequential public.

39. The Allahabad High Court appears to have been convinced by the judgment of the Uttaranchal High Court in *Unique Engineering Works v. Union of India*. In that judgment also, their lordships were mostly impressed by the fact that India is a signatory to several international conventions and our gross fiscal deficit is approximately 10 per cent GDP per annum. The relevant paragraph reads,

"24. We do not find any merit in the arguments advanced on behalf of the petitioner. It was firstly argued before us that the impugned NPA Act, 2002 has been enacted at the behest of the World Bank and at the behest of International financial institutions. In this connection, reliance is placed on Statement of Objects and Reasons to the impugned NPA Act, 2002. As stated above India is a signatory to several International Conventions. Our gross fiscal deficit is approximately 10 per cent of GDP per annum. This is a very high ratio. One of the contributory factors is high amount of non-performing assets. As stated above the non-performing assets are to the tune of Rs. 90,000 crore which is not a good indication for banks/financial institutions. Therefore, the Act has been enacted as a remedial measure to reduce non-performing assets. Hence, there is no merit in the argument that the impugned NPA Act, 2002 is enacted at the behest of the World Bank, IMF and other financial institutions. Hence, there is no merit in the first ground of attack."

40. With due respect to the learned Judges, we are of the view that it is no part of the duty of the Constitutional Courts to administer the finances, and we totally disagree with the view expressed by them, that the SARFAESI Act is retroactive in nature. Whether one employs the term "retroactive" or "retrospective", it cannot be permitted to govern the transactions, which were outside its purview, when they were made.

41. We respectfully agree with the ratio of the judgment of the Orissa High Court in *Subash Chandra Panda* (supra).

42. There are other subsidiary questions, that arise for consideration.

43. The two OPs, i.e., 377 and 378 of 2013 have already been filed in the name of IBFSL, under section 9 of the Arbitration Act. The arbitration clause that existed in the agreements has been extracted in the preceding paragraphs.

44. Section 8 of the Arbitration Act makes it amply clear that if the agreement between the parties contains an arbitration clause, institution of other proceedings is prohibited. When a suit cannot be instituted by a party to an agreement, which contains an arbitration clause, the initiation of proceedings before other fora becomes equally untenable. The proceedings under the SARFAESI Act cannot be placed on a higher pedestal. The borrower of a secured financial institution, as defined under section 2(f) of the SARFAESI Act cannot be treated as a super Court, to be kept on a higher pedestal in the context of section 8 of the Arbitration Act. When arbitration proceedings have already been initiated, the 4th respondent cannot be permitted to ignore them and proceed against the security.

45. We, therefore, allow the writ petition and set aside the proceedings initiated by the 4th respondent, against the petitioners. It is, however, left open to it to take other steps in accordance with law, for recovery of its loans.

46. After the judgment was pronounced, learned counsel for the 4th respondent submitted that the possession of the security has been taken in July 2013 and status quo in respect thereof may be maintained for a reasonable period.

47. We direct that status quo obtaining as on today shall be maintained for a period of four weeks. The miscellaneous petitions filed in the writ petition shall also stand disposed of. There shall be no order as to costs.