
(1988) 03 PAT CK 0009
In the Patna High Court
Case No : A.F.O.D. No. 149 of 1977 (R)

Gupteshwar Prasad Singh	Vs	APPELLANT
M/s. Allahabad Bank and Others		RESPONDENT

Date of Decision : 18-03-1988

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 23

Citation : (1988) PLJR 886

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Advocate : R.K. Merathia, for the Appellant; A.N. Deo, for the Respondent

Judgement

Satyeshwar Roy, J.—Defendant No. 2 is the appellant. The respondent No. 1 file the suit for recovery of Rs. 1,02,597.54 against the appellant and respondent No. 2. Claim was made on the basis of the balance in the cash credit account and the over draft account standing in the name of respondent No. 2. Respondent No. 1 had given accommodation to the appellant in the business name of respondent No. 2 for coal mines business of the appellant. For the purpose of securing loan besides executing promissory notes, the appellant also hypothecated the machinery, stock-in-trade and other movables of the colliery. After nationalisation of the coal mines belonging to the appellant, the coal mines" properties which were hypothecated by the appellant ceased to have a charge as it vested free from encumbrances in the Central Government under the provisions of the Coking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as the Nationalisation Act). Respondent No. 1 demanded the amount outstanding in those two accounts from the appellant and as the same was not paid, the suit was filed.

The appellant filed a written statement taking various technical objections regarding the maintainability of the suit. He contended that the suit was not maintainable in a civil court in view of the Section 23 of the Nationalisation Act. It was also contended that because the goods which were hypothecated

belonged to the coal mine and the load was taken for the purpose of coal mine, the appellant had no liability to reply any outstanding dues against that colliery. Consequently, the operation of the accounts also ceased so far the colliery belonging to a private individual was concerned. Since respondent No. 1 had preferred a claim before the Commissioner of Payments under the Nationalisation Act, it was not entitled to pursue the remedy before the civil court.

Respondent No. 3 is the Bharat Coking Coal Limited. It filed a written statement but the court below has not granted any relief against it. It has not appeared in this appeal.

2. The court below held that the civil court had jurisdiction. It further held that because of the vesting of the coal mine in respondent No. 3, the liability of payment to respondent No. 1 did not cease. It decreed the suit but did not give interest pendente lite and future. Two points were urged on behalf of the appellants (1). That in view of the fact that the forum for making a claim against the erstwhile owner of a coalmine has been provided in the Nationalisation Act, the civil court has no jurisdiction. (2) In view of the fact that the movables which were hypothecated ceased to belong to the appellant, he had no liability to repay the dues of respondent No. 1.

3. So far point No. 1 is concerned, it is true that u/s 23 of the Nationalisation Act, provisions have been made whereunder parties having any claim against the erstwhile owner of a coal mine which has vested under the provisions of the Nationalisation Act may prefer a claim before the Commissioner of Payments and the Commissioner of Payments, if the claim is allowed, shall pay keeping in view the provisions of that section, to the claimants out of compensation which was deposited by the Central Government with the Commissioner of Payments in respect of coal mine in question. Admittedly, the coal mine of Central Gararia Colliery Co. vested in the Central Government and a compensation was allowed to the erstwhile owner for this coal mine. This was deposited with the Commissioner of Payments.

4. From the scheme of Section 23 of the Nationalisation Act, it will appear that payment, if any, is to be made out of the available fund deposited with the Commissioner of Payments of the coal mine in question. The section has classified different debts in different classes. Some classes of debts will have priority over the other classes of debts. The amount deposited as compensation in respect of the colliery in question may be even insufficient to meet all the debts in full or in part. If a claim is allowed by the Commissioner of Payments, for the purpose of recovery of amounts allowed, the claimant shall have to wait for disposal of all the claim cases and shall receive the amount, if any, in terms of Section 23 of the Nationalisation Act. For the purpose of recovery of any money allowed by the Claims Commissioners, a claimant cannot pursue any property other than the compensation deposited with the Commissioner of Payments.

So far the suit is concerned, in the event of decree, the plaintiff may execute the decree for recovery of the amount from any property belonging to the debtor and surely, in that event, any property which is covered by the definition of "mine" under the Nationalisation Act would not be available for sale for satisfaction of the decree of the civil court.

5. Jurisdiction of civil court will not (sic) inferred ordinarily. Any statute ousting jurisdiction must expressly provide that or the provision must be such that from which be necessary implication, exclusion must be followed. As noticed above, Section 23 of the Nationalisation Act has created a forum for entertaining claim against the erstwhile owner of a coal mine. The claimant in that case must satisfy himself, in the event the claim is allowed, with whatever he receives from out of the compensation deposited with the Commissioner of Payments. A creditor of the erstwhile owner if does not prefer any claim or if he preferred, fails to prove his claim shall be excluded from the disbursements made by the Commissioner. There is no provision in the Nationalisation Act which expressly or by necessary implication, ousts the jurisdiction of the civil court.

6. Right to recover the debt by a creditor has been created under the general law and not under the Nationalisation Act. The rule is if a right is created under a statute, a person must seek relief before the forum created under that statute. That is not the provision here. Forum u/s 23 is an additional forum. For all these reasons it must be held that civil court had jurisdiction to entertain the suit. But one thing is clear. If claim u/s 23 is accepted the creditor in a suit cannot claim against that amount that he may have received from the Commissioner of Payments. Reference may be made to the case of *The Indian Cable Co. Ltd. Vs. Lodna Colliery Co. (1920) Ltd.*, and *Barakar Coal Co. Ltd. Vs. N.C. Mehta and Another*, . I find no reason to differ with the finding recorded by the court below that the civil court has jurisdiction.

7. So far as point No. 2 is concerned, that is substance. The loan was granted to the appellant on the basis of promissory note executed by him. Movable properties belonging to the coal mine were hypothecated by way of security. Because of the Nationalisation Act, the securities were not available respondent No. 1 but that did not extinguish the debt and the appellant was still liable to pay the dues of respondent No. 1.

8. A cross-objection has been filed on behalf of respondent No. 1 in which it has been contended that the court below has erred in law in refusing to pay the interest pendente lite and future. Admittedly, there was a stipulation between the parties that the appellant will repay the loan with interest @ 4% over the Bank rate with a minimum of 10% per annum. The business of the respondent No. 1 is to give loan. In that view of the matter, I am of the opinion that the court below could not have refused to pay interest to respondent No. 1 in terms of the agreement between the parties. In the result, the appeal is dismissed and the cross-objection is allowed. The suit is decreed with interest pendente lite and future at 10% per annum. The parties will bear their own costs throughout.