
(2005) 02 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (L) No. 6373 of 2004

Karmachari Kumardhubi Congres Union

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 26, 30

Citation : AIR 2005 Jhar 74 : (2005) 3 BC 315 : (2005) 2 JCR 195

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Pal and M. Palit, for the Appellant; A. Allam, H.S. Verma, U.K. Mehta, G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner, namely, Karmachari Kumardhubi Congress Union representing the workmen of Kumardhubi Metal Casting Engineering Ltd., has filed this writ petition for quashing the order dated 13.1.2004 passed by the Recovery Officer, Debts Recovery Tribunal, Ranchi in R.P. No. 33/2002 whereby one officer of the Bank has been appointed as Receiver to execute the warrant of attachment and as a custodian of moveable properties and also for quashing the order dated 17.11.2004 passed by the Recovery Officer directing action sale of the moveable assets of the Company.

2. Facts which are relevant for the purpose of deciding this writ petition are that a company petition for winding up of respondent No. 4 M/s. Kumardhubi Metal Casting Ltd. (In short the Company) being Company Petition No. 2/96 was filed and in terms of order dated 17.8.1999 official liquidator was appointed for taking possession of all the assets of the Company. Petitioner filed a Public Interest Litigation being WP (PIL) No. 2170 of 2003 for revival of the Company and for payment of legal dues to the employees. The said writ petition was dismissed with the observation to move the Company Court. Petitioner then filed petition

before the Company Court in CP No. 02 of 1996 which was also dismissed with the observation that the petitioner may move the Debts Recovery Tribunal or the Appellate Authority.

3. In the meantime, respondent-Bank of India moved the Debts Recovery Tribunal against the Company for the recovery of the dues which was registered as R.P. No. 33/2002. In that proceeding, the Tribunal by order dated 13.1.2004 appointed a Receiver to execute the warrant of attachment as a custodian of moveable property. The Recovery officer in the said proceeding further passed orders for auction sale of the moveable assets of the Company. The petitioner, namely, Karmachari Kumardhubi Congress Union, through its Secretary again filed an objection before the Recovery Officer in the said proceeding stating, inter alia, that since Official Liquidator has been appointed by this Court and final order is to be passed, the appointment of a receiver is against the law. It was further stated that the assets of the Company be not sold till the dues of the workmen are paid. The said petition was rejected by the impugned order dated 17.11.2004.

4. Mrs. M.M. Pal, learned counsel appearing for the petitioner, assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that when the winding up proceeding is pending in the High Court, the Debts Recovery Tribunal has no jurisdiction to appoint a receiver. Learned counsel further submitted that after appointment of an Official Liquidator, the Debts Recovery Tribunal has no authority to appoint a Receiver that too an officer of the Bank. In the alternative learned counsel submitted that the Recovery Officer is duty bound to take appropriate step for payment of the dues of the workmen. Learned counsel, in this connection, relied upon the decision of the Allahabad High Court in the case of The Industrial Credit and Investment Corporation of India and others Vs. M/s. Sidco Leathers Ltd. (in liq.) and another, in the case of Navin Jain and Others Vs. State Bank of India and Another, in the case of International Coach Builders Ltd. Vs. Karnataka State Financial Corpn., and in the case of Allahabad Bank v. Canara Bank and Anr. AIR 2000 SC 1535.

5. Mr. A. Allam. learned counsel appearing on behalf of the respondent-Bank, on the other hand, submitted that the writ petition is not maintainable at the instance of the petitioner against the order of the Debts Recovery Tribunal. The said order is appealable under Sections 26 and 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Learned counsel submitted that even if a proceeding is pending before a Company Court, the order of Presiding Officer, Debts Recovery Tribunal shall be made enforceable. Learned counsel submitted. That in view of the order passed by a Division Bench in WP (PIL) No. 2170 of 2003, the petitioner can make their grievances before the Company Court and not in the Debts recovery proceeding. Learned counsel, in this regard relied upon the decision of the Supreme Court in the case of Allahabad Bank v. Canara Bank and Anr. AIR 2000 SC 1535.

6. Considering the facts of the case and the submissions made by the learned counsels for the parties, the only question which falls for consideration is whether in view of the pendency of the Winding up Proceeding before the Company Court, the Debt Recovery Tribunal has jurisdiction to proceed with the Debt Recovery Proceeding by appointing Receiver and directing auction sale of the movable assets of the Company. This question is no longer *res integra*. The Supreme Court, in the case of *Allahabad Bank v. Canara Bank and Anr.* AIR. 2000 SC 1535 while considering the provisions of the Companies Act, Debt Recovery Act for recovery of the amount due to Bank and Financial Institutions Act, held as under :

"There can be a situation in law where the same Statute is treated as a special Statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, It was there observed :

"for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law."

For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure, but vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute . In fact in *Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*, already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from treated as a general statute. This is clear from para 19 of the judgment. It was observed :

"Further, the provisions of the Special Act, i.e. LIC Act, will override the provisions of the General Act, viz., the Companies Act which is an Act relating to companies in general."

Thus some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Special law v. Special law :

Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34. A similar situation arose in *Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another*, where there was inconsistency between two special laws. The Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provision) Act, 1985. The latter contained Section 32 which gave overriding effect to the provisions and was held to prevail over the former. It was pointed out by Ahmadi J. that both special statutes contained non-obstanie clauses but that the "1985

Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and 1951 statute is a special one." Therefore, in view of Section 34 of the RDB Act, the said Act override the Companies Act, to the extent there is any thing inconsistent between the Acts."

7. Mrs. M.M. Pal, learned counsel appearing for the petitioner contended that without taking leave of the Company Court and without the knowledge of the Company Court the impugned orders have been passed by the Debt Recovery Tribunal. The submission of the learned counsel does not appear to be correct. As noticed above, the petitioner filed a writ petition in the form of PIL being WP (PIL) No. 2170/2003 making the same grievance. The Division Bench, in terms of order dated 17.10.2003, dismissed the writ petition without prejudice to the right of the petitioner to raise its claim before the Company Court. The petitioner, thereafter, intervened in the company case before the Company Court in CP Case No. 2/96. The learned Company Judge, by order dated 23.9.2004, gave liberty to the intervener to move the Debt Recovery Tribunal or the appellant authority. The order dated 23.9.2004 reads as under :

"Let this case be listed for orders after two weeks. Pendency of this petition shall not stand in the way of inter-vener to move the Debt Tribunal or the Appellate Authority under the Act which is expected to look into the matter.

Let a copy of this order be handed over to counsel for the official liquidator."

8. It is, therefore, clear that the Company Judge was fully aware about the Debt Recovery Proceeding and the orders time to time passed in that proceeding.

9. Besides the above, in the impugned order dated 17.11.2004 the Recovery Officer, while directing auction sale of the movable assets, has categorically held that the claim of the workmen regarding payment of their dues shall also be taken into consideration and, therefore, the petitioner was directed to submit the claim of the workmen before the Tribunal stating their names, addresses, designations and service records etc. It is, therefore, clear that the Debt Recovery Tribunal was wholly conscious of the fact that the claim of the workmen is also to be paid out of the sale proceeds of the assets of the Company.

10. For the aforesaid reason, I do not find any illegality and infirmity in the impugned orders passed by the Debt Recovery Tribunal. The impugned orders, therefore, need no interference. This writ application is, accordingly, dismissed.