
(2008) 08 AHC CK 0313
In the Allahabad High Court

Mak Plastic (P.) Ltd. and Another	APPELLANT
Vs	
U.P. State Financial Corporation and Others	RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34
State Financial Corporations Act, 1951 — Section 32G

Citation : AIR 2009 All 126 : (2009) 1 AWC 579

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Questions of fact and law involved in both the writ petitions are common in nature hence, these are being disposed of by this common judgment. However, Civil Misc. Writ Petition No. 36803 of 2007 is the leading case.

2. By means of these writ petitions under Article 226 of the Constitution of India, the petitioners have sought quashing of the recovery certificate/citations dated 27.7.2007 (Annexure-17 to the writ petition).

3. In short, the facts giving rise to both the writ petitions are that the first writ petitioner M/s. Mak Plastic (P) Ltd., a private limited company duly incorporated under the Companies Act, 1956 (hereinafter referred to as "the Company"), is the principal borrower and the second writ petitioner, Krishna Kumar Maheshwari stood guarantor to the said loan being Director of the Company at the relevant time, although subsequently he resigned from the directorship.

4. Admittedly, the company was sanctioned a loan of Rs. 28 lacs by the U. P. State Financial Corporation, out of which it availed only Rs. 23 lacs, but could not repay the same. Therefore, on the request of the petitioners, one time settlement was made whereafter an amount of Rs. 14.24 lacs was deposited. Ultimately, the balance loan amount could not be paid back by the petitioners,

consequently impugned recovery certificate/citation has been issued for recovery of an amount along with interest totalling to Rs. 87,96,942.26.

5. Learned Counsel for the petitioners vehemently contended that the impugned recovery sought to be made u/s 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972 (for short "the U. P. Act, 1972") is barred by Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Debt Recovery Act, 1993"). Learned Counsel for the respondents contended that the liability is admitted by the petitioners and to facilitate the repayment of the loan amount, one time settlement was made on their request but that too was not complied with, therefore, the equity does not lie in favour of petitioners and they are not entitled to any relief from this Court.

6. In the course of arguments, we have come across two judgments one is AIR 2003 SC 2103 and the other is M/s. Paliwal Glass Works and Ors. v. State of U. P. and Ors. (unreported judgment dated 21st September, 2005, in Civil Appeal No. 5933 of 2005), when the earlier judgment is saying that for the purpose of recovery, apart from Debt Recovery Act, 1993, the other Act is also available in the State of U. P., i.e., U. P. Act, 1972, therefore, on the basis of facts and circumstances of the case, either of the Acts can be made applicable but in the later judgment i.e., M/s. Paliwal Glass Works (supra) a parallel Bench of the Apex Court has opined that earlier judgment, i.e., Unique Butyle (supra) requires reconsideration because the jurisdiction of the Debt Recovery Tribunal as per the Debt Recovery Act, 1993 is exclusive in nature. Thereafter, the matters were forwarded to Hon'ble the Chief Justice of India to pass an appropriate order and on the basis of such order, larger Bench was formed and the matter is pending for consideration by such Bench. Learned Counsel for the respondents has also placed before this Court, the status report of the Supreme Court matter only up to 1st May, 2007. Thereafter, the Court, through its computer section obtained information time to time.

7. Having heard learned Counsel for the parties, the pivotal question which arises for determination by this Court in the instant case is as to whether in view of the provisions of Section 32G of the State Financial Corporations Act, 1951 (for short "the Corporation Act, 1951"), the moneys due to the Financial Corporations (beyond Rs. 10 lacs) can be recovered as an arrear of land revenue; only under the provisions of Debt Recovery Act, 1993 or in alternative it may also be recovered under the provisions of the U. P. Act, 1972.

Section 32G of the Corporation Act, 1951 reads as follows:

32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.- Where any amount is due to the financial corporation in respect of any accommodation granted by it to any industrial concern, the financial corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such

authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

8. From the plain reading of the aforesaid provision it is crystal clear that the State Government can recover any amount due and payable to the financial corporation, as land revenue. The discussion as made in Unique Butyle (supra) in respect of applicability of Section 34(2) of Debt Recovery Act, 1993 when the U. P. Act, 1972 provides different mode of recovery, is contrary. The recovery, u/s 3 of the U. P. Act, 1972 of certain dues as arrears of land revenue will be made by the State Government, particularly on the basis of agreement under the State-Sponsored Scheme. The relevant portion of Section 3 of the U. P. Act, 1972 is quoted as under:

3. Recovery of certain dues as arrears of land revenue.-(1) Where any person is party-

(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by the State Government or the corporation, by way of financial assistance; or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by a Banking Company or a Government Company, as the case may be, under a State-Sponsored Scheme ; or

(c) to any agreement relating to a guarantee given by the State Government or the corporation in respect of loan raised by an industrial concern; or

(d) to any agreement providing that any money payable thereunder to the State Government (or the corporation) shall be recoverable as arrears of land revenue; and such person-

(i).....

(ii)

(iii)

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) ...

(4) ...

(5) ...

9. Against this background, although the reference of Section 34(2) of Debt Recovery Act, 1993 is made but no discussion to the extent is available in the

referred Judgment, i.e., in Unique Butyle (supra) and for such reason, in unreported matter, it has been referred to the larger Bench. The important question u/s 34(2) of Debt Recovery Act, 1993 is that the provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of the State Financial Corporations Act, 1951 etc. Section 34 of Debt Recovery Act, 1993 is quoted to ascertain the position:

34. Act to have overriding effect.-(1) Save as provided under Sub-section (2), the provisions of this Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the Rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

10. Therefore, upon going through language of Section 32G of the Corporation Act, 1951 and Section 3 of the U. P. Act, 1972, we do not find any procedural lacuna to apply Section 34(2) of Debt Recovery Act, 1993, in respect of both, since both are arising out of recovery of dues as arrears of land revenue. Applicability of Section 32G of the Corporation Act, 1951, cannot be a bar to proceed with, before the Debt Recovery Tribunal, as appears from the plain reading of Section 32G of the above Act. Possibly the only difference is whether the dues will be recoverable as an arrear of land revenue out of State-Sponsored Scheme or not.

11. "Banking" is Item No. 45 in the items of the List I-Union List of VII Schedule of the Constitution of India and the item No. 45 of the List II-State List, provides for land revenue, including the assessment and collection of revenue. However, definition of "State-Sponsored Scheme" has been given u/s 2 (g) of the U. P. Act, 1972 as follows:

(g) "State-Sponsored Scheme" means a scheme sponsored by way of financial assistance by the State Government under which the State Government either advances money to a Banking Company or a Government Company for the purpose of disbursing loans, advances or grants or for purpose of sale of goods on credit or hire-purchase or guarantees or agrees to guarantee the repayment of a loan, advance or grant or the payment of the price of goods sold on credit or hire-purchase and includes any other scheme of financial assistance, by a Banking Company or a Government Company, which is declared to be a State sponsored Scheme by the State Government by notification in the Gazette.

12. Hence, from such definition it is clear that State-Sponsored Scheme does not necessarily mean that the loan, advance or grant is given by the State

Government alone. State is only approver of the scheme for financial assistance as per the aforesaid definition so that it can be easier for a loanee to receive such loans. Hence, if a loan is granted on the basis of such scheme by the State Financial Corporation under the Corporation Act, 1951, ie., the Central Act, it is imperative upon the State to take steps to recover it irrespective of other method available under the central law. That being so, it is very difficult to construe that the State will not have any say to initiate a proceeding for recovery of loan or cannot recover as an arrear of land revenue.

13. So far as this case, i.e., Unique Butyle (supra) is concerned, the Division Bench of the Supreme Court has categorically held that a Bank or a financial institution has the option or choice to proceed either under the State Act, Le., U. P. Act, 1972 or under the modes of recovery permissible under the Corporation Act, 1951. On the other hand, in case of M/s. Paliwal Glass Works (supra), the subsequent Division Bench of Supreme Court held that the Debt Recovery Act, 1993 not only provides expressly for exclusive adjudication by the Tribunal under that Act but also for modes of recovery and that the financial corporation could only recover the moneys due to it under the provisions of the Debt Recovery Act, 1993 and not under any other provision. Parallel proceedings for the purpose of recovery were allowed only to the limited extent u/s 34(2) of the Debt Recovery Act, 1993. Section 32G of the Corporation Act, 1951 cannot destroy the exclusivity of the jurisdiction created by the Debt Recovery Act, 1993 as regards the modes of recovery. The Corporation Act, 1951 is a self contained code and that Section 32G should not be read as incorporating by reference the provisions of U. P. Act, 1972. Later Division Bench of Supreme Court held that the scope of Section 32G of the Corporation Act. 1951 and its impact on Section 34(2) of the Debt Recovery Act, 1993 has not been considered by the Division Bench in Unique Butyle (supra), therefore, only the question of scope of Section 34 of the Debt Recovery Act, 1993 as determined in Unique Butyle (supra) has been referred for reconsideration by a larger Bench and thereby the interim order was directed to continue.

14. After coming to know about such developments, we were constrained to reserve the delivery of Judgment and intimated the parties as well as computer section of this High Court to inform about the latest position, time and again however, we have come to know that the matter is still pending. Under such circumstances, we were compelled to call upon the parties to make further submissions and finding no fresh arguments with regard to the point involved again concluded the hearing reserving the Judgment. In the course of deciding the issue whether the law laid down by the Supreme Court in the earlier judgment or in the later Judgment has binding effect, we have come across various analysis including citations on such point which requires consideration hereunder.

15. From the 2nd Edition of the commentary on the Constitution of India by Sri Jagdish Swarup revised by Dr. L. M. Singhvi (since deceased), it appears that the

law laid down by the Supreme Court is binding upon all Courts in the country under Article 141 of the Constitution and numerous cases all over country are decided in accordance with the view taken by the Supreme Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by the Supreme Court. It would create uncertainty, instability and confusion if the law propounded by the Supreme Court, on the basis of which numerous cases have been decided and many transactions have taken place, is held to be not the correct law. Supreme Court may, no doubt in appropriate cases overrule the view previously taken by it but that should only be for compelling reasons. Necessity may sometimes be felt of ridding stare decisis of its petrifying rigidity. Precedents have a value and the ratio decidendi of a case can no doubt be of assistance in the decision of future cases.

16. Further, we get from the 2nd Edition, 2007 of the commentary on the Constitution of India by Sri Arvind P. Datar that the dictionary meaning of the Latin expression ratio decidendi is rule of law on which a judicial decision is based. Every decision has three basic postulates-(i) findings of fact both direct and inferential, (ii) statement of principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect thereof. A case is only an authority for what it decides and not what logically flows from it. A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention of the Judge, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement.

17. It has also been held in Haryana State Coop. Land Development Bank Vs. Neelam, , following the earlier decision of the Supreme Court that a decision, as is well known, is an authority of what it decides and not what can logically be deduced therefrom. In Vijayalaxmi Cashew Company and Others Vs. Dy. Commercial Tax Officer and Another, a three-Judge Bench of Supreme Court held that perception of this Court (SC), as will appear from the later judgments, has changed in this regard. A judgment of a five-Judge Bench, which has not been doubted by any later judgment of this Court (S.C.), cannot be treated as overruled by implication. In P. A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537 : 2005 (4) AWC 3864B , a seven-Judge Bench of the Supreme Court observed that the real task before the Court was to cull out the ratio decidendi and to examine if the explanation or clarification given runs counter to earlier judgment and if so, to what extent. Indian Bank Vs. ABS Marine Products Pvt. Ltd., , speaks as follows:

One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in

exercise of power under Article 142. It is not uncommon to find that Courts have followed not the law declared, but the exemption/ relaxation made while moulding the relief in exercise of power under Article 142. When the High Court repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court. incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The Courts should therefore, be careful to ascertain and follow the ratio decidendi, and not the relief given on special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that the particular direction or portion of the order is an exercise of power under Article 142. Be that as it may.

18. In *Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another*, . a three-Judge Bench of the Supreme Court held that broadly speaking, every judgment of superior Courts has three segments, namely, (i) the facts and the point at issue; (ii) the reason for the decision; and (iii) the final order containing the decision. The reason for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The terms "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment.

19. Coming back to the question arose herein we find when the earlier judgment speaks both the modes of recovery can be made applicable, the later judgment speaks about exclusive jurisdiction under the Debt Recovery Act, 1993. But in doing so the later judgment also speaks as follows:

Parallel proceedings for the purpose of recovery were allowed only to the limited extent u/s 34(2) of the 1993 Act.

20. Therefore, even as per the earlier judgment there is scope of departure being contrary to the exclusiveness as indicated in such judgment. However, in the later judgment it has been held that Section 32G of the Corporation Act, 1951 could not be read in the manner so as to destroy the exclusive jurisdiction created under the Debt Recovery Act, 1993 as regards the modes of recovery. The Corporation Act, 1951 is a self contained code and Section 32G should not be read as incorporating by the reference of the provisions of the U. P. Act, 1972. According to us, all the aforesaid laws either framed by the Centre or by the State are based on the economic policy of the Centre or the State or both, the Centre and the State. A written law cannot be said to be unwritten law by interpretation particularly when it deals with fiscal matters. The State law, i.e., the U. P. Act, 1972 has not been declared ultra vires as yet. State has its

responsibility to recover the loan, not only as per Section 3 of the U. P. Act, 1972, but also u/s 32G of the Corporation Act, 1951. There is no doubt even in the later judgment that the Corporation Act, 1951 is a self contained code, therefore, the legal prescription as available before us by the Act of Parliament or the Legislative Assembly, cannot be ignored by virtue of any unsettled position as yet. On existing law an interpretation by Court of law, already made, will have prevailing effect so far as the cases are concerned. Apart from all the above discussions, one aspect is very clear till this date that we have to go by the ratio decidendi but not with any prima fade view or necessary implication. It might have also passed through the mind of the Court in considering cause in the later judgment that no adequate opportunity of hearing may be given, if not the exclusiveness of the jurisdiction of the Debt Recovery Act, 1993 is directed to be prevailed. We are sorry to say that such part is still undecided and further more, the Corporation Act, 1951 itself provides various stages to follow the principles of natural justice being self contained code. Therefore, in totality, we are of the view that earlier judgment having binding effect upon us can prevail now and hence, by issuing notice to recover the amount as arrears of land revenue, the respondents have not committed any mistake.

21. Hence, the writ petitions are dismissed, however, without imposing any cost. Interim order, if any, stands. vacated.

Shishir Kumar, J.

I agree.