

(2005) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Execution Petition No. 1 of 1999 in Company Application No. 115 of 1986 in Company Petition No. 46 of 1984

Punjab National Bank

APPELLANT

Vs

Bareja Knipping Fasteners Ltd.

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Arbitration Act, 1940 — Section 14, 17
COMPANIES ACT, 1956 — Section 446

Citation : (2006) 3 BC 25 : (2005) 128 CompCas 231 : (2006) 142 PLR 688

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Suvir Sehgal, P.K. Dutt and Puneet Kansal, for the Appellant;

Judgement

This Judgment has been overruled by : Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, (2007) 135 CompCas 163 : (2007) 1 CompLJ 108 : (2007) 5 CTC 642 : (2007) 1 JT 542 : (2006) 13 SCALE 511 : (2007) 2 SCC 230 : (2006) 10 SCR 287 Supp

Adarsh Kumar Goel, J.—Punjab National Bank-applicant has filed application for execution of decree passed in Company Petition No. 46 of 1984 and final decree passed in C. A. No. 115 of 1986. According to the applicant, a sum of Rs. 43,38,193.45 along with 12 per cent. interest remains due which is liable to be recovered from the company (in liquidation) and guarantors by attaching and selling shares of the guarantors, attachment and sale of property of the guarantors and by arrest and detention.

2. C. A. No. 415 of 1999 has been filed on behalf of the judgment-debtors, praying for dismissal of the execution application.

3. C. A. No. 55 of 2005 has been filed for transfer of execution to the Debts Recovery Tribunal, Chandigarh, on the ground that under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short,

"the RDB Act"), jurisdiction for execution is vested in the Tribunal constituted under the said Act, as held by the apex court in Allahabad Bank Vs. Canara Bank and Another, .

4. In the reply filed to the application by the judgment-debtor, the stand taken is that there is no provision for transfer of an application filed after coming into force of the RDB Act which came into force on June 24, 1993.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the decree-holder relied upon judgment of the Bombay High Court in Bank of India v. Harshadrai Odhavji Mody [2003] 115 Comp Cas 86: :[2003] (1) ISJ 215 to submit that jurisdiction being vested exclusively in the Tribunal under the RDB Act, proceedings could be transferred to the Tribunal. He also relied upon a decision of this court in Haryana Urban Development Authority v. D. S. Verma [1982] PLR 679 holding that an application under Sections 14 and 17 of the Arbitration Act could be treated as plaint for purposes of Order 7, rule 10A of the Civil Procedure Code. He further referred to the order of the Delhi High Court in the Official Liquidator, R. C. Abrol and Co. Pvt. Ltd. v. R. C. Abrol [1977] 47 Comp Cas 537: [1977] PLR 42 holding that a complaint filed before the High Court could be transferred to the magistrate u/s 446 of the Companies Act, 1956.

7. Learned counsel for the judgment-debtor relied upon judgment in Chothu Ram Vs. Budhu Ram and Another, to submit that if a court has no jurisdiction, it cannot even return the plaint for presentation to the appropriate court and has to reject the same.

8. No doubt, procedure for transfer of execution proceedings as mentioned in the RDB Act is applicable only with regard to proceedings pending on the relevant date, i.e., June 24, 1993 and there is no provision for transfer of application filed after the said date. There is, however, an order dated December 18, 1998, on record whereby the parties consented that the petitioner may be allowed to file execution petition in this court. In view of the judgment of the apex court in Allahabad Bank Vs. Canara Bank and Another, , this court has no jurisdiction to deal with the application for execution. The question is whether in exercise of inherent jurisdiction of this court, execution petition could be transferred to the Debts Recovery Tribunal, Chandigarh, as prayed for by the decree-holder.

9. Inherent powers of the court are in addition to the powers specifically conferred. The same can be exercised for advancing ends of justice, subject to the condition that exercise of such powers is not in conflict with express provisions of the statute. Learned counsel for the judgment-debtor is unable to show any decision or principle as to why inherent power cannot be invoked in the present case, to achieve the ends of justice. There is no express or implied provision against exercise of such a power, in a situation which has arisen in the present case.

10. Accordingly, C. A. No. 55 of 2005 is allowed and execution proceedings are transferred to the Debts Recovery Tribunal, Chandigarh, for being disposed of in accordance with law. Learned counsel for the decree-holder has made a statement that he wishes to proceed against the guarantors in execution proceedings. C. A. No. 415 of 1999 seeking dismissal of the execution application, is consequently, dismissed.