

(1984) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1166 of 1982

Punjab National Bank, Betul

APPELLANT

Vs

Deviram and Others

RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115

Madhya Pradesh Public Moneys (Recovery of Dues) Act, 1981 — Section 5

Citation : AIR 1985 MP 87 : (1984) ILR (MP) 266 : (1984) JLJ 742

Hon'ble Judges : C.P. Sen, J

Bench : Single Bench

Advocate : J.P. Sanghi, for the Appellant; N.P. Dubey, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.—The applicant-plaintiff has preferred this revision against the order of the trial Court rejecting its application for review as not maintainable.

2. The plaintiff is a nationalised bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The plaintiff gave agricultural loan of Rs. 1400/- to late Khushalchand, father of defendants-non-applicants 1 to 4 for purchase of water-pump and motor for agricultural purposes. The non-applicant No. 5 defendant 5 was a guarantor of the loan taken. The plaintiff filed a suit for recovery of Rs. 3731.40/-against the defendants for recovery of the loan amount with interest. The defendants 1 to 4 resisted the suit denying their liability since their father had taken the loan without their consent or knowledge, the plaintiff has a cheaper remedy by raising a dispute before the Assistant Registrar and in order to increase the expenses and harass the defendants this suit has been filed. However, on 30-11-1981 the plaintiffs counsel conceded that u/s 5 of the M. P. Public Moneys (Recovery of Dues) Act, 1981, the suit has abated and the suit was dismissed but on 1-1-1982 an application for review was made saying that a wrong concession was made on the question of law and the suit is maintainable as the loan was not under any

State's sponsored scheme.

3. It may be mentioned here that the aforesaid Act was enacted to provide for the speedy recovery of certain classes of dues payable to the State Government or to the M. P. Financial Corporation or any other Corporation or to a banking company or any Government Company and for matters connected therewith. Section 3 provides for recovery of certain dues as arrears of land revenue, including any agreement relating to a loan, advance or grant given to a person 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 under Clause (b) of Section 3(1). Under Sub-Section (1) a local agent of the banking company may send a certificate to the Collector for recovery of the amount and under Sub-section (2) the Collector on receiving the certificate shall proceed to recover the amount. Sub-section (3) bars any suit for recovery of any sum due as aforesaid and it shall not lie in Civil Court against any person referred to in Sub-section (1). Under Sub-section (4) arbitration agreements are saved under certain conditions. Sub-section (5) provides that every certificate sent to the Collector under Sub-section (1) shall be final and shall not be called in question in any suit. u/s 5 all suits, applications and arbitration proceedings of the nature referred to in Section 3 and pending immediately before the commencement of this Act shall abate upon the commencement of this Act. It is not disputed that the plaintiff is a banking company, but it is evident that Section 3(1)(b) covers recovery of those loans by a banking company which are under a State sponsored scheme. It is nobody's case here that the suit loan was under a State sponsored scheme nor the State Government was the guarantor of the loan nor any subsidy was given by the State Government for the loan. The Act safeguards the position of the State Government under such circumstances and provides for speedy recovery of the amount as arrears of land revenue under a certificate issued by the person so authorised. Therefore, the suit loan is not covered under the Act nor the present suit abated u/s 5 of this Act on coming into force of the Act.

4. It is true that the counsel for the plaintiff made a wrong concession that the suit has abated and accordingly the suit was dismissed by the trial Court on 30-11-81. It is settled law that an erroneous admission by a legal practitioner on a question of law is not binding on the party and does not preclude him from challenging the wrong concession *M. M. B. Catholicos v. M. P. Athanasius* AIR 1954 SC 526. It is also evident that the order of the trial Court dt. 30-11-1981 dismissing the plaintiffs suit as abated u/s 5 of the Act was a mistake apparent on the face of the record and was liable to be reviewed under Order 47," Rule 1 C.P.C. There are cases that a decision on a review application amounts to a case decided and a revision lies if the order is covered by any of the clauses of Section 115. In the present case, it can be said that by not entertaining the review application, the trial Court refused to exercise jurisdiction vested on it under the law for review or it acted illegally and with material irregularity in rejecting the application. So the revision is maintainable. Of course, there are cases which lay

down that no revision lies against rejection of an application for review of the decree passed because there is an appeal provided against the decree itself.

5. Accordingly, the revision is allowed, the orders of the trial Court dt. 30-11-1981 and 26-6-82 are set aside and the suit is restored to file. The trial Court is directed to proceed with the suit in accordance with law. There shall be no order as to costs.