

(2003) 02 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition No. 851 of 2002

Santosh

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 3, 34(1), 34(2)

Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Niyam, 1988 — Rule 5
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34

Citation : AIR 2003 MP 218 : (2004) 1 BC 461 : (2004) 122 CompCas 929 :
(2004) 1 JLJ 158 : (2003) 2 MPLJ 246 : (2003) 44 SCL 547

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : G.M. Chafekar, Vivek Phadke, Amit Agarwal, Asudani, Ajay Bagadia, S.R. Saraf, Ramesh Saboo, N.K. Dave, Rakesh Saxena, P.V. Bhagwat, S.S. Garg, Milind Phadke, U.K. Choukse, S.M. Dagaonkar, Anand Pathak and Rekha Shrivastava, for the Appellant; D.S. Kale, S.S. Garg, BBL Agrawal, P. Verma, S. Mukati, R.S. Sanghi, Milind Phadke, Jindal, Vinay Zelawat, Namjoshi, K. Kushwah, K.C. Gupta and K.N. Puntambekar, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.

The decision rendered in this writ shall also govern the disposal of other writ petitions being W.P. Nos. 183, 189, 190, 255, 268, 285, 286, 338, 393, 445, 499, 579, 597, 623, 704, 1367 of 2001 and 223, 401, 474, 475, 514, 1004 and 1507 of 2002, because all these writ petitions involve identical issues of facts and law.

By filing the writ under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and propriety of the Revenue Recovery Certificate (Demand), dated 22-3-2001 for recovery of Rs. 52,22,330 issued at the instance of respondent No. 1-Central Bank of India u/s 3 of M.P. Lok Dhan

(Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 (for short "M.P. Adhiniyam"), read with rule 5 of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Niyam, 1988 (for short "M.P. Niyam").

In view of the short legal controversy sought to be raised by the parties in this writ, it is really not necessary to narrate the facts in detail except which are relevant for the disposal of writs.

The respondent No. 1-a Nationalised Bank has advanced a loan (cash credit facility) to respondent No. 3-a Private Limited Company. The petitioner has stood as guarantor for due discharge of the loan advanced to respondent No. 3 and has accordingly executed guarantee deeds in favour of respondent-Bank. On 22-3-2001 (Annexure P-1) impugned Certificate of Recovery towards outstanding loan amount of Rs. 52,22,330 and interest under the M.P. Adhiniyam, read with M.P. Niyam was issued at the instance of respondent No. 1 calling upon the petitioner as also the respondent No. 3 to pay the said amount as arrears of land revenue by 30-3-2002 for their alleged failure to comply with the terms and conditions of the loan granted by the respondent No. 1. It is this demand which is impugned by the petitioner in this writ. So far as other writs are concerned, some of them are filed by the principal borrower and some by Guarantor. However, insofar as the issue of law is concerned, it is common in all these writs because in all these writs, impugned demand is raised u/s 3 of M.P. Adhiniyam, read with Rule 5 of M.P. Niyam. Notice of the writ was issued to respondents. They are served and represented.

Heard Shri G.M. Chafekar, senior counsel with Shri Vivek Phadke, Shri Amit Agrawal, Shri Asudani, Shri Ajay Bagadia, Shri S.R. Saraf, Shri Ramesh Saboo, Shri N.K. Dave, Shri Rakesh Saxena, Shri P.V. Bhagwat, Shri S.S. Garg, Shri Milind Phadke, Shri U.K. Choukse, Shri S.M. Dagaonkar, Shri Anand Pathak, Ku. Rekha Shrivastava, counsel for petitioner and Shri D.S. Kale, Shri S.S. Garg, Shri B.B.L. Agrawal, Shri P. Verma and Shri S. Mukati, Government Advocates, Shri R.S. Sanghi, Shri Milind Phadke, Shri Jindal, Shri Vinay Zelawat, Shri Namjoshi, Shri K. Kushwah, Shri K.C. Gupta, Shri K.N. Puntambekar, counsel for respondents.

Learned counsel for the petitioner's while assailing the legality and validity of the impugned demand in the first place contended that it is per se without jurisdiction. In the second place, it was contended that in view of Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act (for short hereinafter referred to as R.D.B. Act), the provisions of M.P. Adhiniyam could not have been put into operation for issuing the impugned R.R.C. (demand). In the third place, it was contended that the provisions of R.D.B. Act will alone prevail for recovery of alleged dues by virtue of Section 34 of the Act and hence, respondent Bank had no authority/jurisdiction to invoke the provisions of M.P. Adhiniyam for making recovery of the alleged dues by issuing the impugned demand. Learned counsel mainly relied on the law laid down by their lordships of Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, It

may also be mentioned that after the conclusion of the hearing of these writs on 9-12-2002, the Supreme Court rendered one decision on 20-12-2002 in the case of Unique Butyle Tube Industries (P.) Ltd. v. U.P. Financial Corporation [2003] (1) SC 333. It was accordingly brought to the notice of this Court contending that issue involved in this writ now stands fully answered and decided in favour of petitioner. In other words, the submission obviously was that issue now no longer remains *res Integra* and stands answered by the decision of Supreme Court in the case of Unique Butyle, *supra* in petitioner's favour. This in substance, was the submission of the learned counsel for the petitioner. In reply, learned counsel for the respondent while defending the impugned demand mainly relied on a decision rendered by the learned Single Judge (Justice Arun Mishra) in the case of M.L. Chaurasia Vs. Tehsildar, Balaghat and Others, (Annexure R-1) and contended that similar demand having been upheld in the case of M.L. Choris, the same be followed for dismissing this writ as also all other writs. This in substance was the submission.

Having heard the learned counsel for the parties and having perused the record of the case, I am inclined to allow the writ and quash the impugned demand.

In my considered opinion, the issue involved in the writ is squarely covered by the latest decision of Supreme Court, rendered in the case of Unique Butyle Tube Industries (P.) Ltd. (*supra*). It is, however, necessary to take note of facts involved in the case of Unique Butyle Tube Industries (P.) Ltd. (*supra*) and law laid down by their lordships. M/s. Unique Butyle Tube Industries Pvt. Ltd. had taken loan from U.P. Financial Corporation for running their Unit. Three Directors of this Company stood as guarantors to secure its repayment. The borrower i.e. M/s. Unique Butyle so too the guarantors i.e. 3 Directors of the Company failed to repay the loan as per terms and conditions of the loan agreement. It is for the recovery of this loan amount the U.P. Financial Corporation invoked the provisions of U.P. Public Monies (Recovery of Dues) Act, 1972 (for brevity hereinafter called U.P. Act, 1972) and got the certificate of Recovery (RRC) issued from the Court of Collector u/s 3 of the U.P. Act against M/s. Unique Butyle i.e. principal borrower. It is against issuance of this certificate (RRC) M/s. Unique Butyle filed a writ petition in Allahabad High Court under Articles 226 and 227 of the Constitution of India. The challenge was essentially on the ground that after the enactment of the R.D.B. Act, the proceedings under the U.P. Act, 1972 were not maintainable and hence, could not have been resorted to. This objection did not sustain before the High Court and accordingly, petition was dismissed thereby upholding the issuance of R.R.C. M/s. Unique Butyle i.e. borrower felt aggrieved by the said dismissal of their writ filed special leave to appeal before the Supreme Court of India being SLP No. (c) 10315 of 2001. Their Lordships granted leave to appeal and in Unique Butyle Tube Industries (P.) Ltd.'s case (*supra*) allowed the appeal, set aside the order of High Court. While allowing the writ filed by M/s. Unique Butyle, their Lordships quashed the certificate of recovery issued by the Collector at the instance of U.P. Financial Corporation. Their Lordships ruled after placing reliance on the earlier decision of

Supreme Court in Allahabad Bank's case (supra) that consequent upon the enactment of the RDB Act, the jurisdiction of the Tribunal in regard to adjudication of such dues is exclusive. It was held that only exception is as regards to those matters which are covered by Section 34(2) of R.D.B. Act and since U.P. Act is not specified in Sub-section (2) of Section 34 and, hence, it cannot be resorted to for making recovery by the Financial Institution from their borrower. This is what their Lordships held in paras 8 and 9:--

"Para 8 - Allahabad Bank's case (supra) did not specifically deal with Section 34(2) of the Act. However, certain observations made in the said judgment are of relevance.

We shall refer to Sections 17 and 18 in Chapter III of the RDB Act which deal with adjudication of the debt:

" 17. Jurisdiction, powers and authority of Tribunals.--(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

Bar of jurisdiction.--On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17".

It is clear from Section 17 of the Act that the Tribunal is to decide the applications of the banks and financial institutions for recovery of debts due to them. We have already referred to the definition of "debt" in Section 2(g) as amended by Ordinance 1 of 2000. It includes "claims" by banks and financial institutions and includes the liability incurred and also liability under a decree or otherwise. In this context Section 31 of the Act is also relevant. That section deals with transfer of pending suits or proceedings to the Tribunal. In our view, the word "proceedings" in Section 31 includes "execution proceedings" pending before a civil court before the commencement of the Act. The suits and proceedings so pending on the date of the Act stand transferred to the Tribunal and have to be disposed of "in the same manner" as applications u/s 19.

In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate u/s 19(22) formerly u/s 19(7) of the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in

Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate u/s 19(22). u/s 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Article 226 or 227 of the Constitution.

This is the effect of Sections 17 and 18 of the Act.

Para 9 - Section 34 of the Act consists of two parts. Sub-section (1) deals with the overriding effect of the Act 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 the Act. Subsection (1) itself makes an exception as regards matters covered by Subsection (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision i.e. Subsection (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes, one of which is the Financial Act. In other words, a Bank or Financial Institution has the option or choice to proceed either under the Act or under the modes of recovery permissible under the Financial Act. To that extent, the High Court's conclusions quoted above were correct. Where the High Court went wrong is by holding that proceedings under the U.P. Act were permissible. U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act."

Eventually in para 16 their Lordships allowed the appeal and quashed the impugned R.R.C. by holding as under:--

"Para 16 - The impugned order is set aside and the proceedings under the U.P. Act are quashed. It shall be, however, open to the Corporation to take such action under the Act or the Financial Act as is legally available to it. The appeal is allowed without any costs".

The aforequoted principle of law laid down by the Supreme Court in the case of *Unique Butyle*, supra, has full application to the facts of this case. When the object and provisions of U.P. Act 1972 are compared with that of the object and provisions of M.P. Adhiniyam, 1988 then they are found in part materia with each other. In fact, Section 3 of U.P. Act which fell for interpretation in aforesaid case before the Supreme Court is so identically worded with that of Section 3 of M.P. Adhiniyam that there is no room for any distinction between the two provisions. As a necessary corollary, if no demand could be raised u/s 3 of U.P. Act by any Banking Company, then no such demand could as well be raised u/s 3 of M.P. Adhiniyam by or at the instance of any Banking Company as defined u/s 2(b) of M.P. Adhiniyam. It is for the reason that Section 34(2) of R.D.B. Act does not specify M.P. Adhiniyam along with other Acts which are specifically mentioned in

Sub-section (2) of Section 34. In other words Section 34(2) of R.D.B. Act which is in the nature of saving of an action do not include within its fold the action taken under M.P. Adhiniyam and hence, any action taken under the M.P. Adhiniyam will not be saved. It will be thus, hit by Section 34(1) of R.D.B, Act which has overriding effect on all actions taken under any other Acts.

Submission of learned counsel for the respondent Bank was that when this Court (Single Bench) has already upheld the demand issued under the M.P. Adhiniyam after interpreting the provisions of R.D.B. Act in the case of M.L. Chorisa (*supra*), then in such event, the law laid down must be followed even by this Court is not acceptable for two reasons. Firstly, what is binding on this court is the law laid down by the Supreme Court under Article 141 of the Constitution of India. Secondly, if the law laid down by the High Court is in conflict with the law laid down by the Supreme Court and/or if, the view taken by the High Court is rendered without taking into consideration the law already laid down by the Supreme Court then, in such eventuality, the view taken by the High Court is held to be *Per incuriam*. It is not then a binding precedence. With respect, I may observe that the view taken by the learned Single Judge in the case of M.L. Chorisa (*supra*) cannot be held to be holding the field when the learned Single Judge proceeded to uphold the identical demand because it was rendered without taking into consideration the decision of Supreme Court rendered in the case of Allahabad Bank (*supra*) which had a material bearing over the controversy and in any event, the later decision of Supreme Court rendered in the case of Unique Butyle Tube Industries (P.) Ltd. (*supra*) on 20-12-2002 results in expressly overruling the view taken by the learned Single Judge in the case of M.L. Chorisa, Accordingly and in view of this well-settled principle of law of precedents, reliance placed by the learned counsel for the respondent in M.L. Chorisa's case is entirely misplaced.

Once, this court comes to a conclusion that the issue is covered by the decision of Supreme Court then no more discussion is called for or can be permitted. Indeed, no attempt was made or rather could be made by the respondent to distinguish the view of Supreme Court because of the obvious reasons that the U.P. Act and M.P. Adhiniyam are one and same except the difference being that U.P. Act has its operation confined to State of U.P. whereas, M.P. Adhiniyam is confined its operation in State of M.P. - they being State enactment and legislated by the respective States under the concurrent list. It is for this reason that this Court did not consider necessary to embark upon any more detail discussion with reference to various provisions of RDB Act qua M.P. Adhiniyam though urged at the hearing of petitions.

Accordingly and in view of aforesaid discussion, the petition succeeds and is allowed. Impugned demand/R.R.C. dated 22-3-2001 (Annexure P-1), issued by Upper Tehsildar-the respondent No. 2 u/s 3 of Adhiniyam read with Rule 5 of Niyam as also the proceedings registered by respondent No. 2 against the petitioner as also in the name of respondent No. 3 being case No. 223/

A/76/2001-2002 (Annexure P-2) under the Adhiniyam are quashed by writ of certiorari It shall be, however, open to Bank to take such action under the R.D.B. Act or any other Act as is legally available to it.

No costs.