
(2002) 12 AHC CK 0146

In the Allahabad High Court

Case No : C.M.W.P. No's. 43 of 1989 and 180 and 2062 of 2002

State Bank of India

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) 1 AWC 435 : (2003) 1 UPLBEC 328

Hon'ble Judges : Yatindra Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Navin Sinha, Vipin Sinha and K.L. Grover, for the Appellant; Rakesh Ranjan, S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J. 1. This writ petition and Writ Petition No. 2062 of 2002 as well as Writ Petition No. 43 of 1989 involve a similar question and hence, they are being disposed of by a common judgment.

2. We have heard Sri Vipin Sinha, learned counsel for the petitioner in the first two petitions and Sri K.L. Grover in the third, learned standing counsel for the State of U. P. and Sri Rakesh Ranjan Agarwal for respondent No. 4 in the first petition.

3. The facts of the case are that the respondent No. 4 is a company registered under the Indian Companies Act which had borrowed money from the petitioner State Bank of India as stated in paragraphs 5 to 11 of the writ petition. It is stated in paragraph 10 of the writ petition that the respondent No. 4 had also given a letter of undertaking to the petitioner not to create any charge over the properties and assets which have been mortgaged and hypothecated. True copy of the hypothecation agreement is Annexure-2 to the writ petition. True copies of the letter of undertaking and arrangement letters are Annexures-3 and 4 to the writ petition.

4. It is alleged in paragraphs 12 and 13 of the writ petition that the respondent

company committed default in repayment of the loan and hence the petitioner Bank filed a suit for recovery of Rs. 91,55,269.19 with interest at 21% and prayed that the hypothecated assets which are in possession of the company be ordered to be sold and the sale proceeds be applied towards the payment of debt. This suit has been registered as Suit No. 769 of 1996. Copy of the details of the mortgaged property are Annexure-5 to the writ petition.

5. It is alleged in paragraph 14 of the writ petition that the petitioner bank has first charge over the properties of the company which have been mortgaged and hypothecated. However, it appears that there were certain dues of respondent No. 4 owing to the Trade Tax Department and towards payment of these dues, the hypothecated and mortgaged properties of the company were attached by the tahsil authorities and 31.12.2001 was fixed for the auction but the auction was not held on that date and we are informed that it has not yet been held. It is alleged in paragraph 16 of the writ petition that the petitioner bank is a secured creditor and the respondent No. 4 company has to pay Rs. 3,92 crores to the Bank. It is further alleged in paragraph 17 of the writ petition that the petitioner bank being a secured creditor has priority over any other liabilities including the dues of the Trade Tax Department.

6. When the officials of the petitioner bank came to know that the State Government is proposing to auction the properties of the respondent No. 4 company, it filed a detailed objection on 29.12.2001, before the Assistant Commissioner, Trade Tax, Meerut. That objection has not yet been decided.

7. The short controversy in this case is as to whether the debts owed to the petitioner have priority over the debt owed to the State Government towards the trade tax dues.

8. A counter-affidavit has been filed by the Trade Tax Department and it is alleged in paragraph 10 that the State Government has the first charge over the property of respondent No. 4. It is admitted in paragraph 11 of the counter-affidavit that the auction has not yet been done.

9. In *Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others*, (vide paragraph 10), it has been observed by the Supreme Court :

"However, the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law of England or the principles of equity and good conscience (as applicable to India) do not accord the Crown a preferential right for recovery of its debts over mortgaged or pledged goods or a secured creditor. It is only in cases where the Crown's right and that of the subject meet at one and the same time that the Crown is in general preferred. Where the right of the subject is complete and perfect before that of the King commences, the rule does not apply, for there is no point of time at which the two rights are at conflict, nor can there be a question which of the two ought to prevail in a case where one, that of the subject, has prevailed already. In *Giles v. Grover* (1832) 131 ER 563 , it has been

held that the Crown has no precedence over a pledgee of goods. In *The Bank of Bihar Vs. The State of Bihar and Others*, , the principle has been recognized by this Court holding that the rights of the pawnee, who has parted with money in favour of the pawnor on the security of the goods cannot be extinguished even by lawful seizure of goods by making money available to other creditors of the pawnor without the claim of the pawnee being first fully satisfied. Rashbehary Ghose states in *Law of Mortgage* (T.L.L. 7th Edn., p. 386)--"It seems a Government debt in India is not entitled to precedence over a prior secured debt."

10. A perusal of the above observation of the Supreme Court shows that the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. It will not override the right of a secured creditor unless there is a statute to the contrary.

11. In *State of Madhya Pradesh v. State Bank of Indore* 2002 STC 1, it appears that there was a retrospective amendment in the M. P. General Sales Tax Act by which the tax dues of the sales tax department were to be treated to be first charge over the property. In the present case, we have not been shown any statutory provision, which overrides the rights of the secured creditor. Hence reading both these decisions, namely, *Dena Bank's case* (supra) and *State of M. P.'s case* (supra), the legal position emerges that the secured creditors right to recover dues overrides the right of the State unless there is a statute to the contrary.

12. In *State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and Others*, there was a statutory provision to the effect that the sales tax dues will be first charge over the property. Hence this decision will not be of any avail to the State Government. In the present case, there is no statutory provision giving priority to State Government dues over the debts owed to the State Bank which is a secured creditor.

13. The averment in paragraphs 16 and 17 of the writ petition that the State Bank is a secured creditor has not been denied in paragraphs 13 and 14 of the counter-affidavit.

14. In view of this, we are of the opinion that the State Bank of India has first charge over the property in question being a secured creditor and its right to recover its dues overrides that of the State Government.

15. For the reasons given above, the writ petition is allowed. The impugned recovery certificate and citation and consequential proceedings are quashed. The petitioner will be entitled to auction sell the property of respondent No. 4 and if after the auction sale and meeting the debts of the petitioner some property of the respondent No. 4 still remains then of-course the State Government can proceed against this property for recovery of its dues.