

(2015) 03 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition C. No. 3801 of 2013

Tata Yodogawa Limited

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 11, 17, 4, 5
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226

Citation : (2015) 3 AJR 190

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : M.L. Verma and M.S. Mittal, Senior Advocates, for the Appellant; Ajit Kumar, Advocates for the Respondent

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. M.L. Verma, learned senior counsel for the petitioner and Mr. Ajit Kumar, learned counsel for Respondent Nos. 1 to 4 on I.A. No. 651 of 2015 and I.A. No. 1353 of 2015, which are being disposed of by separate orders.

I.A. No. 650 of 2015

2. In this interlocutory application, the petitioner has prayed for amendment in para 1B of the main writ application and consequently to add paras 30a, 30b and 30c after paragraph 30.

3. Para B as made in the main writ application is quoted hereunder:-

"For issuance of an appropriate writ(s), order(s) or Direction(s) or writ for a declaration that 1999 Induction Furnace Tariff is applicable from 06.04.2000 from the date on which it was published in the Gazette and continued till 31st March, 2002 in as much as in terms of letter dated 07.05.2001, the validity of said tariff was only up till 31.03.2002 and consequently from 01.04.2002 up till 31.12.2003, the erstwhile 1999 Tariff of the Bihar State Electricity Board would

be applicable". 4. It has been submitted by the learned senior counsel for the petitioner that Para B, as sought to be deleted and replaced by paragraph 1B, reads as follows:-

"For issuance of an appropriate writ (s), order(s) or Direction (s) or writ for a declaration that 1999 Induction Furnace Tariff is applicable from 06.04.2000 from the date on which it was published in the Gazette and continued till 6th May 2001 in as much as in terms of letter dated 07.05.2001, the said tariff was extended by the Bihar State Electricity Board only to areas falling within the territorial jurisdiction of the State of Bihar and not the areas falling within the State of Jharkhand since the said extension of the tariff was never adopted by the Jharkhand State Electricity Board nor it was published in the official gazette of the State of Jharkhand and consequently from 07.05.2001 up till 31.12.2003 the erstwhile 1999 Tariff of the Bihar State Electricity Board would be applicable. 5. Learned senior counsel for the petitioner submits that while praying for amendment, as noted above, the petitioner is not taking any inconsistent plea rather a consistent plea has been made by the petitioner to the effect that in the original prayer B of the writ application, the same was with respect to the prayer that 1999 Induction Furnace Tariff is applicable from 6.4.2000 which is from the date on which it was published in the Gazette and continued till 31st March 2002 inasmuch as in terms of letter dated 7.5.2001, the validity of the said tariff was only up till 31.03.2002, whereas in the amendment, which has been sought to be made by the petitioner, the applicability of 1999 Induction Furnace Tariff was from 6.4.2000 till 6th May, 2001 as in terms of letter dated 7.5.2001, the said Tariff was extended by the Bihar State Electricity Board only to areas falling within the territorial jurisdiction of the State of Bihar and not the areas falling within the State of Jharkhand.

6. It has been submitted by the learned senior counsel for the petitioner that the amendment is basically with respect to applicability of 1999 Induction Furnace Tariff, as initially it was mentioned in prayer B of the main writ application the same has to be continued till 31st March 2002, whereas in the amendment sought for the same was to be continued till 6th May, 2001. Learned senior counsel for the petitioner submits that if the amendment, as sought for, is allowed, neither the nature of the case will change nor will there be any prejudice, which could be caused to the respondents. It has further been submitted that mere saying that prejudice has been caused will not suffice rather the respondents have to bring it on record or substantiate the said claim to show as to how prejudice will be caused if in case the amendment is allowed.

7. Learned counsel for the Respondents-Board-Mr. Ajit Kumar, has categorically stated that no reply is required on behalf of the respondents to the present interlocutory application and he will be arguing the case based on the point of law as also the factual aspects emanating from the pleadings made by the petitioner. Learned counsel for Respondent Nos. 1 to 4 has submitted that the petitioner by seeking amendment to the prayer made in the writ application is

trying to stall the proceedings with respect to realization of the dues from I.T. It has been submitted that the issue, which the petitioner is raising in the midst of the writ application was always available to the petitioner for the last 13 years but the petitioner never raised the plea and only with a view to delay the issue further, the present interlocutory application has been filed with a prayer for making an amendment in para B of the writ application, which according to the learned counsel for respondent Nos. 1 to 4, is absolutely on frivolous and flimsy grounds. It has also been submitted that the matter has already been decided in the earlier writ application and reviving an issue, which has already been decided, is hit by the principle of constructive res judicata and in such circumstances, the present interlocutory application is liable to be dismissed. It has also been submitted by the learned counsel for the respondents while referring to the order dated 2.5.2013, passed in CWJC No. 852 of 2000 (R) that the petitioner's unit was categorized as HTS-II category of consumer and the tariff schedule, which was notified by the erstwhile Bihar State Electricity Board on 15th March, 2000 was made specifically applicable to Induction Furnaces of the consumer of the Board. Learned counsel for respondent Nos. 1 to 4 further refers to paragraph 15 of the order passed in CWJC No. 852 of 2000 (R) as also to various other paragraphs of the said order most notably paragraphs 26, 27, 28, 33, 34, 35, 36 and 37 so as to suggest that the amendment which has been sought for by the petitioner was already the subject matter of CWJC No. 852 of 2000 (R) and in such circumstances the petitioner cannot be allowed to agitate the same subject matter over and over again. He, therefore, submits that since the issue has already been decided, the prayer of the petitioner is misconceived. Learned counsel for respondent Nos. 1 to 4 further submits that the entire action of the petitioner is mala fide in view of the fact that the petitioner is now no more a consumer of respondent No. 1 and, therefore, on one pretext or the other, the petitioner is trying to stall the proceedings with respect to payment of the dues to the Respondent-Board. He also submits that even if assuming that the prayer, which has been made by the petitioner has not been raised earlier, it can seriously be assumed that the same has deliberately not been raised only to defeat the action of the respondent No. 1 in recovery of electricity dues, which is with the petitioner for a considerable length of time.

8. Controverting the arguments of learned counsel for the respondent Nos. 1 to 4, learned senior counsel for the petitioner has submitted that the question of retrospectivity with respect to the date on which the said tariff is applicable was never an issue in CWJC No. 852 of 2000 (R) and the amendment, which has been sought for by the petitioner has never been debated before and as such it is submitted that constructive res judicata will not apply in such circumstances. It has also been submitted by the learned senior counsel for the petitioner that the order passed in CWJC No. 852 of 2000 (R) clearly gives a direction to the respondent-Board to raise electricity bills against the petitioner for the remaining period on the basis of the instant tariff in question till they are replaced by any subsequent tariff as notified by the Jharkhand State Electricity Regulatory

Commission and in such circumstances, it was submitted that the amendment, which has been sought for with respect to applicability of 1999 Induction Furnace Tariff till 6th May, 2001 was never an issue before the learned court.

9. After hearing the learned counsel for the parties and on going through the instant interlocutory application, it appears that the amendment, which has been sought for by the petitioner, is with respect to applicability of 1999 Induction Furnace Tariff inasmuch as in the main writ application, the said tariff was said to be applicable from 6.4.2000 and was valid up till 31.03.2002 and consequently from 1.4.2002 till 31.12.2003, erstwhile 1993 tariff of the Bihar State Electricity Board would apply whereas the amendment sought for is with respect to applicability of 1999 Induction Furnace Tariff from 6.4.2000 till 6th May, 2001 and consequently from 7.5.2001 till 31.12.2003, the erstwhile tariff of the Bihar State Electricity Board would be applicable. Since the issue at hand is intertwined and interlinked with the prayers and averments made in the main writ application and the arguments which have been advanced by learned counsel for the respective parties has tended to veer towards the contentious issues in the writ application, this Court has to make a careful scrutiny of the facts with respect to the amendment sought for by refraining from making any observation with respect to the main writ application.

10. Learned senior counsel for the petitioner in course of his argument has referred to the case of Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, , wherein it was held as follows:-

"15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

20. We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon"ble Judges of the Division Bench and as to whether the application does not

appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust. It was alleged that Respondent 1 is not only in exclusive possession of 57,942 shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and have the proceeds invested in government bonds and/or securities. A reading of the entire plaint and the prayer made thereunder and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made out in the plaint. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. There is a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this Court and the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The amendments sought for by the appellants have become necessary in view of the facts that the appellants being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are sold and then invested in government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that Respondent 1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favour of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of Respondent 1 that the appellants have been constrained to seek relief against the same."

11. In the case of *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*, , it was held as follows:-

57. In *Suraj Prakash Bhasin v. Raj Rani Bhasin* this Court held that: (SCC p. 653)

".... liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment."

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should

govern the courts" discretion in grant or refusal of the amendment.

No prejudice or injustice to other party

59. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

12. The Hon'ble Supreme Court in the case of Revajetu Builders and Developers (supra) indicated that application for amendment is a very serious judicial exercise and the Courts must not refuse bona fide honest, legitimate and necessary amendment.

13. Learned counsel for the respondent Nos. 1 to 4 has referred to the case of Tata Yodogawa Limited Vs. Jharkhand State Electricity and Ors. reported in 2013 (3) JBCJ 561 (HC), which was for review of the order passed in CWJC No. 852 of

2000 R. Learned counsel for respondent Nos. 1 to 4 has referred to paragraphs 5 and 6 of the said order to substantiate the argument that the amendment which is being sought to be brought on record by the petitioner was already considered and therefore the fact does not necessitate allowing of the amendment application of the petitioner. Learned senior counsel for the petitioner at this stage has also referred to paragraph 17 of the said order and has submitted that the amendment, which has been sought for by the petitioner has a direct bearing on the subsequent bills, which have been raised by respondent Nos. 1 to 4 and in such circumstances there being a fresh cause of action, the same requires to be inserted in the main writ application to arrive at a just and correct conclusion.

14. As indicated above, the amendment, which has been sought for by the petitioner, is basically with respect to applicability of 1999 Induction Furnace Tariff, which according to the petitioner, continued till 6th of May, 2001. The amendment, which has been sought for by the petitioner, does not seem to change the nature of the case and that the same is imperative and necessary for a proper and effective adjudication of the case. Although, the learned counsel for the respondent Nos. 1 to 4 has vehemently sought to project that the amendment as sought for is barred by constructive res judicata but on perusal of the order passed in CWJC No. 852 of 2000 (R) and the subsequent order passed in review, reported in 2013 (3) JBCJ 561 (HC), the same does not indicate that the issue at hand had already been considered by this Court earlier. The amendment, which has been sought for, is with respect to rectified bills, which have been raised by the respondent No. 1 and which are under challenge in the original writ application and in such circumstances in order to sub serve the interest of justice, it would be necessary that the amendment application be allowed so that proper adjudication be made to the issue at hand.

15. Accordingly, as a consequence of the discussions made hereinabove, this application for amendment is allowed. The petitioner is directed to file an amended writ application within a period of 10 days from today.

16. I.A. No. 650 of 2015 is allowed and disposed of.

I.A. No. 1353 of 2015

17. This interlocutory application has been filed by the petitioner for amendment in the main writ application in view of the subsequent developments, which have taken place during the pendency of the writ application and the amendment, which has been sought for is being reproduced hereunder:-

"32A That the following prayer may be added in para 1 and prayer of the writ petition as para 1(g) and prayer (g):-

"g. For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the letter No. 07, dated 19.02.2015, which is a Notice under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 issued by the Certificate Officer (Electrical and Revenue), ID, Karandih, Jamshedpur, Saraikella-

Kharsawan, whereby and whereunder the petitioner was informed that a Certificate for Rs. 2,63,60,97,051/- due from the petitioner on account of energy charges and other allied dues has been filed in the office of the Certificate Officer under Sections 4, 5 and 6 of the Bihar and Orissa Public Demand Recovery Act, 1914 and by the said Notice, the petitioner has been restraint from alienating immovable properties or any part thereof and also if the petitioner removes or dispossess any part of immovable properties, the Certificate would be executed immediately".

18. Accordingly, in view of the prayer, which has been sought to be amended by insertion of para 1(g), it has been prayed that after paragraph 63, sub paragraphs 63(a) to 63(t), as mentioned in paragraph 32 of the instant application be added.

19. In the main writ application, the petitioner apart from the other prayers has also prayed for quashing of the bill dated 10.06.2013, which was raised for an amount of Rs. 2,72,030,25445.70. It has been stated in the writ application that the petitioner's factory was set up in the year 1970 and had a contract demand of 12,500/- KVA and on 1.4.1979, the petitioner had reduced its contract demand to 10,500 KVA and entered into a fresh agreement with the Bihar State Electricity Board. The Bihar State Electricity Board issued various tariff notifications from time to time and in the year 1993, a tariff notification was issued for all category of consumers, which was made effective from 1.7.1993. After coming into force of 1993 tariff, the consumers under various categories started being governed by the 1993 tariff and they were being charged according to the terms and conditions therein. The petitioner was also making payment of electricity bills raised on the basis of 1993 tariff and subsequently the Bihar State Electricity Board vide letter dated 24.09.1999 introduced a new tariff schedule for HT consumers having induction furnace. The bills having been raised on the basis of 1999 Induction Tariff for the period January-February 2000, the same was challenged by the petitioner as well as the applicability of tariff in CWJC No. 852 of 2000 R, which was decided against the petitioner vide judgment dated 2.5.2013. Pursuant to the judgment dated 2.5.2013, passed in CWJC No. 852 of 2000 R, rectified bills were issued by the Electrical Superintending Engineer vide letter No. 1583 dated 10.06.2013 for an amount of Rs. 2,72,03,25,445.72. On receipt of aforementioned rectified bills, the petitioner preferred the present writ application. During pendency of the writ application, a notice was served upon the petitioner under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914. (The Act for short) vide letter No. 07 dated 19.02.2015, in which the petitioner was asked to make payment of Rs. 2,63,60,97.051 on account of energy dues and other allied dues. On initiation of the certificate proceeding and after issuance of notice under section 7 of the Act, the petitioner has filed the instant application seeking amendment in order to challenge the letter No. 07 dated 19.02.2015 issued by the Certificate Officer (Electrical and Revenue) I.D. Karandih, Jamshedpur, Saraikella, Kharsawan.

20. Shri M.L. Verma, learned senior counsel for the petitioner, submits that vide letter dated 5th May, 2014, addressed by the petitioner to the G.M. cum Chief Engineer (Singhbhum), Jamshedpur Electrical Area Board, JSEB, Jamshedpur, it had been brought to the notice of the concerned authority enclosing the statements in support of the claim of the petitioner and thereby making a request to process the claim and immediately refund the excess amount of Rs. 2,09,922.205/- to the petitioner. It has been submitted that instead of taking appropriate measures on the representation of the petitioner, a letter was issued by the Electrical Executive Engineer (C and R), Jamshedpur dated 15.12.2014, wherein a notice had been served upon the petitioner for payment of Rs. 2,65,82,94490.00 within 15 days, failing which a certificate proceeding shall be initiated. The petitioner immediately thereafter advanced a representation dated 30.12.2014 requesting the author of the notice dated 15.12.2014 to withdraw the said notice and in the event the order of the Hon"ble Supreme Court is not complied with, steps may be taken for initiation of a contempt proceeding. Learned senior counsel for the petitioner, therefore, submits that representation filed by the petitioner bringing to the notice of the concerned authority the actual facts had fallen on deaf ears and it would be well nigh impossible for the petitioner to get justice at the hands of the respondents. It has also been submitted that considering the aforesaid scenario, no purpose will be served in appearing before the certificate proceeding and that the petitioner apprehends that even if any objection is filed to the notice under Section 7 of the Act, the same shall be rejected, which would entail the petitioner to prefer an appeal, to which 40% of the amount has to be deposited as a precondition. It has also been submitted by the learned senior counsel for the petitioner that it has been held in a catena of decisions that alternative remedy is not a bar in allowing the amendment application. In this context, he has referred to the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., as well as in the case of Dhampur Sugar Mills Ltd. Vs. State of U.P. and Others, and in the case of Ram and Shyam Company Vs. State of Haryana and Others, .

21. Reference has also been made in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, .

22. It has further been submitted that the issue of initiation of the certificate proceeding and the challenge made in the main writ application to the rectified bills by the respondent is interlinked and intertwined and since the certificate proceeding is a consequence of the rectified bills raised, the amendment, which has been sought for by the petitioner for making a challenge to the certificate proceedings itself has a direct bearing on the outcome of the writ application and the same being an efficacious remedy available under the law, the petitioner cannot be allowed to take recourse to an alternative remedy by filing an objection before the certificate court. It has also been submitted that the petitioner undertakes to adhere to the provisions of Sections 8 and 9 of the Act and in such circumstances on allowing the amendment application the further proceedings of certificate case be stayed.

23. Learned counsel for the respondent Nos. 1 to 4 Mr. Ajit Kumar, has submitted that Bihar and Orissa Public Demand Recovery Act is a complete code in itself and the procedural aspects have been laid down in Sections 7, 8, 9, 10 and 11 of the said Act. It has, therefore, been submitted that since the Act itself guides the recovery of public demand and the petitioner has a remedy of filing an objection denying liability to make payment, the best course available to the petitioner in the circumstances is to take recourse by appearing in the certificate proceedings. Merely because issuance of notice under Section 7 of the Act is consequent to raising of rectified bills by the Board in terms of the order passed in CWJC No. 852 of 2000 R, the same cannot permit the petitioner to challenge the certificate proceedings itself before this Court. Learned counsel for the respondent Nos. 1 to 4 on the question of alternative remedy available to the petitioner has referred to the case of United Bank of India Vs. Satyawati Tondon and Others, , Cicily Kallarackal Vs. Vehicle Factory, , C.C.T. Orissa and Others Vs. Indian Explosives Ltd., , State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others, , The Tata Iron and Steel Company Ltd. Vs. State of Bihar and Others, and Anwar Ali Vs. State of Bihar and Others, .

24. Replying to the contentions of learned counsel for respondent Nos. 1 to 4, learned senior counsel for the petitioner submitted that Section 60(1) of the Act relates to an appeal and it has been envisaged therein that no appeal against an order passed under Section 10 of the Act shall be entertained unless the appellate authority is satisfied that the appellant has paid 40% of the amount determined under that section or such amount as the appellant admits to be due from him whichever is greater. Learned senior counsel for the petitioner, thus, submits that the petitioner itself is entitled for a refund and if the certificate case is decided against the petitioner preferring an appeal would burden the petitioner with a huge amount and in such circumstances the certificate proceedings be allowed to be challenged by making necessary amendments as sought for by the petitioner. Learned senior counsel for the petitioner has also suggested that Jharkhand State Regulatory Commission be directed to decide the issue of rectified bills as the petitioner at the cost of repetition submits that he does not apprehend fairness on the part of the respondent Board.

25. After hearing learned counsel for the parties in the instant interlocutory application, it is an admitted fact that vide letter No. 07 dated 19.02.2015, the petitioner was issued a notice for payment of Rs. 2,63,6097,051.00 towards the energy dues and other allied dues. The main writ application has been preferred by the petitioner for quashing the bill dated 10.06.2013 raised for a sum of Rs. 2,72,03,25,445.72, which was raised as a rectified bill in terms of the order passed by this Court on 2.5.2013 in CWJC No. 852 of 2000 (R). Much arguments have been advanced by the learned counsel for the parties in respect to the main writ application but the present amendment application has to be considered in the touchstone of the main writ application. It has been consistently argued by the learned senior counsel for the petitioner that since the issue in the main writ application and initiation of the certificate proceeding is interlinked, intertwined

and intermingled, therefore, in such circumstances, the endeavour would be to arrive at a just and correct decision and it would be in the interest of justice that the amendment as sought for be allowed. The question would then arise as to whether during pendency of the writ application since a certificate proceeding has been sought to be initiated, the same can be brought within the fold of the main writ application and whether this Court can usurp the jurisdiction vested on the certificate officer under the Act. Learned senior counsel for the petitioner has in course of his argument relied on various judicial pronouncements, reference of which are being made herein below:-

In the case of Dhampur Sugar Mills Ltd. (supra), it was held as follows:-

"23 As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be termed as "alternative", or "equally efficacious". Once a policy decision has been taken by the Government, filing of appeal is virtually from "Caesar to Caesar's wife", an "empty formality" or "futile attempt". The High Court was, therefore, right in overruling the preliminary objection raised by the respondents".

26. In the case of Mardia Chemicals Ltd. and ors (supra), it was held as follows:-

"804. In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down". 27. In the case of Ram and Shyam Company (supra), it was held as follows:-

"9....An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clitch of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court". 28. In the case of A.V. Venkateswaran, Collector of Customs, Bombay, Appellant (supra), it was held

that two exceptions of the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court.

29. The common thread which runs through the first three judgements referred to by learned senior counsel for the petitioner are with respect to preferring an appeal, which as per the petitioner is an oppressive, onerous, arbitrary and uphill condition and in the context of the said judgments, much stress has been made that the petitioner will be faced with such situation wherein 40% of the amount has to be deposited as a pre-condition to the appeal.

30. Learned counsel for the Respondent-Board, on the other hand, has referred to various judgements, which are noted herein below:-

In the case of United Bank of India (supra), wherein it was held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies

under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection".

31. In the case of *Cicily Kallarackal* (supra), it was held that once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India.

32. In the case of *CCT, Orissa and Ors.* (supra), it was held that the High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for Assessment Year 1997-1998 and Assessment Year 1998-1999 in respect of *ICI India Ltd.* In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside.

33. In the case of *Bindesh Kumar Singh* (supra) while considering the scope and ambit of the Public Demands Recovery Act, it was held as follows:-

"14. Sec. 9 of the Public Demands Recovery Act enables the certificate-debtor to file objection within the stipulated period denying his liability in whole or in part. Sec. 10 provides that the certificate officer in whose office the certificate is filed, shall hear the petition, take evidence (if necessary) and determine whether the Certificate Officer is liable for the whole or any part of the amount for which the certificate was signed and may set aside, modify or vary the certificate accordingly. A certificate proceeding is, no doubt, not as full-fledged as a suit. However, having regard to the provisions of Secs. 9 and 10 there cannot be any doubt that the Certificate Officer is fully empowered to go behind the certificate and after determining the liability of the certificate-debtor, to set aside, modify or vary the certificate. In that sense the position of the Certificate Officer is different from the executing court under the Civil Procedure Code, while the executing court cannot go behind the decree and it has to execute it as it is, the Certificate Officer is entitled to go behind it, even set aside modify or vary I.T. The proceeding before the certificate proceeding must, therefore, be held to be composite in nature. If it is open to him to determine the liability and allow the claim of the certificate-debtor either in whole or part it follows that it is also competent to ascertain and determine the actual liability of the certificate-debtor and in case of more than one certificate-debtor, to apportion the liability amongst them. I, therefore, do not find any substance in the argument that the certificate proceeding cannot be initiated in respect of an unascertained sum and that no proceeding having been taken under Chapter V of the Co-operative Act the

impugned proceeding is bad. From perusal of Sec. 52 it is obvious that it is open to the society to take recourse to the proceeding under Chapter V, and thereafter, to levy certificate proceeding or to straightaway send requisition for instituting the certificate proceeding. They are alternative in nature and not exclusive to each other". in the case of Anwar Ali (supra), it was held that although there is some limitation of the Certificate Officer to decide all points but still when liability has been denied then if objection has been filed in proper form as per section 9 of the P.D.R. Act then the Certificate Officer can decide it after doing a proper investigation of the matter by giving opportunity to adduce evidence by both the parties and on production of proper documents.

34. The crux of the argument of learned counsel for the Respondent-Board is, therefore, that when an alternative remedy is already available to the petitioner, the proper recourse or remedy available to the petitioner would be to take steps in the certificate proceedings itself. As has been held in the case of Bindesh Kumar Singh (supra), the proceeding before the Certificate Officer is composite in nature. The Bihar and Orissa Public Demands Recovery Act is a complete code in itself, which empowers the Certificate Officer to go behind the certificate and on determining the liability of the certificate debtor to set aside, modify or vary the certificate. The petitioner has already an efficacious alternative remedy before the Certificate Officer and mere apprehension of the petitioner that proper adjudication will not be done by the Certificate Officer is a mere apprehension and only on the basis of such apprehension or a future cause of action, the petitioner cannot be permitted to redress its grievance in the present writ application itself bypassing the alternative remedy available to it under law. The discretion in considering the amendment application has to be exercised judiciously and when there already exists a forum, before whom, the petitioner can redress its grievances and the said forum having been bestowed with the power to go beyond the certificate and vary, alter or modify the certificate and without exhausting the alternative remedy available to the petitioner, the petitioner cannot be permitted to challenge the initiation of the certificate proceedings itself in the present writ application. This Court, as has been indicated above, is not empowered to usurp the jurisdiction of the certificate officer. The forum, which has been created by the statute can best be availed by the petitioner by filing objection before it taking all the grounds available to it before the Certificate Officer and in such circumstances when there is an alternative remedy available to the petitioner under law, the instant amendment application being I.A. No. 1353 of 2015 fails and the said amendment application is, accordingly, rejected.

35. Consequently, the prayer for stay of operation and implementation of Certificate Case No. 38 of 2015 as also the letter dated 19.02.2015 for stay is also rejected.

36. In the circumstances, I.A. No. 650 of 2015 succeeds, whereas I.A. No. 1353 of 2015 is hereby rejected.

37. The petitioner, as has been indicated in the order passed in I.A. No. 650 of 2015, is directed to file the amended writ application within a period of ten days from today.

W.P.C. No. 3801 of 2013

38. List this case under the heading "For Admission" on 22.04.2015.