

(2011) 01 AHC CK 0138

Allahabad High Court

Case No: None

Dullu Textiles and Another

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision: Jan. 21, 2011**Acts Referred:**

- Banks and Financial Institutions Act, 1993 - Section 34
- Debts Recovery Tribunal Act, 1993 - Section 31

Hon'ble Judges: Shyam Shankar Tiwari, J; Ashok Bhushan, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

1. Heard learned Counsel for the Petitioner, learned Standing Court and Sri Nipendra Mishra, learned Counsel appearing for the Respondent No. 3.

2. By this writ petition the Petitioner has prayed for quashing the impugned recovery certificate dated 8.12.2010 issued by the U.P. Financial Corporation to the Collector for recovery of dues against the Petitioner's firm under the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972.

3. Learned Counsel for the Petitioner contends that after the enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the U.P. Financial Corporation could not have invoked 1972 Act since Section 34 of 1993 Act gives overriding effect to the provisions of 1993 Act. He has placed reliance on the Full Bench judgment of this Court reported in 2005 (60) ALR 455 Suresh Chandra Gupta and Anr. v. Collector, Kanpur Nagar and others and the judgment of the Apex Court reported in AIR 2003 SC 2103

4. In response to the aforesaid submission, Sri Nipendra Mishra, learned Counsel for the Respondent relied upon the judgment of the Apex Court in the case of Pawan K Umar Jain v. Pradeshia Industrial and Investment Corporation of U.P. Ltd. reported

in 2004 (57) ALR 190. In Pawan Kumar Jain's case the recovery under 1972 Act was issued prior to 24.1.2004 on which date the pick up was notified under 1993 Act.

5. Learned Counsel for the Petitioner has submitted that in the present case the U.P. Financial Corporation has been notified under 1993 Act in the year 1995, hence, the recovery certificate cannot be issued.

6. Paragraph 4 of the judgment of the Pawan Kumar Jain's case clearly makes it clear that the said judgment has not application in the present case. Para 4 of the judgment is quoted below.

"(4) THIS authority would have been binding upon us. However, in reply Mr. Bhalla pointed out that in respect of the 1st Respondent-Institution the notification by the Central government has only been issued on 24.1.2004, whereas the recovery certificate is of a much earlier date. He submitted that, therefore, in this case the proceedings under the U.P. Act are not barred. He pointed out that u/s 31 of the Debt Recovery Act, it is only suit or proceeding pending before any court, which stand transferred to the tribunal established under that Act. In our view, Mr. Bhalla is right. As the action was initiated prior to the notification being issued by the Central government, the action would not be barred and would not stand transferred to the tribunal. "

7. In view of the aforesaid, we are of the view that the Petitioner has made out prima facie case for grant of interim relief.

8. Three weeks time is allowed to the learned Counsel for the Respondents to file counter affidavit.

9. List thereafter showing the name of Sri Nipendra Mishra be shown as counsel for the Respondent.

10. Till then recovery proceedings in pursuance of recovery certificate shall remain stayed. However, it shall be open for the U.P.

11. Financial Corporation to take appropriate steps in accordance with 1993 Act.