Purshottam Sutwala Vs Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Others

Court: Allahabad High Court

Date of Decision: Oct. 1, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Contract Act, 1872 â€" Section 62
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 â€" Section 2, 34
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 22
State Financial Corporations Act, 1951 â€" Section 32G
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 â€" Section 3

Citation: (2004) 55 SCL 584 : (2004) 2 UPLBEC 1828

Hon'ble Judges: V.N. Singh, J; A.K. Yog, J

Bench: Division Bench

Advocate: Ravi Kant and Ashok Kumar, for the Appellant; Vivek Saran and S.C., for the Respondent

Final Decision: Dismissed

Judgement

A.K. Yog and V.N. Singh, JJ.
Heard Counsels appearing on behalf of the petitioner, on behalf of respondent No. 1 and the Standing

Counsel on behalf of respondent Nos. 2 and 3.

2. This petition, under Article 226, Constitution of India, has been filed by one Purshottam Sutwala who seeks to impugn recovery certificate dated

July 23, 2003/Annexure-4 to the writ petition.

3. It is not disputed that petitioner is the guarantor in respect of certain loans taken by the company, M/s. Meekan Transmission incorporated

under Indian Companies Act, 1956 for manufacturing automatic gears in the factory situate at 19 kms stone, G.T. Road, Bhawanipur, Mandhana,

Kanpur Nagar. Petitioner is also the Managing Director of the Company (writ para 3).

4. In para 4 of the writ petition it is stated that the petitioner, Purshottam Sutwala, was sanctioned loan as per terms and conditions contained in the

bond/Annexure-1 to the writ petition and (according to the conditions of the Loan Agreement bond) Pradeshiya Industrial and Investment

Corporation of U.P., called the PICUP, to quote from writ para 8 ""was obliged to first realise the amount in case of default of repayment of dues

by putting assets of the company (under mortgage to sale) and personal guarantee was to enforce additional guarantee for recovery of the money if

company fails to repay it"".

5. It is to be noted that petition has been filed by Purshottam Sutwala in his personal name and not on behalf of the company. It is apparent on

reading the writ petition that the two personalities and their separate status have been inter-mixed or in other words, intermingled on several places.

6. Petitioner does not dispute that company defaulted in making payment of loan to the financial institutions, including PICUP; way back in the year

1991 itself PICUP made reference to the ''Board of Industrial and Financial Reconstruction'', for short called ""BIFR"" as contemplated under Sick

Industrial Companies (Special Provisions) Act, 1985, called ""SICA"" and BIFR, vide order dated June 2, 1992 declared the company ''sick'';

appointed Industrial Development Bank of India (IDBI) for formulating rehabilitation scheme and a rehabilitation scheme was finally approved by

BIFR"" on 29.3.1993/Annexure-II (writ para 13).

7. It is admitted to the petitioner in para 15 of the writ petition that he did not furnish guarantee as required under the rehabilitation scheme,

approved by ''BIFR''; strong exception was taken and BIFR, to quote from the petition ""..........accordingly pulled up the petitioner for such non-

providing of the guarantee also threatened to put off execution of the rehabilitation of the scheme.....".

8. Petitioner further admits, vide para 16 of the writ petition, ""That ultimately the BIFR did not see eye to eye with the stand of the petitioner

accordingly, by order dated 20.2.1996 the BIFR came to the conclusion that sanctioned scheme had fallen. It (IDBI) accordingly ordered that

advertisement for the change in Management be published"".

9. Further, in paras 17 and 18 of the writ petition it is pleaded that later a second rehabilitation package was approved by BIFR on July 10, 1997

but that also failed and that efforts at the behest of ''BIFR"" with the tacit participation and at the behest of the petitioner and his company did not

succeed in spite of its orders of revival/purchase of the unit.

10. Admitted facts in the petition show that BIFR, at the instance of the company and active consent of the petitioner endeavoured to provide

oxygen and all possible support to revive it but failed because the petitioner himself backed out and never acted upon it.

11. Whatever be the position, from the pleadings of the petitioner himself it is clear that scheme approved by the BIFR was never accepted and/or

acted upon and hence the petitioner or the company cannot take advantage whatsoever of the revival scheme being formulated by the BIFR or

plead that new agreement/contract ever came into existence.

12. Learned Counsel for the petitioner has made following four submissions :--

(i) That none of the respondents are competent to realise loan dues as land revenue by issuing impugned recovery certificate under the Uttar

Pradesh Public Moneys (Recovery of Dues), Act, 1972.

13. Learned Counsel for the PICUP, on the other hand, referred to Section 2(h) of Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 (Act No. 51 of 1993), deemed to have come into force on the June 24, 1993 which reads :--

financial institution"" means--

(i) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 (1 of 1956);

(ii) such other institution as the Central Government may, having regard to its business "activity and the area of its operation in India, by notification,

specify.

14. Section 4A of Companies Act, while specifying various financial institutions does not include PICUP.

15. Counsel for the petitioner has not been able to show anything otherwise and had to concede to the above submission of the respondent No. 1

and finally this point was not agitated and rather dropped.

16. Thus the argument of the learned Counsel for the petitioner on this score fails.

(ii) It is next argued, with reference to the judgment of Apex Court in the case of AIR 2003 SC 2103 , that impugned recovery certificate could

not be issued at the instance of PICUP for recovering loan as land revenue in view of Section 34 of Recover of Debts Due to Banks and Financial

Institutions, Act, 1993 which contemplates overriding effect of the said Act. However, Section 34(2) of the said Act, 1993 did not refer to the

financial institution in question, namely, PICUP.

17. Counsel for the contesting respondent placed before us a copy of Central Government Notification dated December 11, 1986. The

petitioner"s Counsel has no objection to it. The relevant extract of which reads--

GSR WHEREAS the Government of the State of Uttar Pradesh have requested that the provisions of Sections 29: 30: 31: 32A: 32B: 32C: 32D:

32E and 32F of the State Financial Corporations Act, 1951 (63 of 1951) may be made applicable to the PICUP Limited, and institution

established by the State Government which has for its object the financing of industrial concerns. Now, therefore, in exercise of the powers confers

by Sub-section (1) of Section 46 of the Act, the Central Government hereby directs that provisions of the said sections .....shall apply to the said

PICUP.

18. From the said notification it is clear that Section 32G of the State Financial Corporations Act, 1951 has not been applied to the PICUP;

consequently Apex Court decision in the case of Unique Butyle Tube Industries (supra) has no application.

19. Argument of the learned Counsel for the petitioner fails on this score as well.

(iii) Counsel for the petitioner then submitted that recovery could not be enforced against, guarantor in view of Section 22 of SICA.

20. On the other hand, respondent Counsel referred to the Supreme Court judgment rendered in the case of Kailash Nath Agarwal and Others

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Since Section 22(1) only prohibits recovery against the industrial company, there is no protection afforded to guarantors against recovery

proceedings under the U.P. Act.

21. Learned Counsel for the petitioner has not disputed that petitioner (in the present petition) is a guarantor. The submission of the learned

Counsel for the petitioner has no force and fails.

(iv) Lastly, learned Counsel for the petitioner contended that recovery certificate could not be issued on the basis of the liabilities in view of earlier

bond/agreement which stood superseded in view of scheme proposed by BIFR and which was impliedly accepted by all the concerned parties

including, petitioner.

22. In support of the aforesaid contention, reference is being made to Section 62 of Indian Contract Act; for convenience said section is

reproduced--

62. Effect of novation, rescission and alteration of contract.--If the parties to a contract agree to substitute a new contract for it, or to rescind or

alter it, the original contract need not be performed.

23. The aforesaid argument of the learned Counsel for the petitioner has no merit and utterly misplaced- primarily for various reasons :--

(a) There is no pleading constituting necessary facts required to be proved u/s 62, Contract Act on the ground in present writ petition.

(b) Petitioner nowhere, earlier or in this writ petition taken such a stand, viz., that the parties to the original ''Loan agreement'' consented to

substitute it with a new contract which allegedly later came in the shape of ''Rehabilitation Scheme''.

(c) ''Revival Scheme'' was merely a proposal jointly agreed by the concerned in order to provide adequate support as an interim measure without

rescinding, nullifying or actually altering the original contract in any manner so as to absolve the petitioner/company of its obligation under original

act. Section 62 of the Indian Contract Act, is not at all attracted in the facts of the instant case.

(d) From the petitioner''s own admissions contained in the writ paras 3 to 25 and 27 to 33, of the petition referred to above in the earlier part of

the judgment, petitioner himself never accepted the scheme expressly or impliedly and also there is nothing to suggest that parties in any manner

acted upon the said scheme. It is advised, in view of the admission of the petitioner himself, that such scheme is still born child creating no

obligation or to say altered obligation of the parties in any manner whatsoever.

(e) Court do not expect such an argument being advanced in view of writ para 38 which is reproduced--

That the BIFR having overruled the stand of the petitioner, the old guarantee bond is still existing and having accordingly suspended execution of

the first rehabilitation scheme, the bond guarantee executed by the petitioner cannot be said to be ink existence, consequently the entire

proceedings initiated by the respondent for recovery of the dues is totally without jurisdiction and is manifestly arbitrary and illegal.

Submission made by Shri Ravi Kant, Senior Advocate is against the pleadings and petitioner''s own commitment found in aforequoted writ para.

(f) Learned Counsel for the petitioner has referred to the decision in the case of Lalta Construction and Ors. v. Dr. Rameshchandra Ramniklal

Shah and Anr. (2001) 1 SCC 586.

24. Without burdening our judgment we may quote para 11 of the said judgment, observations of the Apex Court wherein cut the very roots of the

argument of the learned Counsel for the petitioner--

In the instant case, the rights under the original contract were not given up as it was specifically provided in the subsequent contract that the rights

under the old contract shall stand extinguished only on payment of the entire amount of Rs. 9,51,000. Since the amount was not paid by the

appellants as stipulated by the subsequent contract, the rights under the original contract were still available to the respondents and they could

legally claim enforcement of those rights. Obviously, under the original contract, the appellants were under an obligation to provide a flat to the

respondents. This right would come to an end only when the appellants had, in pursuance of the subsequent contract, paid the entire amount of Rs.

9,51,000/- to the respondents. Since they had not done so, the respondents could legally invoke the provisions of the earlier contract and claim

before the Commission that there was ""deficiency in service"" on the part of the appellants.

25. Before parting with the judgment we may also note that petitioner who happened to be the Managing Director, has also given personal

guarantee, has somehow managed to evade his liability by not making dues coupled with the circumstances that matter was referred to the

institutions of the petitioner and also his company having formulating scheme under the BIFR but they themselves having chosen not to show any

contrition to take steps for honouring said scheme there are no equity in favour of the petitioner. Petitioner has got no prima facie case whatsoever.

26. Writ petition has no merit. Dismissed.

27. In the facts of the case no order as to costs.