

UCO Bank (Formerly known as the United Commercial Bank) Vs Government of India, Ministry of Industrial Development Department and Others

Court: Patna High Court

Date of Decision: July 15, 1997

Acts Referred: Britannia Engineering Company Limited (Mokameh Unit) and the Arthur Butler and Company (Muzaffarpur) Limited (Acquisition and Transfer of Undertakings) Act, 1978 â€” Section 15, 21, 21(7), 3, 7

Citation: (1998) 1 PLJR 260

Hon'ble Judges: Dharmpal Sinha, J; B.P. Singh, J

Bench: Division Bench

Advocate: K.D. Chatterji, Kali Das Chatterji and A.K. Verma, for the Appellant; Udyan Chaudhary, for Respondent No.2, for the Respondent

Final Decision: Dismissed

Judgement

Dharmpal Sinha and B.P. Singh, JJ.

The Appellant herein is United Commercial Bank which was one of the creditors of an undertaking

known as the Britannia Engineering Company Limited which had its unit at Mokameh. The said unit of the aforesaid company was taken over by

the Central Government under the Britannia Engineering Company Limited (Mokameh Unit) and the Arthur Butler and Company (Muzaffarpur)

Limited (Acquisition and Transfer of Undertakings) Act, 1978 (Act No. 41 of 1978) (hereinafter referred to as the Act). u/s 3 of the Act, the

Mokameh Unit and the right, title and interest of Britannia Engineering Company in relation to the Mokameh unit stood transferred to and vested in

the Central Government. u/s 15 of the Act, the Central Government was required to appoint a Commissioner of Payments for the purpose of

disbursing the amount payable under Sections 7 and 8 to the concerned companies. u/s 21 of the Act, the procedure was prescribed for

entertaining the claims and their disposal. The Commissioner of Payments after following the procedure prescribed could admit or reject the claim

in whole or in part. Sub-section 7 of Section 21 of the Act is relevant which provides as follows:

A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal Court of original

jurisdiction within the local limits of whose jurisdiction the Mokameh unit or, as the case may be, the registered office of Arthur Butler and

Company is situated.

Provided that where a person, who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court of the

State in which the registered office of Britannia Engineering Company or, as the case may be, Arthur Butler and Company is situated, and such

appeal shall be heard and disposed of by not less than two judges of that High Court.

2. The instant appeal has been preferred against the order of the Commissioner of Payments dated 27.2.1987 whereby the claim of the Appellant

Bank was partly admitted. The Bank is aggrieved by the rejection of a part of their claim.

3. Counsel appearing on behalf of Respondent No. 2 at the threshold has challenged the maintainability of this appeal. He submitted that if the

Appellant-Bank was aggrieved by the decision of the Commissioner, it could prefer an appeal to the principal Court of original jurisdiction within

the local limits of whose jurisdiction Mokameh unit was situated. According to him, such an appeal could be filed in the Court of the District Judge

at Patna. He therefore, submitted that this appeal filed before the High Court should not be entertained.

4. Mr. K.D. Chatterji appearing on behalf of the Appellant Bank submitted that the words used in the section are ""the principal Court of original

jurisdiction"". The words used are not ""ordinary original civil Jurisdiction"". He submitted that since the High Court of Patna also is vested with

original jurisdiction in some matters, such an appeal is maintainable before this Court as well because the High Court must also be deemed to be a

Court of original jurisdiction and the Mokameh unit is situated within its jurisdiction.

5. The submission urged on behalf of the Appellant, is, no doubt, ingenious, but cannot be accepted in view of the judgment of the Supreme Court

reported in Raja Soap Factory and Others Vs. S.P. Shantharaj and Others, Moreover, the proviso to Sub-section 7 does not permit such a

construction, and where an appeal must lie before a High Court has been clearly specified. In the instant case, we are informed that the

Commissioner of Payments was a former officer belonging to the Bihar Judicial Service. An affidavit to this effect has been filed by Respondent

No. 2. Obviously, therefore, this case is not covered by proviso to Sub-section 7 of Section 21.

6. We are, therefore, of the view that the Appellant Bank has preferred this appeal under a misconception of law, may be bonafide believing that

an appeal lay to this Court since this Court also has original jurisdiction in some matters. Having regard to the provision of Sub-section 7 of Section

21 of the Act and the judgment of the Supreme Court aforesaid, we are of the view that this appeal is not maintainable and must be dismissed as

such.

7. In these circumstances, we refuse to entertain this appeal and direct the Registry to return the memo of appeal and the connected papers to

counsel for the Appellant for presentation before the appropriate forum.

It will be open to the Appellant to urge before the forum that it was bonafide pursuing its remedy before another Court.

8. This appeal is not maintainable.