
(2008) 10 BOM CK 0060

Bombay High Court (Nagpur Bench)

Case No: Second Appeal No. 30 of 1994

The Coal India Limited
and The Western
Coalfields Limited

APPELLANT

Vs

Central Bank of India
and Others

RESPONDENT

Date of Decision: Oct. 6, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Coal Mines (Nationalisation) Act, 1973 - Section 19, 19(3), 19(6), 20, 20(1)
- Coal Mines (Taking Over of Management) Act, 1973 - Section 6, 6(10)
- Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948 - Section 3C
- Companies Act, 1956 - Section 226
- Contract Act, 1872 - Section 56

Hon'ble Judges: C.L. Pangarkar, J

Bench: Single Bench

Advocate: C.S. Samudra, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

C.L. Pangarkar, J.

This is a second appeal by original defendants Second Appeal no.30 of 1994. 3 no. 15(a) and 15(b). Respondent no.1 herein was the plaintiff and rest of the respondents were the defendants in the suit. The parties herein after shall be referred to as plaintiff and defendants.

2. The facts giving rise to this appeal are as under The plaintiff is a Banking Company. The defendants is a Company which used to run a colliery. Before defendant no.1 was taken over by the Government of India under the Coal Mines Nationalization Act, defendant no.1 was dealing in coal. During the course of his business, defendant no.1 .

The Ballarpur Collieries Company had obtained credit facility including Clean Demand Endorsed Bills Limit and Usance Bill Limit from the plaintiff. The said limit was from time to time raised and lastly it was raised on 27th September, 1972 to Rs. 84,00,000/-.

Defendant no.1 used to sell coal to its customers and used to draw a Hundi on the customer through the plaintiff-bank. Said Hundies were being presented for discounting purposes. The plaintiff used to purchase the hundies and make the payment to defendant no.1 immediately on its submission. Thereafter, drawee of the Hundi on accepting the Hundi used to make the payment of bills to the plaintiff. This practice was continued until 1973 when Coal Mines Taking Over of Management Act came into force. Defendant no.1 sold coal to defendant no.16 and defendant no.1 submitted bill and Hundi to the plaintiff-bank on 27/1/1973. The said amount of the bill was Rs. 19,091.12. Upon presentation of the Hundi to the plaintiff-bank, the plaintiff discounted the Hundies in the account of defendant no.1. Defendant no.16 accepted the Hundies on 9/2/1973. Defendant no.16, however, failed to make payment to the plaintiff. It is alleged that defendant no.16 failed to make payment to defendants no.15(a) and (b). The plaintiff had also laid the claim before the Commissioner u/s 20 of the Coal Mines Nationalization Act. The said claim of the plaintiff was rejected. The plaintiff contends that all the defendants i.e. 1 to 16 are liable to pay the amount of the Hundies which was received by defendant nos.15(a) and (b) and which has not been paid by the defendant No. 15(a) and (b) to the plaintiff.

3. Defendants no.1 to 14 admitted that defendant no.1 had sold Coal to defendant no.16 and defendant no.16 was liable to pay the amount to the plaintiff. It is the contention of the defendants that since the defendant no.16 had accepted the liability to make the payment of Hundi to the plaintiff, defendant nos.1 to 14 stand discharged. Further it is the contention of the defendants that by virtue of provisions in Section 56 of the Indian Contract Act, the contract stands frustrated. Since the coal mines have been taken over by the Government, defendant nos.1 to 14 are not in any way responsible to make the payment to the plaintiff. Further they submit that since defendants no.15(a) and (b) have received the amount, it will be their liability to make good the loss caused to the plaintiff.

4. Defendant no.15 (a) and (b) had also resisted the suit and contended that they are immune from any action in the court of law. It is their contention that they alone were entitled to recover money which was due to defendant no.1 after coming into force of the two Acts namely (The) Coal Mines (Taking Over of Management) Act, 1973 and (The) Coal Mines (Nationalisation) Act, 1973.

5. Defendant no.16 also resisted the suit and contended that as per the Circular issued by the custodian appointed under the (The) Coal Mines (Taking Over of Management) Act, 1973, the amount has been remitted by the Company to defendants no.15(a) and (b). Defendant no.16, in fact, therefore stands discharged and the defendants are, therefore, not liable to make any payment to the plaintiff.

6. The learned judge of the Trial Court framed several issues and found that plaintiff no.1 was entitled to recover the amount. It was entitled to interest. Holding so, the learned judge passed a decree in favour of the plaintiff and against the defendants.

7. Defendant no.15(a) and (b) alone preferred an appeal before the District Judge. The Additional District Judge, who heard the appeal, dismissed it. Being aggrieved by that judgment and decree, this second appeal has been preferred.

8. I have heard learned Counsel for the appellants. None appears for the respondents.

9. The appeal was admitted on the following substantial questions of law.

1. Whether, in view of the specific provisions of Coal Mines Nationalisation Act absolving the appellants from every liability of the pre-nationalisation period the impugned judgment and decree could be sustained ?

2. Whether, in view of the provisions of the Coal Mines Management Act, the appellants could be held liable for the amount received by the custodian during the period of management ?

3. Whether, in view of amended Section 11 of CPC the adjudication of the claim by the Commissioner acts as res-judicata ?

10. Before I proceed to deal with the substantial questions of law, I may mention here that the trial court passed a decree of Rs. 25,097.57 against defendants no.1 to 14 and 16, while a decree for Rs. 18,082.73 was passed against defendants no.15(a) and (b) i.e. the present appellants. Defendants no.1 to 14 and 16 did not challenge the decree against them before the District Judge or before this Court. That part of the decree has, therefore, assumed finality. We have, therefore, to consider only to consider the decision to pass a decree against defendant nos.15(a) and (b).

11. Following undisputed facts may be noted first. The plaintiff/respondent no.1 was the banker of defendant no.1 i.e. respondent no.2. Defendant no.1 availed various credit facilities including Clean Demand Endorsed Bills Limit and Usance Bill Limit. The suit is in respect of bill discounting account. Under this facility, defendant no.1 used to submit the bills in the name of customer and used to draw hundi in the prescribed form. On submission of bill, the plaintiff was giving credit to the account of defendant no.1 and presenting hundi to the drawee, who upon acceptance used to make the payment to the plaintiff. Defendant no.16 had purchased the coal from defendant no.1 and defendant no.1 had prepared a bill for Rs. 19,091.12. Defendant no.1 along with bill presented the Hundi to the plaintiff on 27/1/1973. The plaintiff discounted the hundies in the account of defendant no.1 and presented it to defendant no.16. Defendant no.16 accepted the Hundi on 9/2/1973 but failed to make payment of Hundi to the plaintiff. Defendant no.16, however, made payment to defendants no.15(a) and (b) on 22/8/1973 after deducting the commission. This was done on account of taking over of the management by the

Government. Defendant no.16, therefore, has certainly paid the amount to defendants no.15(a) and (b) and defendant 15(a) and (b) claimed that suit is not maintainable against them.

12. The transaction in question is of 27/1/1973. Hundi was accepted on 9/2/1973 and payment to defendant no.15(a) and (b) was made in August, 1973. Defendant no.15 (a) and (b)/appellants merely resisted the suit on the basis of statutory provisions.

13. Shri Samudra, learned Counsel for the appellants, contended that an Act known as (The) Coal Mines (Taking Over of Management) Act, 1973 came into effect from 30/1/1973 and mandated that the Central Government alone, to the exclusion of all others shall receive the money or realise the money even though it may pertain to transaction prior to appointed day. He submitted that therefore defendants no.15(a) & (b) were alone entitled to receive the amount. He invited my attention to Sub-section 10 of Section 6 of the (The) Coal Mines (Taking Over of Management) Act, 1973. The Section reads thus

6. Power of Central Government to appoint Custodians

1. ...

2. ...

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10. The Central Government shall receive, to the exclusion of all other persons, any monies due to the coal mine realised after the appointed day notwithstanding that such receipt pertains to a transaction made at any time before the appointed day.

14. It is clear from the provision that the Central Government alone shall be entitled to receive the money due to the erstwhile owner of the mines, from the person who owed that money. Obviously, defendant no.16 was obliged statutorily to make payment to defendants no.15(a) and (b) alone. The custodian appointed under the Taking Over of Management Act issued Circular (Exh.72) to all customers of coal mines that under the Act they are obliged to make payment to the coal mines authority alone of pretake over

dues also. Exh.82 is the letter written by defendant no.16 that the amount was remitted to it in view of the Circular of the custodian and the matter should be settled by the plaintiff and the defendants no.15(a) and (b) mutually by adjusting the accounts. There is, therefore, no doubt that the amount is recovered by defendants no.15(a) and (b) i.e. appellants by virtue of mandate of Sub-section 10 of Section 6 of the (The) Coal Mines (Taking Over of Management) Act, 1973 and Circular issued by the Custodian.

15. Before the remittance of this amount, the Coal Mines (Nationalisation) Act, 1973 came into force on 1/5/1973. As soon as this Act came into force, Section 19 of the Act also came into force. Section 19 reads thus

19. Statement of accounts in respect of the period of management by the Central Government, etc.

(1) The central Government or the Government company, as the case may be, shall cause the books in relation to each coal mine, the management of which has vested in it under the Coal Mines (Taking Over of Management) Act, 1973, to be closed and balanced as on the date immediately before the appointed day, and shall cause a statement of accounts, as on that day, to be prepared, within such time, in such form and in such manner as may be prescribed, in relation to each such mine in respect of the transactions effected by it during the period for which the management of such coal mine remained vested in it:

Provided that where two or more coal mines were owned, before the commencement of this Act, by the same owner, a consolidated statement of accounts may be prepared for all the local mines owned by such owner.

(2) All amounts received by the Central Government or the Government Company after the closure of such accounts shall, where such accounts relate to transactions effected before the appointed day, be included in the said statement of accounts in respect of the coal mine to which the said receipt relates.

(3) The Central Government or the Government company in which the right, title and interest of coal mine stand vested shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money, due to the coal mine, realised after the appointed day notwithstanding that the realisations pertain to a period prior to the appointed day. Provided that where such realisations have not been included in the statement of accounts as on the day immediately before the appointed day, a supplementary statement of accounts shall be prepared and furnished, at such intervals as may be prescribed, by the Central Government or the government company to the owner of the coal mine.

(4) The liabilities of the coal mine (not being liabilities arising out of advances made by the Central Government or the Government Company), which could not be discharged by the appointed day, may be discharged by the Central Government or the Government

company up to the specified date out of the realisations effected before or after the appointed day or out of advances or borrowings made up to the specified date and every payment so made shall be included in the statement of accounts as on the date immediately before the appointed day indicating therein the period in relation to which the payments were made and the payments so made shall not be called in question in any court: Provided that the liabilities in relation to the period prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coal mine.]

(5) A copy of each statement of accounts prepared under this section shall be delivered by the Central Government or the Government company, as the case may be, to the Commissioner and also to the owner :

Provided that where the number of owners is more than one, only one copy of the statement of accounts shall be given to the owners for the benefit of all of them.

(6) The statement of accounts prepared under this section shall be audited by a person who is qualified to be appointed as an auditor of a company u/s 226 of the Companies Act, 1956, and the auditor so appointed shall receive from the funds of the coal mine, such remuneration as the Central Government may fix.

(7) The audit of the statement of accounts shall be conducted in such manner as the Central Government may direct.

(8) The statement of accounts audited under Sub-section (6) shall, unless the company is proved, be conclusive proof in respect of every matter entered therein.

16. Sub-section 3 of Section 19 of the Coal Mines (Nationalisation) Act and Sub-section 10 of Section 6 of the Coal Mines (Taking Over of Management) Act, 1973 are almost identical. Both these sections certainly authorise the Central Government or the Company constituted by it to receive the money due to acquired company to the exclusion of all others. Defendant no.16 therefore became statutorily bound to pay the money due to it to defendants no.15(a) and (b). That alone could give a valid discharge to defendant no.16. Even the right of the plaintiff to receive such money due to the acquired company was taken away by the statute. After coming into force of both the Acts, the plaintiff was bound to follow statutory provisions. Neither defendant nos.1 to 14 nor defendant no.16 could be blamed when defendant nos.15(a) and (b) appropriated the sum due from defendant no.16 to defendant no.1.

17. But one thing that needs to be considered is that there was no privity of contract between the plaintiff and defendants nos.15(a) and (b) and 16. The contract or agreement was between the plaintiff and defendant no.1 alone. The amount to be received by the plaintiff from defendant no.16 under the Hundi by virtue of the agreement, was credited by plaintiff in the account of defendant no.1 even before it was actually received by plaintiff from defendant no.16. The fact is, therefore, that the plaintiff was not reimbursed

by defendant no.16. The plaintiff could, therefore, necessarily lay claim against defendant no.1 alone u/s 20 of the Coal Mines (Nationalisation) Act. Section 20 reads thus

20. Claims to be made to the Commissioner (1) Every person having a claim against the owner of a coal mine shall prefer such claim before the Commissioner within thirty days from the specified date :

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days but not thereafter.

(2) Without prejudice to the provisions of Sub-section (1), claims in relation to a provident fund, pension fund, gratuity fund or any other fund established for the welfare of the persons employed by the owner of a coal mine or group of coal mines may be filed on behalf of the persons so employed by the Coal Mines Provident Fund Commissioner appointed by the Central Government u/s 3C of the Coal Mine Provident Fund, Family Pension and Bonus Schemes Act, 1948; [and claims in relation to any other matter may be filed on behalf of all or any of the persons so employed or any group of such persons, by any Trade Union, registered under the Trade Unions Act, 1926, or, where no such claim has been filed by any Trade Union, by the Chief Labour Commissioner (Central) appointed by the Central Government or any officer subordinate to him] and the claims so made shall be deemed to have been made by the persons having a claim against the owner of a coal mine or group of coal mines .:

Provided that no such claim shall be made by the coal Mines Provident Fund Commissioner [or the Trade Union or the Chief Labour Commissioner (Central) or any officer subordinate to him] in relation to a person who has already⁸ made a claim under Sub-section (1)]

[(3) Where any claim, not being a claim which was time- barred on 31st day of January, 1973, was preferred under Sub-section (1) within the period specified therefore and was rejected merely on the ground that such claim was time-barred, such claim shall be deemed not to have been rejected and the Commissioner shall restore on his file such claim and shall deal with it in the manner specified in Section 23].

18. There is no other provision under the Nationalization Act to recover the money. The plaintiff did lay a claim before the Commissioner of payments. The award of the Commissioner is at Exh.67. The said claim was rejected by the Commissioner of Payments. The plaintiff had, therefore, exhausted the remedy and forum available to it under the Act. The plaintiff did not prefer an appeal under Sub-section 7 of Section 23 of the Nationalization Act against the award passed by the Payment Commissioner. That award is, therefore, final. That was the only method through which the claim of the plaintiff could have been satisfied. The Supreme Court in Civil Appeal No. 3057 of 1995 decided on 27/3/2003 observed as follows That the plant and machinery which were hypothecated

by the private respondents to respondent no.1 formed part of the mines and, therefore, subject to nationalisation under the Coal mines (Nationalisation) Act, cannot be in dispute not only having regard to the decision of the Commissioner of Payments, but also the definition of the word in the Act and the decisions of this Court more particularly the decision in [Bharat Coking Coal Ltd. Vs. Madanlal Agrawal](#), construing the definition. As such on the nationalisation of the two coal mines, the hypothecated assets vested in the appellants free from encumbrances in terms of Section 6 of the Coal mines (Nationalisation) Act. To the extent that the respondent no.1 has any claim against the private respondents in respect of the hypothecated goods, the respondent no.1 must seek for recovery of the same by pursuing its remedy u/s 20 of the Act before the Commissioner of Payments or by such other method which may in law be available to it. No decree could have been passed against the appellants for nor are they obliged to meet the liabilities of the private respondents..

This was also a petition filed by the Central bank of India against the western Coalfields. It is clear from the above observations by Their Lordships of the Supreme Court that the only method by which the amount could have been recovered was by laying the claim before the Commissioner of Payments and not before the Civil court. In view of this, the appeal filed by the appellants must succeed. The appeal is allowed. The Judgments and decree passed by the Trial Court and the first appellate court are set aside. The suit as against defendant nos.15(a) and (b), who are the present appellants stands dismissed. The substantial questions of law are answered accordingly. Since the matter is too old, it would be appropriate to leave the parties to bear their own costs.