Joginder Pal Kapoor Vs R.L. Plantation Pvt. Ltd. and Others

Court: Calcutta High Court

Date of Decision: March 2, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1, 114
Companies Act, 1956 â€" Section 442, 446, 446(1), 446(2), 446(3)
Constitution of India, 1950 â€" Article 141, 226, 227
Debts Recovery Tribunal Act, 1993 â€" Section 18, 19, 25

Citation: (2006) 1 ILR (Cal) 329

Hon'ble Judges: V.S. Sirpurkar, C.J; Arun Kumar Mitra, J

Bench: Division Bench

Advocate: Joy Saha, Joydeep Sengupta and Siddhartha Banerjee, for the Appellant;P.C. Sen, Aniruddha Roy and D.N. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Sirpurkar, C.J.
This is application for seeking review of the order dated 23rd September, 2004 passed by the Division Bench of this

Court (A.N. Ray, Acting Chief Justice and A.K. Mitra, J.) in ACO No. 118 of 2003. By that order, the Division Bench had dismissed the appeal

filed by the petitioner herein Joginder Pal Kapoor and had also confirmed an order confirming a sale in favour of M/s. Basu Tea Company, the

respondent No. 5 herein, for Rs. 3.1 crores. In that, the learned Judges had held that this was the best offer made for the company which was

running a tea garden. The Court also expressed its satisfaction about the legality of the sale as also the procedural aspect thereof. In short, the sale

was held to be fair, open and for adequate amount.

2. The review application was filed on 14.10.2004. The petitioner herein was the Managing Director of the Company which went on liquidation on

account of the outstanding due worth Rs. 2,74,925/- on 24.9.2002. The petition was admitted on 12th August, 2002 and ultimately, a final order

of winding up was passed on 24th September, 2002.

3. The case of petitioner is that he came to know about the winding up order only in the month of December, 2002 whereupon he filed an

application for stay of the order passed which application was also dismissed on 16th December, 2002 by the learned Company Judge. The

Official Liquidator took the possession of the assets of the Company and the assets were ordered to be evaluated by the learned Company Judge.

The Punjab National Bank, respondent No. 3 herein, was the secured creditor. It enforced the sale of the assets of the company and by order

dated 13th June, 2003, the learned Company Judge granted leave to the secured creditor, the Punjab National Bank, to obtain buyers for the tea

estate on ""as is where is"" basis. The assets valued at Rs. 2,92,19,000/-. Ultimately, the said tea estate was sold on 31.10.2003 for Rs. 3.1 crores.

Before that, the petitioner had filed an application u/s 466 of the Companies Act being C.A. No. 380 of 2003 wherein he had prayed for stay: of

the further proceedings in Company Petition No. 24 of 2002 as also the orders dated 28th March, 2003 and 13th June, 2003. Prayer for stay of

sale of company in liquidation was also sought for and the consequential injunction was also prayed for. This application came to be rejected on

31st October, 2003. In the meantime, the sale of the company had already taken place. The learned Judge also confirmed the sale of the assets of

the company in favour of Basu Tea Estate Pvt. Ltd., the respondent No. 5 herein. By that order, the purchaser was directed to pay the sum of Rs.

31,00,000/- by a banker''s cheque to the Official Liquidator by November 01, 2003. The Official Liquidator was also directed to encash the pay

orders immediately. The balance sum was ordered to be paid within three months from the date and on payment of the balance consideration, the

Official Liquidator would make arrangement for execution of the necessary documents and papers. In default of the payment, the Official

Liquidator was entitled to forfeit the earnest money.

4. The petitioner was not present on that date though his case is that an adjournment was sought for on his behalf and was refused. The payments

were made. The petitioner preferred two appeals against the order dated 31.10.2003 as also the subsequent order dated 14th November, 2003

whereby the payment of Rs. 31,00,000/- by the purchaser, respondent No. 5, was acknowledged. The case of the petitioner was that during the

course of the hearing of the aforementioned appeals, it transpired for the first time that the Punjab National Bank had also instituted proceedings

before the Debt Recovery Tribunal under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 on or about 8th

April, 2003. As has been stated earlier, these appeals came to be disposed of by the Division Bench by an order dated 23rd September, 2004.

5. The review of this order is being sought now predominantly on the ground that firstly the Punjab National Bank having instituted the proceedings

before the Debt Recovery Tribunal could not have participated in the proceedings concerning the sale of the assets and properties of the said

company in liquidation. The further case of the petitioner is that after the proceedings were instituted by the Punjab National Bank before the Debt

Recovery Tribunal, this Court had no further jurisdiction to proceed with the sale of the assets and properties of the company in liquidation. The

further cause for review as pleaded by the petitioner is that the Division Bench did not consider the question concerning the jurisdiction of the

learned Company Judge to pass the orders dated 31.10.2003 and 14.11.2003, that is of sale of the Company as also the acceptance of the part

consideration of Rs. 31,00,000/- In that, the contention is that this Division Bench did not consider the decision i Allahabad Bank Vs. Canara

Bank and Another, Thus, the contention is that since the Supreme Court decision not having been considered by the Division Bench while

disposing of the appeals, that amounts to an error apparent on the face of the record.

6. In support of his contention, the learned Counsel for the petitioner very heavily relies on the aforementioned decision and further suggests that

there was no jurisdiction in the Company Judge to order for the sale and consequently, the Appellate Court had no jurisdiction to confirm the

same. According to the learned Counsel, in the aforementioned decision the Supreme Court had very clearly held that once the proceedings have

been instituted before the Debt Recovery Tribunal, yet the jurisdiction of the Company Court even in respect of the company in liquidation stands

ousted.

7. As against this, the learned Counsel appearing for the purchaser, opposed the application and pointed out that firstly the plea, which is being

raised now, was never raised before the Division Bench deciding the appeals. It is pointed out that the decision was never pressed in service by the

petitioner before the Division Bench though the said decision was very much available on the day when the appeal was decided. The learned

Counsel was at pains to point out that even on the day when the Court had directed the Punjab National Bank to find the purchasers by order

dated 13.6.2003 and later on, on 31.10.2003 when the Court directed the sale, the said decision was available and yet it was never pressed into

service. Against the initial order directing the sale or accepting the sale no challenges were made while the appeals were filed only against the order

confirming the sale. The learned senior Counsel further pointed out that there were absolutely no bona fides in the petitioner who had no reasons

whatsoever to wait till 14.10.2004 when he actually filed the review application. Even this review application, the learned Counsel pointed out, was

dismissed once in default. The learned Counsel very strongly argued that there was no question of there being any error apparent on the face of the

record in this matter. Lastly but mainly, the learned Counsel argued that the aforementioned decision of the Supreme Court cannot be read as

ousting the jurisdiction of the Company Court in the matters like the present. The contention is that the said decision turned on different facts. On

this backdrop, we have to see whether the order of the Division Bench can be reviewed on the basis of the contentions raised.

8. It cannot be disputed that a review will lie on the principles of Order 47 Rule 1 of the CPC read with Section 114. There are any number of

Supreme Court judgments now suggesting that review jurisdiction is not an appellate jurisdiction where the errors of law can be corrected. It is

held by the Supreme Court in Parsion Devi and Others Vs. Sumitri Devi and Others, that a judgment may be open to review, inter alia, if there is a

mistake or error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can

hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.... The Court further held that in

exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. There is a clear

distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the

latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be an appeal

in disguise. In this judgment, the Supreme Court has relied on Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, and more

particularly, the observations made therein to the following effect:

What, however, we are not concerned with is whether the statement in the order of September, 1959 that the case did not involve any substantial

question of law is an ''error apparent on the face of the record''. The fact that on the earlier occasion the Court held on an identical state of facts

that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the

statement was wrong, it would not follow that it was an ''error apparent on the face of the record'', for there is a distinction which is real, though it

might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by ''error

apparent'', A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent in error.

(emphasis ours)

9. The Supreme Court also referred to the decisions in Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, as also in Aribam Tuleshwar

Sharma Vs. Aribam Pishak Sharma and Others,

10. While elaborating as to what would not be an error apparent on the face of record, the Supreme Court observed in Dokka Samuel Vs. Dr

Jacob Lazarus Chelly,

The omission to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error apparent on the face of the

record, since the Counsel has committed an error in not bringing to the notice of the Court the relevant precedents.

11. The only ground on which the review is being pressed by the learned Counsel in this case is that the Supreme Court judgment in Allahabad

Bank"s case cited supra, was not considered by the Division Bench. According to him, that decision ousted the jurisdiction of the Company Court

particularly because it was found that one of the secured creditors Punjab National Bank had filed a claim before the Debt Recovery Tribunal

against this very company. The learned Counsel further urged that the question of adjudication as also the recovery of a debt fell within the

exclusive jurisdiction of the Debt Recovery Tribunal and, therefore, a sale ordered by the Company Court after the claim was filed before the Debt

Recovery Tribunal was obviously an act of recovery against the company which act clearly fell within the jurisdiction of the Tribunal and was

clearly outside the jurisdiction of the Company Court. Therefore, the non-consideration of this judgment by the earlier Division Bench dismissing

the appeals against the confirmation of sale, was an error apparent on the face of the record. In order to buttress his contention that the non-

consideration of the earlier Supreme Court judgment by itself becomes an error apparent on the face of the record, the learned Counsel drew our

attention to AIR 1972 Mysore 44 (The Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraj) and

The Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram etc., as also to AIR 1081 Raj 36 (State of Rajasthan v. Mehta

Chetan Das Kishandass). It is true that in all the three cases mentioned above, the learned Judges have expressed that the failure to consider a

contrary Supreme Court judgment would amount to an error apparent on the face of the record. In fact, in support of this proposition, the Mysore

High Court in their judgment has relied on the decision in Thungabhadra Industries Ltd."s case (supra) and has proceeded to hold that since under

Article 141 of the Constitution of India, the law declared by the Court is binding on all the Courts where there is a decision of the Supreme Court

bearing on the point and where a Court has taken a view on that point which is not consistent with the law laid down by the Supreme Court, it

would need no elaborate argument to point to the error and there could reasonably be no two opinions entertained about such error. In

Thungabhadra''s case cited supra, the Supreme Court had very specifically suggested as under:

A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not

consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say

that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and

there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

12. We must hasten to add that in Tungabhadra''s case (supra), the Supreme Court had not specifically said that omission to consider a previous

judgment of the Supreme Court by itself amounts to an error apparent on the face of the record. In our opinion, the correct position of law would

be that such decision would have to be ""directly contrary"" to the judgment which is being sought to be reviewed. Thus, there should be a direct

conflict in between the judgment in question and the ignored judgment of the Supreme Court. If the judgment of the Supreme Court is to be used

by way of raising an additional argument which was never made before the Court having given the judgment sought to be reviewed, there would be

no question of an error apparent on the face of the record in not considering the judgment of the Supreme Court. Similarly, where the judgment of

the Supreme Court is required to be interpreted for making it applicable to the facts in the judgment in review applying the test in Tungabhadra''s

decision the non-consideration of that judgment would not amount to an error apparent on the face of the record. We would, therefore, test the

judgment in Allahabad Bank''s case (supra) as to whether the non-consideration thereof amounted to an error apparent on the face of the record.

13. We must begin this exercise by firstly pointing out to the facts at hand, but even before that, we must mention that this judgment was never

cited before the Division Bench. It could have been so cited only to raise the question of jurisdiction or rather the lack of it in the Company Court

while dealing with the appeal against the confirmation of the sale of the company. We must at the outset point out that the jurisdiction objection was

never raised before either the Single Judge or even before the Division Bench. We have closely examined the appeal memos. This appeal was

against the orders dated 31st October, 2003 and 14th November, 2003 to which we have already made reference in the earlier part of the

judgment. We have also seen those orders. However, this question of the jurisdiction was not raised while all other objections have been

elaborately raised. All these objections were on the merits. In his application for review, the petitioner herein in paragraph 17 of the application

suggests that during the course of the hearing of the aforementioned appeals, it transpired for the first time that the Punjab National Bank had

instituted proceedings before the Debt Recovery Tribunal under the provisions of the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993. Now, therefore, it was clear that the petitioner could, at least at the time of final hearing of the appeals before the Division Bench, have

raised this question either by amending the appeal memo adding the new grounds of attacking on the question of jurisdiction or at least could have

argued before the Division Bench on the basis of the decision which is claimed to be supporting the petitioner herein. We have seen the order

passed by the Division Bench to which one of us was a party (A.K. Mitra, J.) and we find that no effort was made by the appellant in those

appeals, that is the petitioner before us either to amend the appeal memo or to raise this point during the arguments by citing the judgment. In fact,

therefore, the question of jurisdiction of the Company Courts to order the sale was never raised before any of the Company Courts, either the

Single Judge or the Division Bench. The whole controversy therein revolved round the correctness of the orders of sale on entirely different

grounds and more particularly, on the merits of the sale. The main thrust of the arguments appear to be as to whether the Company Court was

justified in ordering for accepting the sale for a consideration of rupees 3.1 crores. The argument was that the Company was worth much more.

14. In fact, by order dated 31.10.2003, the learned Company Judge, S.K. Mukherjee, J. merely accepted the offer made by the present

respondent Basu Tea Pvt. Ltd. By the subsequent order dated 14.11.2003, the learned Judge merely modified his earlier order to the extent that

the time for payment of earnest money was extended upto November 3, 2003, the date on which the earnest money was actually deposited.

Action for recovery was filed only on 8th April, 2003 and it became known to the petitioner only during the pendency of appeal. We have

deliberately referred to this fact because the decision in question was available right from the year 2000. It was not cited and even after the fact of

the claim having been lodged before the Debt Recovery Tribunal became known to the petitioner, the petitioner never bothered to raise the

question about jurisdiction. Therefore, it is clear that it was only by way of an additional argument that this judgment is being intended to be used

and that the reasoning in the judgment in review had nothing to do with this judgment.

15. One look at the judgment in question suggests that the judgment revolves around the reasonableness of the price for which the company was

sold and the manner in which the sale was conducted. The argument that because of the filing of the claim before the Debt Recovery Tribunal the

Company Court ""had lost the jurisdiction"" would clearly be an additional point for getting the sale set aside, which was not raised at all. It is for this

reason we say that there was no ""contrary judgment"" of the Supreme Court available which was ignored by the Bench while writing the judgment in

question. We can understand a diametrically opposite view having been taken by the Division Bench against the available judgment of the Supreme

Court but such is not the case here. Therefore, on this ground it is difficult to conclude that there was any error apparent on the face of the record

in not noticing the judgment in Allahabad Bank''s case (supra). We again reiterate and fall back on the judgment of the Supreme Court in Dokka

Samuel (supra) and the clear observations made therein.

16. Now, we go to consider the third aspect as to whether the Allahabad Bank''s judgment directly suggests the ouster of the jurisdiction of the

Company Court or is it required to be interpreted to apply the same to the present controversy. The factual scenario in Allahabad Bank''s case

was that Allahabad Bank had obtained a simple money decree against the debtor company from the Debt Recovery Tribunal u/s 19 of the Debt

Recovery Tribunals Act and had also thereafter filed a recovery case against the company. Even the respondent Canara Bank which was a

secured creditor had filed an application before the same Tribunal from recovery of debt from same debtor company which application had

remained undecided. It was at the instance of some third parties that the winding-up petition was filed against the debtor company and at the

instance of respondent Canara Bank, the Company Judge passed an order under Sections 442 and 537 of the Companies Act, 1956 staying any

further sale of the debtor company''s asset and also restraining the disbursement of monies already realised in other sales. This order was clearly

posterior to the earlier order passed by the Debt Recovery Tribunal adjudicating the claim of Allahabad Bank against the company and during the

pendency of the recovery proceedings initiated by it before the Tribunal. Under such circumstances that the matter came before the Supreme

Court.

17. The Supreme Court held that the Debt Recovery Tribunal had the exclusive jurisdiction for adjudication of the money due and the recovery

officer had the exclusive jurisdiction at the stage of execution of recovery of monies. It also held that u/s 18 the jurisdiction of any other Court or

authority which would otherwise have had jurisdiction but for the provision of the Debt Recovery Act is ousted and the power to adjudicate upon

the liability is exclusively vested in the Tribunal. It is further clarified that these exclusion did not, however, apply to the jurisdiction in the Supreme

Court or the High Court exercising powers under Articles 226 and 227 of the Constitution of India. Even in regard of execution, it is held that the

jurisdiction of the recovery officer was exclusive and the certificate granted u/s 25 had to be executed only by recovery officer. There were no dual

jurisdiction contemplated by the Act. The Supreme Court also held, on the facts of that particular case, that the Company Judge had no jurisdiction

to stay the proceeding before the Debt Recovery Tribunal or as the case may be the proceedings of execution pending before the recovery officer.

18. The Court had formulated six questions in paragraph 13 of the said judgment, out of which sub-paragraphs 1, 2 and 3 of paragraph 13 are

relevant for our purposes. Those are as follows:

(1) Whether in respect of proceedings under the RDB Act at the stage of adjudication for the money due to the banks or financial institutions and

at the sage of execution for recovery of monies under the RDB Act, the Tribunal and the recovery officers are conferred exclusive jurisdiction in

their respective spheres?

(2) Whether for initiation of various proceedings by the banks and financial institutions under the RDB Act, leave of the Company Court is

necessary u/s 537 before a winding-up order is passed against the company or before provisional liquidator is appointed u/s 446(1) and whether

the Company Court can pass orders of stay of proceedings before the Tribunal, in exercise of powers u/s 442?

(3) Whether after a winding-up order is passed u/s 446(1) of the Companies Act or a provisional liquidator is appointed, whether the Company

Court can stay proceedings under the RDB Act, transfer them to itself and also decide questions of liability, execution and priority u/s 446(2) and

(3) read with Sections 529, 529A and 530 etc. of the Companies Act or whether these questions are all within the exclusive jurisdiction of the

Tribunal.

Rest of the sub-paragraphs are not relevant for our purposes. We have already indicated the answer given to the first and second question by the

Supreme Court. In so far as the third question is concerned where the Supreme Court was concerned with the situation ''Whether after a winding-

up order is passed u/s 446(1) of the Companies Act or a provisional liquidator is appointed, whether the Company Court can stay proceedings

under the RDB Act, transfer them to itself and also decide questions of liability execution and priority u/s 446(2) and (3) read with Sections 529,

529A and 530 etc. of the Companies Act or whether these questions are all within the exclusive jurisdiction of the Tribunal ?'' The Supreme Court

answered the question in negative.

19. The learned Counsel heavily relied on the observations made in paragraphs 21 to 25 thereby suggested that since the jurisdiction of the Debt

Recovery Tribunal and the recovery officer is held to be exclusive, the Company Court had lost the jurisdiction to decide anything at the moment.

20. A claim was lodged by Punjab National Bank on April 8, 2002. Before proceeding further, we must, however, clarify that in this case much

before this claim was filed on 8th April, 2002 the Company Court had admitted the petition for winding up on 12th August, 2002. It had then

passed the final order of winding up on 24th September, 2002. It was by an order dated 28th March, 2003 that liberty was given to the secured

creditor Punjab National Bank to obtain buyers for the said tea estate on "as is where is" basis by a valuation obviously for the purpose of selling

the company. This request by the Punjab National Bank is to be found in the same order dated 28th March, 2003. Punjab National Bank is a

party to this order being a secured creditor. Ultimately, on 13th June, 2003 when the valuation report which was got prepared at the instance of

Punjab National Bank came up before the Court. The Court passed an order that the valuation report in pursuance of the order dated 28th March,

2003 should be acted upon and the secured creditor was granted leave to procure buyers in respect of the tea estate on "as is where is" basis.

Therefore, it is obvious that before filing a claim against the company the secured creditor, Punjab National Bank itself had enforced its claim

before the Company Court. Ultimately, the Bank which had secured the purchaser for the company became successful in ultimately getting the

company sold which sale was accepted by the learned Single Judge by an order dated 31st October, 2003. Therefore, obviously the secured

creditor did not have any objection regarding the jurisdiction of the Company Court to proceed with the sale. This position is in sharp

contradistinction with the facts in Allahabad Bank"s case where there were rival claims in between Allahabad Bank which had obtained the decree

from DRT and Canara Bank which was a secured creditor of the wound up company. Under this factual scenario, the Supreme Court held that the

Company Court could not have stayed and interfered with the proceedings pending before the DRT and/or the proceedings pending before the

recovery officer.

21. The contention raised by the learned Counsel is that the mere filing of the claim by the Punjab National Bank before the Debt Recovery

Tribunal would result in ouster of jurisdiction of the Company Court to proceed further. We do not see any such sweeping observation anywhere

in the decision. On the other hand the observations appear to be turning on the facts of that case which we have already referred to. In the

reported decision the contest was between Allahabad Bank which had secured decree and had nothing to do with the proceedings before the High

Court which were not even initiated when by the order of Debt Recovery Tribunal the Allahabad Bank had obtained the decree and Canara Bank,

There are no such contesting claimants in the present case nor has any contesting claimant raised objection to the jurisdiction.

22. It must further be noted that during the pendency of the recovery proceeding by the Allahabad Bank the proceedings of winding up of in the

company were initiated. Such is not the situation here. Here, everything was over by the time the Punjab National Bank had filed its claim on 8th

April, 2003 before the Debt Recovery Tribunal. The bank being the secured creditor had no objection to the Company Court proceeding with the

sale of the wound up company and in fact it had taken an active part in the sale by enforcing the sale in its claim. Very strangely, the objection here

is being raised by a Director of the company who claims to be a person interested in the company which is already wound up and sold and the sale

of which was also stood confirmed. What the petitioner is trying to do here is trying to put a whole clock back by seeking an order that the

Company Court which sold the company which sale was ultimately got confirmed could not have done it as the jurisdiction of the Company Court

had ceased the moment the Punjab National Bank had filed the claim.

23. When we look at the questions formulated by the Supreme Court in paragraph 13 of the decision the question Nos. 2 and 3, more particularly

turn on the time aspect. In question No. 2 the situation contemplated is as to whether for initiation of proceedings under the Recovery of Debts

Due to Banks and Financial Institutions Act, 1993 leave of the Company Court is necessary u/s 537 of the Companies Act. 1956 before a winding

up order is passed against the company or before provisional liquidator is appointed u/s 446(1) and whether the Company Court can pass orders

of stay of proceedings before the Tribunal, in exercise of powers u/s 442. Even if the answer to this question is in negative, this does not apply to

the facts of the present case where practically everything was over before the claim was filed by Punjab National Bank before the Debt Recovery

Tribunal. Even as regards the question No. 3, all that the Supreme Court had held that after a winding up order is passed u/s 446(1) of the

Companies Act or a provisional liquidator is appointed, the Company Court can not stay proceedings under the RDB Act, transfer them to itself

and decide the question of liability, execution and priority.

24. What the learned Counsel says is that in this case the Court could not have sold the company because it would amount to an execution

proceeding. We do not think so. What the Supreme Court has prevented is that when the execution proceeding is pending before the recovery

officer. Company Courts cannot step in either to stay the proceeding or transfer the proceeding to itself. Such is not the case here. In the present

case, there was no adjudication also on the claim raised by Punjab National Bank before the Debt Recovery Tribunal. The execution contemplated

by the Supreme Court in the aforementioned decision is the execution pending before the Debt Recovery Officer in pursuance of the certificate

given u/s 25 and no other execution. This factual scenario was obviously not available.

25. The observations made in paragraph 50 would clearly suggest that exclusive jurisdiction is conferred on the Tribunal and the Recovery Officer

at the stage of adjudication and execution respectively and that in those proceedings there can be no interference by the Company Court u/s 442

read with Sections 537 and 446 of the Companies Act, 1956. Again, the exclusive jurisdiction has been recognised in the Tribunal only in respect

of monies realised under the RDB Act. Such is not the position here. Here there were no monies realised under the RDB Act. It is, therefore,

obvious that the Supreme Court does not say that mere filing of a claim by a bank would totally amount to the ouster of jurisdiction of the

Company Court proceeding even in the case where the winding up orders are already passed.

26. Lastly, we must point out that in this case, there was a confirmed sale in favour of the Basu Estate Tea Pvt. Ltd. The rights earned by that

company could not be interfered with now by way of reviewing the earlier order without there being any fault on their part.

27. In view of what we have discussed above, we are of the clear opinion that the judgment in review is not directly contrary to the Allahabad

Bank judgment of the Supreme Court and, therefore, not referring to that judgment does not amount to an error apparent on the face of the record

and as such, there cannot be a review of that judgment. The review application is, therefore, dismissed with costs of Rs. 5000/-.

28. Xerox certified copy of this judgment be given to the parties on the usual undertakings.

Arun Kumar Mitra, J.

29. I agree.