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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1417 of 2005
IN
Civil Writ Jurisdiction Case No. 8077 of 2004

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1. (i) Shakuntala Devi, wife of Raj Kishore Prasad Singh
   (ii) Kaushalendra Kumar Singh
   (iii) Smt. Kumud Rai
   (iv) Amrendra Prasad Singh
   (iv) Shailendra Prasad Singh
2. Mala Devi, wife of Kaushlendra Kumar Singh
   All residence of Village- Sadanandpur (Rashidpur), Post Office- Sadanandpur, Police Station- Ballia, Dist- Begusarai.

.... Appellants

Versus

1. The State of Bihar
2. The Begusarai Central Cooperative Bank Ltd, Begusarai through its Managing Director, Begusarai.
3. The Certificate Officer, Begusarai At P.O, P.S. & Dist- Begusarai.
4. Branch Manager, Central Cooperative Bank, Ballia Branch At P.O & P.S. Ballia, Dist- Begusarai.
5. The District Magistrate-cum-Collector, Begusarai At P.O & P.S. Ballia, dist- Begusarai.

.... Respondents

with

Letters Patent Appeal No. 6 of 2006
IN
Civil Writ Jurisdiction Case No. 4458 of 2004

Kaushlendra Kumar Singh, son of Sri Raj Kishore Prasad Singh, resident of Village- Sadanandpur (Rashidpur), P.S. Ballia and District- Begusarai.

.... Appellant

Versus

1. The State of Bihar.
2. The Begusarai Central Co-operative Bank Ltd., Begusarai through its Managing Director.
3. The Certificate Officer, Begusarai.
4. Branch Manager, Central Co-operative Bank, Ballia Branch.
5. District Magistrate cum Collector, District- Begusarai.

.... Respondents

Appearance:
(In LPA No. 1417 of 2005)

For the Appellants	:	Dr. K.N. Singh, Sr. Advocate.
		Mr. Manish Kumar, No.2, Advocate
		Mr. Avinash Chaudhary, Advocate.
For the State	:	Mr. Prabhat Kumar Singh, SC-12
For the Bank	:	Mr. K.K. Sinha, Advocate.

(In LPA No. 6 of 2006)

For the Appellants : Dr. K.N. Singh, Sr. Advocate.
For the State : Dr. Md, Rasul Haque, SC-4
For the Bank : Mr. K.K. Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 09-03-2015

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In these two Letters Patent Appeals common question of facts and law arises for consideration. Therefore, we dispose of both these Appeals through a common judgment.

M/s. Shivam Industries, Sadanandpur was a firm constituted in the year 1994. It proposed to undertake the activities of manufacturing of plywood and other products. The firm obtained loan of Rs.9,00,000/- from the Begusarai Central Co-operative Bank Limited, the 2nd Respondent herein, through its Ballia Branch, the 4th Respondent. It is stated that over the period, a sum of Rs.14,00,000/- was remitted towards repayment of loan and that the partnership have also undergone several structural changes.

In the year 2004 the 2nd Respondent initiated a proceedings under Bihar and Orissa Public Demand Recovery Act, 1914 (for short "the Recovery Act") against the partners and other persons associated with the firm for recovery of Rs.20,82,820/- on account of the loan. On receipt of notice, the appellants herein entered appearance before the Certificate Officer, Begusarai, 3rd Respondent. Challenging the proceedings as being without jurisdiction the appellants filed CWJC No. 4458 of 2004 and CWJC No. 8077 of 2004. Their plea was that the provisions of Recovery Act cannot be invoked for recovery of the amounts that are due to the 2nd Respondent. On facts, it was stated that the loan has been cleared and the claim is time barred. The writ petitions were contested mainly by Respondent Nos. 3 and 4. They pleaded that the amount due from the appellants answers the description of "Public Demand" as defined under the Act and proceedings were initiated by taking recourse to Clause 15, Schedule I of the Recovery Act. It was also pleaded that if for any reason, the amount due from the appellant does not fall within the ambit of Section 36 of the Recovery Act, Clause (4) of the Schedule I, read with Section 52 of the Bihar Co-operative Societies Act, 1935 (for short "the Co-operative Societies Act") would bring the same, under its purview. They took the plea that the proceedings initiated against the appellants cannot be interdicted at all. The learned Single Judge dismissed both the writ petitions through a common order dated 07.12.2005. Hence these two Letters Patent Appeals.

Dr. K.N.Singh, learned Senior Counsel for the appellants submits that the mechanism provided for under the Recovery Act is almost a substitute for the ordinary mechanism of recovery of amount due to the individuals, agencies and several extra ordinary powers are conferred upon the authorities under the Act. He submits that the proceedings can be initiated for recovery of only such amount,that squarely falls within the ambit of the Act. He contends that Clause 15 of Schedule I which is referred to Sub Section 6 of Section 3 of the Recovery Act is clear in its purport that it is only when there is an agreement between the agency that advanced the amount on the one hand and the loanee on the other, as regards initiation of the proceedings under the provisions of Recovery Act, that the proceedings can be initiated and admittedly, in the instant case there is no such agreement. He submits that the occasion to invoke Clause (4) of Schedule I, read with Section 52 of the Co-operative Societies Act would arise only when the amount is due from a member, past member or the nominee, heirs, or legal representative of the deceased member of a primary co-operative society and in the instant case the 2nd Respondent is not a primary Co-operative Society at all. He submitted that the learned Single Judge did not appreciate the matter from the correct perspective and dismissed the writ petition.

Sri K.K. Sinha, learned Counsel for the Respondent Bank submits that the loan taken by the firm was not repaid in its entirety and being the partners thereof the appellants are under obligation to pay the amount. He submits that the requirement as to the existence of a written agreement, mentioned proviso to Clause 15 would apply only to the Co-operative Societies where the stake of the Government is pervasive and that in the instant case the same does not exist at all. He submits that if for any reason the amount due to the 2nd Respondent cannot be treated as falling within the ambit of Clause 15 of Schedule I of the Recovery Act, the same became recoverable under that Act and the same situation would exist if one takes into account, the purport Clause (4) of Schedule I thereof and Section 52(f) of the Co-operative Societies Act. He submits that the loanee in the instant case was very much a member of the Primary Co-operative Society and it hardly made a difference, whether the lending agency is a Primary Co-operative Society or not. He contends that the learned Single Judge has followed several authoritative pronouncements and that no interference is warranted with the judgment under appeal.

These appeals involve interpretation of certain important provisions of the two enactments referred to above. That the firm raised the loan of Rs. 9,00,000/- from the 2nd Respondent, is beyond any controversy at all. However, there is some dispute as to the extent of liquidation or repayment of the loan. According to the appellants, a sum of Rs. 14,00,000/-was paid against Rs. 9,00,000/- and thereby, the entire loan was liquidated. However, this is not the forum to address the issue, and we have to proceed on the assumption that part of the loan amount was due to the 2nd Respondent, from the appellant firm.

The Co-operative Societies Act provides for a special mechanism for recovery of loan from its members or non-members. The mechanism ranges from initiation of proceedings to filing of Suits. The Respondents 2 and 4, however, have initiated proceedings under the Recovery Act.

The Recovery Act is a special enactment that provides for realization of revenue dues wherever they remained unpaid. Over the period the scope of the Act was expanded. What is recoverable by invoking the provisions of the Recovery Act is "public demand" as defined under Section 3, Sub Section 6 of the Act, it reads as under :

> *(6) "Public demand" means any arrear or money mentioned or referred to in Schedule-I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II.*

The proceedings are to be initiated before a specified authority on the basis of certificate issued by the revenue authority.

The definition of the expression of "public demand" would be incomplete unless it is read in the context of Schedule-I. The Schedule I in turn contains as many as 15 Clauses, each defining the amount of money that can be recovered by invoking the provisions of the Act. Clause 15 thereof reads as under :-

> *"[15. Any money payable to-*
>
> *(i) State Bank of India constituted under the State Bank of India Act, 1955(No. 23 of 1955); or*
>
> *(ii) a Bank specified in column (2) of the first schedule to the Banking Companies (Acquisition and Transfer of Undertaking) Act,*

1970 (Act V of 1970); or

(iii) a company or a statutory body, including a registered society carrying on financial transactions, owned by or in which, Government has a majority of shares or which is managed by an authority appointed under any law for the time being in force; or

(iv) the Bihar State Electricity Board.

in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as public demand.]"

It is no doubt that the 2nd Respondent is a Co-operative Society, carrying on financial transactions. It is urged on behalf of Respondent Nos. 2 and 4 that the amount due to the four agencies mentioned in Clause 15 can be recovered by invoking proceedings under the provisions of the Recovery Act, if only there is an agreement wherein the persons liable to pay the amount have expressed consent through a written agreement that the amount is recoverable as "public demand". Admittedly, in the instant case, there is no such written agreement.

An attempt is made by learned counsel for the Respondents to persuade us that the requirement as to existence of a written agreement does not apply to the 2nd Respondent because the Government does not have majority shares. If that is so the 2nd Respondent falls outside the purview of Clause 15F and the argument tends to become self defeating.

The 2nd Respondent pleaded that even if the claim does not fit into Clause 15 of Schedule I, however, Clause-(4) will be attracted. The provision reads as under:

> *"4. Any money which is declared by any enactment for the time being in force-*
>
> *(i) to be a demand or public demand; or*
>
> (ii) *to be recoverable as arrears of a demand or public demand, or as a demand or public demand; or*
>
> (iii) *to be recoverable under the Bengal Land-Revenue Sales Act, 1868 (Ben. Act VII of 1868)"*

The purport of Clause (4) is that though a particular amount is not recoverable as "public demand" under the provisions of Recovery Act, it can be treated as such if any other enactment brings the amount into that category. In this regard reliance is placed upon Section 52 of the Co-operative Societies Act which reads as under :-

> *"52. Recovery of sums due.- Any sum payable by any person or by any registered society-*
>
> *(a) as fees for an audit held under section 33,*
>
> *(b) in accordance with an order of the Registrar under section 39 apportioning the costs of an inquiry or inspections,*

(c) in accordance with an order passed under Section 40,

(d) in accordance with an order of the Registrar or of a liquidator passed under section 44, or

(e) in accordance with an order, decision or award passed or made under section 48,

[(f) As an amount due from member, past member or the nominee, heirs, or legal representative of the deceased member of a primary co-operative society.]"

The effort of the 2nd Respondent is to bring it within the purview of Section 52 of the Co-operative Societies Act and thereby, the Recovery Act. A close scrutiny of Section 52 makes it clear that it is only when the amount is due from member, past member or the nominee, heirs, or legal representative of the deceased member of a "primary co-operative society" that it becomes recoverable as "public demand". The controversy revolves around the meaning, to be given to the expression "Primary Co-operative Society". Learned counsel for the appellants submits that it is only when the lending agency is a primary co-operative society that Section 52(f) of the Co-operative Societies Act and, thereby Clause (4) of Schedule-I of the Recovery Act can be applied. In contrast learned counsel for Respondents 2 and 4 submits that it would be sufficient if a loanee is a member of a primary co-operative society and it makes no difference whether the lending agency is or is not a

Society of that category. Here it is an undisputed fact needs to be mentioned. The 2nd Respondent does not come within the description of a Primary Co-operative Society as defined under Section 2(ggg)of the Co-operative Societies Act. It reads:-

> "2(ggg) - 'primary society' is a society of which no member is a registered society."

We find it difficult to accept the contention of the learned counsel for the 2nd Respondent. The language employed in Section 52(f) of the Co-operative Societies Act is clear to the effect that the loan must be due to a primary co-operative society and the loanee should be a member, past member or the nominee, heirs, or legal representative of the deceased member of such a society. If the scope of that provision is to be restricted to the extent of describing the loanee alone, it will lead to peculiar if not, to disastrous results. For example, if a member of a primary co-operative society is due certain amount to a private individual or agency albeit, not a primary co-operative society and, if the amount is to be treated as "public demand" that the individual or agency the lender can invoke the provisions of the Recovery Act. That was never, nor could ever be the intention of the Legislature. The emphasis was only to protect the loan that is due to a primary co-operative societies. Once the lending agency does not answer the description of the primary co-operative society the loan due to stands taken away from the purport of Section 52(f) and thereby Clause (4) of Schedule I to the Recovery Act. Ascribing any other meaning to the provision would result in situations, which were totally beyond the contemplation both the enactments. It hardly needs any mention that the provisions of a special enactment, which prescribes a procedure stringent procedure, compared to the one under the ordinary law, needs to be construed strictly. In the instant case, one does not have to take recourse to any principles of interpretation also. A plain reading of provisions make things very clear namely, (a) the 2nd Respondent is not a primary co-operative society, (b) there did not exist any written agreement between the firm, of which the appellants are partners, wherein any consent was given for permitting recovery of amount as "public demand".

The 2nd Respondent can not invoke Clause (4) or Clause 15 of Schedule-I of the Recovery Act thereby the proceedings initiated before the 3rd Respondent are without jurisdiction.

Across at Bar it is urged that the objections in this behalf can be raised before the 3rd Respondent himself. This argument in fact gained some acceptability with the learned Single Judge. When the proceedings are under the special enactment are initiated before the authority created under it, the questions as to whether the authorities have jurisdiction in a particular matter cannot be decided by that very authority, particularly when the process of interpretation of statutes is involved.

In the judgment of this Court, on which reliance has been placed by the learned counsel, the question of jurisdiction or interpretation the provisions of two enactments did not fall for consideration.

We, therefore, allow these appeals and set aside the judgment dated 7th December, 2005 rendered by the learned Single Judge. Consequently we allow the Appeals and quash the proceedings initiated against the appellants before the 3rd Respondent under the provisions of the Recovery Act.

It hardly needs any mention that it shall be open to the Respondent nos. 2 and 4 to recover the amount in accordance with law.

Interlocutory Application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

A.F.R.

Chandran/Md.Ibrarul

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