Clips From Judgements

D.N. Tripathi
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1. Printing of currency notes of rupees fifty denomination – Gandhi series – Whether depiction of National Flag and Ashoka Wheel Ilegal, Gyan Prakash Kamra vs. Union of India (Raj. H.C., Div. Bench, Jaipur, W.P. No. 5245 of 1997 decided on 26th March 1999)

Brief Facts

Petitioner Shri Gyan Prakash Kamra sent a letter on 10th September 1997 to the Hon'ble Chief Justice Shri M.G. Mukherjee, Rajasthan High Court, Jaipur alleging therein that the Reserve Bank of India had issued Gandhi Series Bank Notes of rupees fifty denomination in which on reverse Parliament and National Flag have been pictorised wrongly. It was alleged, inter alia, that (1) in the bank note in question the green and orange colour stripes of the national flag have been shown in similar shades; (2) wrong pictorial representation of the national flag in tiled blocks was not legally permissible; (3) the middle white strip of the national flag is shown in colour with artistic work; (4) the Ashok Chakra in the white strip is also represented wrongly as in place of spokes in wheel circles are shown; (5) the Reserve Bank has committed insult to the national flag by carelessly printing national flag in incorrect manner; and (6) wrong pictorial representation of the national flag in public is an offence under Section 2 of Prevention of Insults to National Honor Act, 1971 and violation of provisions of Article 51A(1) of the Constitution of India.

The petitioner prayed inter alia that (a) circulation of defective currency notes should be immediately stopped; (b) representation of national flag in defective manner in future should be stopped immediately; (c) if court deems fit initiate appropriate action against the guilty officials; (d) if deemed fit court may direct RBI to print national flag in the three rea colours; and (e) The petition should be heard on utmost peremptory basis as petition relaters to Prevention of Insults to National Honor Act, 1971. The Division Bench of Rajasthan High Court vide order dated 17-9-97 issued notice to Union of India through Secretary, Ministry of Finance to show cause as to why the writ petition may not be admitted. As the matter related to the issue of the note by the Reserve Bank of India it was considered appropriate to appear before the High Court through counsel and clarify the position. Union of India and the Bank filed its replies to the show cause notice, it was submitted on behalf of the Bank that Section 22(1) of the Reserve Bank of India Act, 1934 provides that the Reserve Bank shall have the sole right to issue Bank notes in India, and may, for a period which shall be fixed by the Central Government on recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the Central Government. Sub Section (2) of Section 22 of Reserve Bank of India Act provides that on and from the date on which this Chapter comes into force the Central Government shall not issue any currency notes. Section 24 of the Reserve Bank of India Act provides that Reserve Bank may issue Bank notes of the

denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees and five hundred rupees on the recommendation of the Central Board. Section 25 of the Reserve Bank of India Act provides that design, form and material of the Bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Central Board as per provisions of Section 25 of the Reserve Bank of India Act, 1934. The pictorial representation of Parliament with national flat on reverse of it was approved by the Government of India at the time of finalisation of the design to prevent forgery and making counterfeiting more difficult. In order to prevent counterfeiting the entire note design is made of lines while designs used for commercial printing are of dots. The line design also restrict to great extent replication of the image in the note design unlike design for commercial printing. Light colour also prevents replication of the colour by photo copier. The National flag on the top of Parliament House shown on the back side of rupee fifty denomination Bank note is a pictorial reproduction in line design for production by note printing process. National flag cannot be produced in three colours and exact dimension design it as it was only suitable for note printing press. It was also submitted that the Bank has highest regard for the National emblem and National flag. It was submitted that the reserve Bank has not violated either the provisions of Section 2 of the Prevention of Insults to National Honor Act, 1971 or the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 or provisions of Article 51A of the Constitution of India.

Question Considered by the Court

Whether the Reserve Bank committed violation of Section 2 of Prevention of Insults to National Honor Act, 1971?

Observations and Findings of the High Court

The High Court observed that the designing of the National flag was only suggestive and could be printed on the note in line design for security purposes to avoid counterfeiting of the note which was essential feature of the note printing. Court observed that the printing of flag on fifty rupees note over the Parliament House did not insult the Indian National flag. The Petition was accordingly disposed of.

Comments

It is an important decision dealing with the printing and designing of Bank notes. Depiction of national flag and Ashoka wheel in line design for printing notes would not amount to violation of any provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 and Section 2 of the Prevention of Insults to National Honor Act, 1971.

2. Recruitment — Operation of waiting list

The High Court of Judicature at Bombay, Nagpur Bench — Writ Petition No. 2267/1997 decided on 18th August 1998 by Hon'ble Mr. Justice J.N. Patel and Mr. Justice D.D. Sinha.

In this case, the Bank invited applications through Employment Exchange for preparing a waiting list of candidates for the post of pharmacist without there being any vacant post of pharmacist. Petitioners R.N. Hatwar and R.P. Motwani were wait listed on 6-7-1990 for the post of pharmacist after interview. Petitioners were advised that mere inclusion of their names in the waiting list did not entitle them any right to post in the Bank. The wait list was initially valid for one year. However its validiaty was extended and ultimately the waiting list lapsed on 30-6-94. Sh. R.N. Hatwar and Shri R.P. Motwani were engaged for some time on day to day basis during the period from 3-8-1992 and 10-8-1992 to 5-10-1994 when regular/part-time pharmacists were absent. Petitioners were disengaged with effect from 6-10-94. The petitioners filed writ petition praying for a direction to the Bank to continue to operate waiting list and to employ them by offering permanent status in the post of pharmacist on the ground that petitioners were put on waiting list by the Bank in order to meet the contingencies of employing them on a vacancy which occurs due to absence of regular employees. The Bank adopted the procedure of inviting names from employment exchange for preparing wait list even when there was no clear vacancy either of temporary or permanent nature to meet the exigencies and to operate the waiting list for such contingency of casual absence of regular employees.

Decision

The High Court dismissed the petition observing that it does not create any right in favour of the petitioner to be continued on waiting list and to seek permanent status in the post of pharmacist with the Bank when the waiting list is not prepared for the purpose of filling a clear vacancy of permanent or temporary nature and hence, there was no merit in the writ petition.

3. Physical disability — Claim for employment

High Court of Orissa — OJC No. 994 of 1996-Sudam Charan Mahapatra Vs. Reserve Bank of India & Others decided on 1-9-1997 by Hon'ble Mr. Justice A. Pasayat and Hon'ble Mr. Justice S.C. Datta.

The petitioner in this case, a disabled ex-serviceman, was interviewed on July 31, 1987 for the post of peon in the Bank's Bhubaneswar Office and was placed in the waiting list for appointment as and when vacancy arose. However, petitioner was not engaged on daily wage basis any time. On 23rd July 1993 Bank entered into a settlement with Reserve Bank Workers Federation, a recognised trade union of Class IV employees of the Bank for regularisation of ticcas and also for absorption of part-time employees in full time posts. As per the settlement ticcas who had rendered continuous service of three years as on 19th November 1992 were eligible for being considered for regular full time or part time posts. The petitioner was not engaged though his name continued on the waiting list. When petitioner made representation in the year 1995 it was found that he was medically unfit for the post of peon as his both legs were amputed. On receipt of advice from the Bank that he was medically unfit for the post of peon in the Bank and his

name was deleted from the consolidated waiting list petitioner filed petition for issue of mandamus directing the Bank to appoint him as peon in the Bank.

It was submitted on behalf of the Bank that in terms of Office Circulars dated 13-9-1980 and 7-12-1987 a person can be considered for the post of a peon whose lower extremists are normal and who has in his upper extremities one of the limbs functioning normally. The petitioner having lost his both the lower limbs could not be absorbed in the Bank's service because he was medically unfit and physically disabled.

Held

After considering the arguments of the parties the High Court held that circulars issued by Reserve Bank of India prohibit appointment of persons whose both lower extremities are not functioning normally because of amputation. Therefore, the request of the petitioner for appointment in the Bank for the post of peon was rightly rejected. However, the court observed that it would be well if the Bank explored possibility of providing a job in the Bank suitable for the petitioner considering his physical disability.

4. Refund of exchange value of soiled notes

District Consumer Disputes Redressal Forum, Wardha — Complaint No. 10 of 1997 — Ashok Vasudevji Saraf, Complainant Vs. Reserve Bank of India and others, Opposite Parties decided on 26th May 1998.

Facts

District Consumer Disputes Redressal Forum, Wardha dismissed vide order dated 26th May 1998 the complaint filed by Ashok Vasudevji Saraf against the Bank alleging deficiency in service on the part of the Bank. Sh. Saraf's complaint was about non receipt of two Demand Drafts No. 165074 dated 15 September 1994 for Rs. 2457/ - and No. 166079 dated 9-11-94 for Rs. 2430/-sent by Reserve Bank of India being exchange value of soiled note tendered by him after adjudication by Reserve Bank of India, Nagpur under Reserve Bank of India (Note Refund) Rules, 1975.

Held

District Consumer Disputes Redressal Forum held that Reserve Bank of India discharges sovereign and statutory function and it refunds the exchange value of the currency notes after adjudication. It does not receive any commission from any person who tenders soiled/defective notes to it. Hence, complainant cannot be consumer of Reserve Bank of India. Therefore, complaint cannot lie before the Forum against Reserve Bank of India.

1. *STUDY : Law is continually being transformed. If you do not follow its changes, you will be less of a lawyer every day.*

2. *THINK : Law is learned by study, but it is exercised by thought.*

3. *WORK : Law is arduous toil put in the service of justice.*

4. *FIGHT : Your duty is to fight for the law; but in the day when you find the law in conflict with justice, fight for justice.*

5. *BE LOYAL : Be loyal to your client, whom you must never forsake until he proves to be unworthy of you. Be loyal to your adversary, every when he is disloyal to you. Be loyal to the judge who not knowing all the facts, must rely on your word, and, as far as the law is concerned, at one time or another, he must have confidence that you trust him.*

6. *BE TOLERANT : Tolerate the truth of others as much as you would have others to tolerate your own.*

7. *BE PATIENT : Time will vindicate those things which are done with its collaboration.*

8. *HAVE FAITH : Have faith in the law as the best instrument for the co-existence of men; in justice as the normal destiny of the law; in peace as the generous entity of justice; and above all, have faith in freedom without which there is no law, no justice and no peace.*

9. *FORGET : Advocacy is a struggle of passions. If in each combat you would burden your soul with rancor, there will come the day when life will be impossible for you. The combat over, quickly forget four victory or your defeat.*

10. *LOVE YOUR PROFESSION : Seek to consider advocacy in such a way that the day when your son asks for advice as to his destiny, you will consider it an honour to propose that he become a lawyer.*

— COUTURE, E.J., in La Abogacia en Espana Y en el Mundo, Volume I (Translated by Ethel M. Spiegler), reprinted in 44 American Bar Association Journal 859 (September, 1958)

Recent Judgements Relevant to Bankers

Janaki Saha & Sunilkumar K.N.
Legal Officers

1. Power of Board of Directors of Company to move BIFR — Cases where petition for winding up has been presented or provisional liquidator is appointed — Even in such cases Board of Directors will have power to move BIFR.

Chemox Chemical Industries Ltd. vs. Tata Finance Ltd., (1999) 20 SCL 45 (Bom).
Facts

Tata Finance Ltd. (Respondent) has filed a petition for winding up against the company, namely Chemox Chemical Industries Ltd. (petitioner). By order dated 13th November 1998 the High Court appointed a provisional liquidator. Subsequently on the Board of the Petitioner Company passed a resolution to move the BIFR as the net worth of the company had eroded by more than 50% and lodged the application with BIFR. Thereafter, the petitioner filed the application to stay the order dated 13th November 1998 admitting the company petition and appointing the provisional liquidator, till the disposal of reference made by the company to the BIFR. It was further prayed that the official liquidator be restrained from taking further steps as per the order of the High Court without obtaining any prior permission from the BIFR.

Contention of the respondent

Opposing the said stay application the respondent contended that once the provisional liquidator was appointed by the High Court, the Board of Directors could have taken no steps to pass the resolution to refer the matter to the BIFR. It was alleged that the company had suppressed the facts from High Court in winding up petition that they had approached the BIFR and had not informed BIFR about winding up order already passed by the High Court. It was therefore contended that the order of BIFR was non est and/or should be ignored.

Issue to be decided

The question to be decided by the Court was whether on appointment of a provisional liquidator the Board of Directors of company becomes defunct or incapable of carrying out any function and as such incapable also of moving the BIFR for the purpose of rehabilitation.

Decision

The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) is an Act brought into force by Parliament with a view to bringing out a company from sickness and to see to its rehabilitation. It is not the object of the official liquidator to start the process of rehabilitation. Therefore, this is a residuary power in the Board of the Directors and as they will have powers to take steps with the aim and object of rehabilitating the company.

Section 15 of SICA casts a duty on the Board of Directors within 60 days from the date of finalisation of the duly audited accounts of the company for the financial year at the end of which the company has become sick, to make a reference to the BIFR. Therefore, as long as there is a Board of Directors, the Board is duty bound to intimate to the BIFR whether the company is sick or not. Section 22 of SICA prohibits any proceedings for the winding up of the company or for the appointment of a receiver in respect thereof while an inquiry is pending with BIFR. Therefore, the moment a case is registered with BIFR Section 22 having sprang into action it would apply to all pending proceedings. If a party is aggrieved by suppression of material fact, it is open to such party to move the BIFR for recalling the order. At any rate it cannot be held that the order is non est. In the light of that all further proceedings against the company were stayed in terms of Section 22. However, the petitioner could always move the court in the event the order by the BIFR was set aside or BIFR passed any other order which would have the effect of the court assuming jurisdiction in the matter of appointment of provisional liquidator.

2. Presumptions regarding promissory note -presumption as to consideration is rebuttable - Initial burden lies on defendant to prove nonexistence of consideration - If burden is discharged, onus shifts to plaintiff to prove passing of consideration - In case of defendant's failure to discharge the initial burden, plaintiff would be entitled to benefit of presumption under Section 118(a) of the Negotiable Instruments Act.
Bharat Barrel and Drum Manufacturing Co. Vs. Amin Chand Pyarelal,
(1999)3SCC 35.

Facts

In August 1961, the respondent had offered to import 10,160 metric tonnes of steel drum sheets from USA which was accepted on 15.9.61 by the appellant with the condition that the goods should be shipped on or before 30.11.61 i.e. before the expiry of the appellant's import licence. The respondent executed a promissory note for Rs.6,20,000/- by way of collateral security for payment to the plaintiff, of damages, in any event, which the appellant might actually suffer in consequence of non supply of the goods. On his failure to repay the amount borrowed, the appellant filed a suit under order - xxxvii of the CPC in the original side of the High Court of Calcutta. The suit was dismissed by the learned High Court holding that as the evidence led by the plaintiff and the defendant was not believable, the suit could not be decreed, as according to the learned judge, the appellant had failed to prove its case for being entitled to the grant of the decree. Aggrieved by the judgement of the learned trial judge, the appellant filed an appeal before the Division Bench of the High Court. In view of the important question of law involved, the Division Bench referred the appeal to a larger Bench and the same was dismissed by the Hon'ble Court. Not satisfied with the judgement of the Full Bench of the Calcutta High Court, the appellant has filed this appeal before the Supreme Court.

Issues

(1) Was the promissory note dated October 11, 1961 executed by the respondent as collateral security in the circumstances and on the agreements mentioned in the written statement?

(2) Was there no consideration for the Promissory Note?

(3) Did the consideration, if any, for the said promissory note fail?

(4) To what relief, if any, is the plaintiff entitled?

Findings of the Court

In the written statement filed, the respondent alleged that the promissory note had not been executed `for the value received' as mentioned therein but was executed by way of collateral security. Due to freezing of lakes, the contract of import of steel drum sheets could not be performed and the same was cancelled with the appellant which absolved the respondent from any liability arising out of and in relation to the document executed by him. The learned trial Judge held that he was unable to accept that the promissory note was executed by way of a collateral security and also unable to accept that a sum of Rs.6,20,000/ - or any other sum was advanced by the appellant in consideration of the promissory note. The appellant was entitled to the benefit of the presumption under section 118 of the Negotiable Instruments Act and it was necessary for the respondent to prove that no consideration of any description was given for the promissory note before the respondent could succeed. As it had been established that no loan was advanced by the appellant to the respondent, the consideration of the loan had been disproved and the presumption raised by section 118 of the Negotiable Instruments Act had been completely dislodged. In appeal both the Division Bench and Full Bench upheld the decision of the trial judge.

The Hon'ble Supreme Court has held that the law relating to negotiable instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce making the provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. To achieve the objective of the Act, the legislature in its wisdom thought it proper to make a provision in the Act conferring such privileges on the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged. The privilege of presumption under section 118 of the Act and summary procedure provided under the CPC are aimed at providing certainty, security and continuity in business transaction.

The approach adopted by the majority of the Judges was contrary to the basic principles governing the law relating to negotiable instruments. Faith of the business community dealing in mercantile and trade cannot be permitted to be shaken by resort to technicalities of law and the procedural wrangles. Even though it is true that the plaintiff's evidence was not believed yet the same could not be made the basis for rejecting its claim because obligation upon the plaintiff to lead evidence for the purposes

of `to prove his case', could not have been insisted upon because the defendant has prima facie or initially not discharged his onus of proof by showing directly or probabilising the non-existence of consideration.

Once execution of promissory note is admitted, the presumption under section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence and in that case, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the nonexistence of the consideration can be either direct or by bringing on record, the preponderance of probabilities by reference to the circumstances upon which he relies. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under section 118(a) in his favour.

To disprove the consideration of the promissory note, the respondent had brought certain circumstances to the notice of the Court which he wanted to probabilise by leading evidence. The evidence led by the respondent in that regard was not accepted by any of the Judges dealing with the case. In the absence of disproving the existence of the consideration, the onus of proof of the legal presumption in favour of the appellant could not be shifted. The finding that the defendant had not discharged his initial burden of proving the non-existence of consideration amounted to negating the presumption arising under section 118(a) of the Act.

Decision

The Hon'ble court has allowed the appeal by setting aside the impugned judgement under appeal. The suit for recovery of Rs. 6,51,900/-was decreed with pendente lite and future interest at the rate of 6% per annum

3. Transfer of suit from High Court to Debt Tribunal – Suit for damages and compensation which were yet to be quantified - Suit could be held to be essentially for recovery of a debt so as to justify transfer of such suit from High Court to Debt Tribunal

United Bank of India Vs. Debts Recovery Tribunal (1999) 20 SCL 180

Facts

A suit was filed by the appellant bank in the High Court of Calcutta claiming relief against three respondents. During the pendency of the suit, the Parliament enacted the Recovery of Debts due to Banks and Financial Institutions Act, 1993 to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and the suit was transferred to Debt Recovery Tribunal. The respondents filed applications contending that the Tribunal had no jurisdiction to

entertain the suit, in view of the nature of relief claimed. The Tribunal disposed of the applications holding that the Tribunal had the jurisdiction to decide the claim of the appellant.

On applications filed under Article 227 of the Constitution of India challenging the orders passed by the Tribunal, the High Court of Calcutta set aside the order of the Tribunal with a finding that the Tribunal gets jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of `debts' due to such banks and financial institutions but the plaintiff's claim in question could not be held to be a `debt' as defined in section 2(g) of the Act. The claim was for damages and compensation which were required to be quantified before a decree could be passed and such a suit would not be within the purview of the provisions of the Act. Being aggrieved by the order, the appellant has filed this appeal before the Hon'ble Supreme Court of India.

Issues

1. Whether the plaintiff's claim can be held to be a `debt' as defined in section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

2. Whether the Tribunal had jurisdiction to entertain the suit?

Findings of the Court

The prime object of the Act is to provide for the establishment of Tribunals for expeditious adjudication and recovery of `debts' due to banks and financial institutions and for matters connected therewith or incidental and the expression `debt' has been defined in the Act. The general meaning of `debt' may be of a persuasive value in interpreting the expression `debt' in the Act but it is too well settled that where an expression in any Act has been defined, the said expression will have the same meaning. To ascertain the question as to whether any particular claim of any bank or financial institution would come within the purview of the Tribunal created under the Act, it is imperative that the entire averments made in the plaint are looked into and it is not whether notwithstanding the specially created Tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such Tribunal is ousted.

With the aforesaid principle in mind, on examining the averments made in the plaint, the Hon'ble Court held that the claim in question made by the appellant was essentially one for recovery of a debt due to it from the respondents and therefore, the Tribunal had exclusive jurisdiction to decide the dispute.

Decision

The Hon'ble Court set aside the impugned order of the Calcutta High Court by saying that the High Court was in error to hold that the dispute in question was not entertainable by

the Tribunal and accordingly ordered to transfer the suit to the Tribunal for disposing of by the Tribunal in accordance with law.

4. Payment made by judgement debtor towards decretal amount - To be adjusted strictly in accordance with the directions of the Court - In absence of such directions, subject to an agreement to the contrary between the parties, firstly towards interests and costs and thereafter towards principal amount.

Industrial Credit and Development Syndicate now called ICDS Ltd. Vs. Smithaben H. Patel (Smt.) and Others

(1999) 3 SSC 80

Facts

In a suit filed by the Industrial Credit and Development Syndicate (Plaintiff/Appellant), a decree was passed on the basis of a mortgage deed executed by Smt. Smithaben H. Patel and Others (Defendant/Respondent) holding the respondents liable to pay the appellant a certain amount together with court costs and interest. The decretal amount was, however, to be paid in monthly instalments of Rs.20,000/- after making the deduction of amounts already paid in the Court. The decree did not prescribe any mode of payment towards various heads of the decretal amount. On account of the judgement-debtor's failure to pay the full amount the appellant filed the execution petition. The respondents pleaded before the execution court that in the letters accompanying the instalments they had specifically instructed the appellant that the instalments made were towards the satisfaction of the principal. The appellants had not sent any reply to the letters rejecting the instructions. Therefore, there was implied acceptance on the part of the appellants for receiving the instalments towards principal. Even otherwise, if the instructions were not acceptable to the appellants, they ought to have returned the amount to the respondents. The execution Court rejected these objections.

Appeal in the High Court

In appeal the High Court set aside the order of the execution court on the ground that as the appellant failed to reply to the letters of the respondents, the implied acceptance has to be presumed. However, the High Court held that the appellant was not under obligation to return the amount, in case of their refusal to the instructions.

Findings of the Supreme Court

Aggrieved by the order of the High Court, appellant moved to the Supreme Court. Clarifying the legal position with regard to the adjustment of decretal amount the Supreme Court held that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly, strictly in accordance with the directions contained in the decree. In the absence of such direction, adjustments are to be made firstly towards interest and costs and thereafter towards principal, subject to one

exception that the parties may agree to the adjustment of payment in any other manner despite the decree. However, the onus is on the party who pleads agreement to the contrary. In the present case respondents failed to prove the agreement to the contrary. In view of Rules 1 and 2 of Order 21 of Civil Procedure Code also the judgement-debtor cannot claim the benefit of adjustment in the manner insisted upon by him. The judgement debtor cannot take protection under Section 60 of the Contract Act, as the said provision has to be read along with Sec. 59 which deals with adjustment in case of several distinct debt payable by one person. The provision is not applicable in the case of principal and interest and due on a single debt. Further, there is no legal obligation as the decree holder to intimate the judgement-debtor that the amount paid to him had not been accepted in the manner specified by him. Insisting upon such a course would result in unnecessary burden upon the financial institutions and conferment of unwanted unilateral discretion in favour of the defaulters. Acceptance of the plea that the amount paid first should be adjusted in the principal amount would not only be against the provision of law but against the public policy as well.

Decision

In the circumstances, the appeal was allowed by setting aside the impugned order passed by the High Court and by upholding the order of the executing Court.

5. Conducting and confirmation of sale -Principal obligation - Body of creditors of company for obligation is to ensure best possible price

Allahabad Bank Vs Bengal Paper Mills Company Ltd.

(1999) 20 SCL 309 (SC)

Facts

In June 1995, a winding up petition was filed against Bengal Paper Mills Company Ltd., (Respondent), now in liquidation. In the year 1986, various banks such as Punjab National Bank, Bank of Baroda, United Bank of India, American Express Bank and Allahabad Bank (appellant) filed various mortgage suits against the company in various courts. On 24th April 1987 in the winding up petition, the company was ordered to be wound up and the official liquidator was directed to take possession of the company's assets and properties. However, the company court permitted the banks to proceed with their respective suits. On 25th November 1988, the court appointed a valuer for assessing the company's assets and properties. In response to the sale notice issued by the official liquidator M/s. Eastern Minerals and Trading Agency (respondent No.2) offered Rs.1.5 crore which was subsequently raised to two crores. The company judge in view of representation of the State Government that 1,700 people would be re-employed and also in view that secured creditors/ banks had no objection and they themselves participated during sale proceedings, approved sale and directed official liquidator to hand over the possession of the mill premises to the purchaser by the very next day.

Appeal before the Division Bench

The appellant bank challenged the order of the company court on grounds that the valuation report was never disclosed and the bank had no opportunity to object the valuation. The bank also challenged that the valuer had not considered the value of huge leasehold land belonging to the company. Further as secured creditors, the bank had never agreed to sell the assets which were actually their securities. The Division Bench found that the sale was made with undue haste without giving wide publication. However, considering the facts that the bank had participated in the sales from the very beginning and raised no objection, the purchaser had been allowed to take possession of the property and incurred huge expenditure and the appeal was filed after 5 long months, dismissed the appeal.

Findings of the Supreme Court

On an appeal to the Supreme Court, while examining the sale process, the Court found the following anomalies;

i. No reserve price for the sale was fixed
ii. ii. Valuer did not consider the leasehold land
iii. iii. Inadequate publicity

Therefore, the Supreme Court was of the view that the single judge did not appreciate that his principal obligation in conducting and confirming the sale, was to the body of creditors of the said company and that the obligation was to ensure that the best possible price had been procured. The court further added, the sale was conducted with undue haste. Therefore, the Supreme Court expressed dissatisfaction over the decision of the Division Bench that even after observing the sale was conducted with undue haste, the Division Bench has not struck down the sale. The expenditure incurred by the purchaser during the pendency of appeal is not a ground to perpetrate the sale, because such expenditure as it incurred with this knowledge was at its risk of the rights.

Decision

As a result, the sale was set aside and the official liquidator was directed to forthwith recover possession from whoever was in possession of the assets and properties covered by the said order of sale. The court ordered fresh re-sale after fresh valuation and notice.

There is a vague popular belief that lawyers are necessarily dishonest. ..... Let no young man choosing the law for a calling for a moment yield to the popular belief – resolve to be honest at all events; and if in your own judgement you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.

— LINCON, Abraham, Notes for a Law Lecture, July 1, 1850, in II, Complete works of Abraham Lincoln (John G. Nicolay and John Hay, eds., New York: Francis D. Tandy Company, 1894), p. 143.
