SOBRAN SINGH A
v.
STATE OF U.P. & ORS.
(Civil Appeal No. 9100 of 2014 etc.)

SEPTEMBER 23, 2014 B

[T.S. THAKUR C. NAGAPPAN AND ADARSH KUMAR GOEL, JJ.]

Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972: C

s.4(2) r/w s.3 – Guarantor claiming that recovery proceedings cannot be initiated against him unless properties mortgaged by principal borrower remain to be sold for payment of outstanding dues – The protection referred to in s.4(2) has no application to guarantor, and the same is confined only to the principal debtor who has charged his properties in the manner indicated – Pawan Kumar Jain and Ashok Mahajan, overruled. D

Dismissing the appeals, the Court E

HELD: 1.1. Sections 3 and 4 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 make it clear that recovery of outstanding loan amount can be made as arrears of land revenue only if there exists an agreement to that effect. In the instant case, the agreement executed between the guarantor-appellant and respondent No.4-Corporation does provide for recovery of money due thereunder as arrears of land revenue. [para 5 & 6] [664-B-D] F G

1.2. In cases where there is a charge, mortgage or encumbrance referred to in s.4(2), the sale of such property is made a condition precedent for recovery of

 H

A the balance amount, if any, by initiating proceedings against the defaulter in terms of clause (b) of s.4(2). It has no application to cases in which the person referred to in s.3 has not mortgaged, charged, pledged or encumbered in favour of the State Government or the B Corporation or a Government Company or a banking company, any property owned by any such person. I n the instant case, the guarantors have not created any mortgage, charge or encumbrance in regard to their immovable property in favour of the respondent-C Corporation. The bar against initiation of recovery proceedings till such time such mortgaged, charged or encumbered properties are sold can, therefore, have no application to them. The protection is confined only to the principal debtor who has charged his properties in the D manner indicated. [para 7-8] [665-B-E]

1.3. The legislature has made a conscious departure in the case of guarantors while providing protection to the borrowers whose properties stand mortgaged in connection with the loan transactions. The general E principle of law that the liability of the guarantor is co-extensive with that of the principal borrower continues to hold good even when recovery proceedings are taken under a special enactment. There is nothing in s. 4(2) to suggest that the legal edifice on which the liability of the F borrower and the guarantor are made co-extensive stands altered. All that the statute provides is that while the liability of the guarantor remains enforceable coextensively with the principal borrower, the latter shall not be proceeded against so long as properties G mortgaged, charged or encumbered by him have not been sold. [para 9] [666-B-E]

1.4. *Pawan Kumar Jain's case* laying down that the guarantors cannot be proceeded against unless the property mortgaged or charged by the principal debtors H

is first sold, is overruled, and so also *Ashok Mahajan's* case. This Court holds that the guarantors do not enjoy any protection against recovery of proceedings u/s 4(2) of the U.P. Public Moneys (Recovery of Dues) Act, 1972. [para 10] [666-H; 667-A] A

Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Ors. **2004 (3) Suppl. SCR 447 = (2004) 6 SCC 758,** *Ashok Mahajan v. State of U.P.* **2006 (6) Suppl. SCR 657 = (2006) 10 SCC 332 – overruled.** B C

Case Law Reference:

2004 (3) Suppl. SCR 447	**overruled**	**para 2**
2006 (6) Suppl. SCR 657	**overruled**	**para 2**

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9100 of 2014.

From the Judgment & Order dated 24.7.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 37172 of 2006. E

WITH

C.A. No. 422 of 2008 & 9101 of 2014.

Aditya Dewan, Lakshmi Raman Singh, Subramonium Prasad, Ashim Vachher, Rajiv Dalal, Sunil Kumar Jain, Pawan Shree Agrawal, Sachin Sharma for the Appellant. F

P.V. Shetty, Aarohi Bhalla, Ardhendumauli Kumar Prasad, Mike P. Desai, Ajay Sharma, Rajeev Sharma, Neelam Sharma, Ashok Kumar Singh, Gunnam Venkateswara Rao, Adarsh Upadhyay, Anuvrat Sharma for the Respondents. G

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted. H

A 2. In *Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Ors. (2004) 6 SCC 758*, a two-Judge Bench of this Court declared that no proceedings for recovery of the outstanding loan amount can be taken against a guarantor so long as the property of the B borrower which is mortgaged, charged or otherwise encumbered is not first sold. Section 4 (2)(b) of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 was in the process interpreted to be giving protection against recovery proceedings not only to the borrower of the loan but to his C guarantor as well. The conclusion drawn by this Court is summed up in the following passage:

> *"**8.** In our view, the above-set-out provisions of the U.P. Act are very clear. Action against the guarantor cannot be taken until the property of the principal debtor is first* D *sold off. As the appellant has not sold the property of the principal debtor, the action against the appellant cannot be sustained. We, therefore, set aside the recovery notice."*

E 3. Proceedings for the recovery of outstanding loan amount having been initiated against the appellant Sobran Singh who stood guarantor for the repayment of the loan amount, Writ Petition No.37172 of 2006 filed by him before the High Court of Judicature at Allahabad challenged the same primarily on F the ground that so long as the properties of the principal borrower remained to be sold, the guarantor could not be proceeded against. That contention did not find favour with the High Court who summarily dismissed the writ petition holding that the liability of the guarantor was co-extensive with that of G the borrower and that recovery proceeding could be initiated against both of them simultaneously. The present appeal by special leave assails the correctness of the view taken by the High Court.

4. When the matter came up for hearing on 12th H November, 2007 before a bench comprising S.B. Sinha and

H.S. Bedi, J.J., the appellant placed reliance upon the decision of this Court in *Pawan Kumar Jain's case (supra)* to argue that the guarantor was as much protected against proceedings for recovery of the outstanding amount as the borrower in view of the provisions of Section 3(1)(d) read with Section 4(2)(b) of the Act afore-mentioned. The Court, however, entertained doubts about the correctness of the view taken in *Pawan Kumar Jain's case (supra)* and accordingly referred the matter to a larger bench. That is precisely how this appeal and the accompanying two matters have come up before us for hearing.

5. Sections 3 and 4 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 may, at the outset, be extracted *in extenso* :

> *"3. Recovery of certain dues as arrears of land revenue.—(1) Where any person is party—*
>
> *(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of, goods sold to him by the State Government or the Corporation, by way of financial assistance; or*
>
> *(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him, by a banking company or a government company, as the case may be, under a State-sponsored scheme; or*
>
> *(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or*
>
> *(d) to any agreement providing that any money*

A *payable thereunder to the State Government shall be recoverable as arrears of land revenue; and such person—*

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

B

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof; or

C

(iii) otherwise fails to comply with the terms of the agreement;

then, in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification in the Official Gazette, and in the case of the Corporation or a government company the Managing Director thereof, and in the case of a banking company, the local agent thereof, by whatever name called, may send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

D

E

F

(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue.

(3) No suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1).

G

4. Savings.—(1) Nothing in Section 3, shall,—

(a) affect any interest of the State Government, the Corporation, a government company or any banking

H

company, in any property created by any mortgage, charge, pledge or other encumbrance; or A

(b) bar a suit or affect any other right or remedy against any person other than a person referred to in that section, in respect of a contract of indemnity or guarantee entered into in relation to an agreement referred to in that section or in respect of any interest referred to in clause (a). B

(2) Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, the Corporation, a government company or banking company, then,— C

(a) in every case of a pledge of goods, proceedings shall first be taken for sale of the thing pledged, and if the proceeds of such sale are less then the sum due, then proceedings shall be taken for recovery of the balance as if it were an arrear of land revenue: D

E

Provided that where the State Government is of opinion that it is necessary so to do for safeguarding the recovery of the sum due to it or to the Corporation, government company or banking company, as the case may be, it may for reasons to be recorded, direct proceedings to be taken for recovery of the sum due, as if it were an arrear of land revenue before or at the same time as proceedings are taken for sale of the thing pledged; F

(b) in every case of a mortgage, charge or other encumbrance on immovable property, such property or, as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person as if it were an arrear of land revenue, and any other G

H

A *proceedings may be taken thereafter only if the Collector certifies that there is no prospect of realisation of the entire sum due through the first-mentioned process within a reasonable time."*

B 6. A careful reading of the above would show that recovery of outstanding loan amount can be made as arrears of land revenue only if there exists an agreement to that effect. It is common ground that agreement executed between the guarantor-appellant and the respondent No.4-Corporation does provide for recovery of money due thereunder as arrears of land C revenue. In fairness to learned counsel for the appellants, we must mention that there was no challenge to the recoverability of the amount outstanding against the borrower and the guarantor, as arrears of land revenue. What was argued at considerable length was whether recovery proceedings could D be initiated against the guarantor so long as the properties mortgaged by the principal debtor borrower remain to be sold for payment of the outstanding amount. It was contended that such recovery proceedings against the guarantor would be permissible only if the mortgaged, charged or encumbered E immovable property of the borrower is first sold off. Support for that proposition was drawn from the provisions of Section 4(2)(b) of the Act and the decision of this Court in *Pawan Kumar Jain's* case (supra) later followed by another two-Judge Bench decision of this Court in *Ashok Mahajan v. State of U.P.* F *(2006) 10 SCC 332.*

7. Section 4(2)(b) does not, in our opinion, lend itself to the interpretation urged on behalf of the appellants. The expression *"where the property of any persons referred to in Section 3 is subject to any mortgage, charge, pledge or other* G *encumbrance"* appearing in that provision, in our opinion, leaves no manner of doubt that situations where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or any encumbrance are alone covered by the same. It has no application to cases in which

H

the person referred to in Section 3 has not mortgaged, charged, pledged or encumbered in favour of the State Government or the Corporation or a Government Company or a banking company, any property owned by any such person. In cases where there is a charge, mortgage or encumbrance referred to in Section 4(2), the sale of such property is made a condition precedent for recovery of the balance amount, if any by initiating proceedings against the defaulter in terms of clause (b) of Section 4(2). In other words Section 4(2) postulates initiation of proceedings against a person whose property is mortgaged, charged or encumbered only if such property is first sold off and the Collector certifies that there are no prospects of realizing the entire sum due through such process of sale within a reasonable time.

8. It is not in dispute that the guarantors have not in the present appeals created any mortgage, charge or encumbrance in regard to their immovable property in favour of the respondent-Corporation. The bar against initiation of recovery proceedings till such time such mortgaged, charged or encumbered properties are sold can, therefore, have no application to them. The contention that Section 4(2)(b) protects even the guarantors must, therefore, fail. The protection is, in our opinion, confined only to the principal debtor who has charged his properties in the manner indicated above.

9. It was contended on behalf of the appellants that any interpretation which deprives the guarantor of the property under Section 2(b) and consequently exposes him to a harsher treatment than the one given to the principal-debtor who has borrowed the loan but failed to repay the same would be inequitable and opposed to equity and good conscience. It was urged that the principal borrower cannot escape simply because he has mortgaged or charged his immovable property, nor was there any rationale for denying the protection available to the borrower to the guarantors who have taken no advantage for themselves and yet face the prospects of

A summary proceedings for recovery of the outstanding as arrears of land revenue which can at times result in their detention in civil prison. The argument though attractive does not stand closer scrutiny. The legislature has, it is evident from the language employed in the provision, made a conscious B departure in the case of guarantors while providing protection to the borrowers whose properties stand mortgaged in connection with the loan transactions. If the intention of the legislature was to extend the benefit of such protection to the guarantors also, nothing prevented it from specifically indicating C so. Section 4(2) would then have been differently worded. That, however, is not the position. The general principle of law that the liability of the guarantor is co-extensive with that of the principal borrower continues to hold good even when recovery proceedings are taken under a special enactment. There is D nothing in Section 4(2) to suggest that the legal edifice on which the liability of the borrower and the guarantor are made co-extensive stands altered. All that the statute provides is that while the liability of the guarantor remains enforceable coextensively with the principal borrower, the latter shall not be E proceeded against so long as properties mortgaged, charged or encumbered by him have not been sold. The difference in the treatment which the special enactment authorises as between the borrower and the guarantor in our opinion springs from the fact that one has mortgaged, charged or encumbered his immovable property while the other has not. The one who F has charged, mortgaged or encumbered the property is placed at a different footing than the one who has not done so. To that extent alone there is a difference in the matter of enforcement of the recovery proceedings against the borrower and the guarantor for in all other respects the liability of the two G continues to be unlimited and co-extensive.

10. In the light of what we have said above, we are of the view that *Pawan Kumar Jain's case (supra)* was not correctly decided when it said that the guarantors cannot be proceeded H against unless the property mortgaged or charged by the

principal debtors is first sold. The later decision of the Court in *Ashok Mahajan's* case *(supra)* has simply followed *Pawan Kumar Jain's case (supra)* without making any qualitative contribution to the rationale underlying judgment. We have, therefore, no hesitation in overruling both the decisions and holding that the guarantors do not enjoy any protection against recovery of proceedings under Section 4(2) of the U.P. Public Moneys (Recovery of Dues) Act, 1972. These appeals accordingly fail and are, hereby dismissed but in the circumstances without any order as to costs.

Rajendra Prasad Appeals dismissed.