

Shyam Singh

Vs

Collector, District Hamirpur, U. P. and Others

Civil Appeal No. 3966 of 1992

(M. N. Venkatachaliah, P. B. Sawant, N. P. Singh JJ)

25.09.1992

JUDGMENT

N. P. SINGH, J. –

1. Special leave granted.

2. This appeal is against an order passed by the High Court dismissing the writ application filed on behalf of the appellant for quashing the proceedings initiated by the respondents for sale of 22 acres of land which had been mortgaged in favour of the State Bank of India (hereinafter referred to as 'the Bank') in connection with a loan amounting to Rs 34,000 advanced to the appellant in the year 1972 for purchase of a tractor. The tractor so purchased had been hypothecated with the Bank.

3. On various dates the appellant paid Rs 11,500 towards the instalments and the interest in respect of the aforesaid loan. In July 1977, the Bank approached the concerned Tehsildar for recovery of Rs 44,872.60 the outstanding amount till that date in accordance with the procedure prescribed by Section 10-B of the U.P. Agricultural Credit Act, 1973. The Tehsildar initiated recovery proceedings and pursuant to an order passed by him on December 16, 1977, the aforesaid tractor was attached and was taken away from the custody of the appellant on December 26, 1977. From the recovery proceedings of Tehsildar it appeared that interest up to July 7, 1977 had been recovered and the total amount due was Rs 40,793.29. In the column meant for estimated value for the tractor, it was mentioned as Rs 46,146.36. In other words the estimated value of the tractor mentioned in the recovery proceedings was more than the total amount due.

4. On or about July 24, 1981, a proceeding was initiated under Section 11-A of the aforesaid Act for recovery of the same amount and a notice was issued under Section 279 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 giving the details of 22 acres of the lands which were going to be sold for non-payment of the amount advanced along with interest. This was objected to on behalf of the appellant saying that first the sale proceeds of the tractor be adjusted and steps for sale of the agricultural land be taken only thereafter. It was pointed out on behalf of the appellant to the authorities concerned that they themselves had fixed the estimated value of the tractor on July 7, 1977 to be Rs 44,146.36 and had shown the total amount payable by the appellant at Rs 44,872.60. This amount of Rs 44,872.60 included Rs 4,079.33 as the expenses of recovery at the rate of 10 per cent. The amount which was actually payable was Rs 40,793.29 only. This plea was rejected by the Revenue Authorities as well as by the High Court.

5. The U.P. Agricultural Credit Act, 1973, (hereinafter referred to as 'the Act') has been enacted for making "provisions to facilitate adequate flow of credit for agricultural production and development

through banks and other institutional credit agencies and for matters connected therewith or incidental thereto." The definition of "agricultural purpose" in Section 2(a)(ii) includes the acquisition of implements and machinery in connection with any such activities and shall include purchase of a tractor. The definition of Bank shall include the respondent-Bank. The financial assistance means "assistance by way of loan, advance for aforesaid agricultural purposes". Chapter III contains the provisions regarding charges and mortgages in favour of banks and their priorities. Chapter IV provides the procedures for recovery of dues by banks. Sections 10-B, 11 and 11-A are relevant.

"10-B. Distraint and sale of produce and movables. - (1) Where any sum in respect of any financial assistance granted to an agriculturist remain unpaid on the date on which it falls due, the bank granting the financial assistance may apply to the Tehsildar having jurisdiction for the recovery of the sum due, together with expenses of recovery, by distraint and sale of the movable property or the crop or other produce charged in favour of the bank.

(2) The provisions of the Limitation Act, 1963, shall apply in relation to an application under sub-section (1), as if such application were a suit in a civil court for sale of the movable property for enforcing recovery of the sum referred to in that sub-section.

(3) On receipt of an application under sub-section (1), the Tehsildar or any other official authorised by him may, notwithstanding anything contained in any other law for the time being in force, take action in the manner prescribed for purposes of distraining and selling the property referred to in that sub-section.

(4) Any sum so recovered shall be transferred to the bank after deducting the expenses of recovery and satisfying the Government dues or other prior charge, if any.

11. Recovery of dues of a bank through a prescribed authority. - (1) Notwithstanding anything contained in any law for the time being in force, an officer specified by the State Government by notification in the Gazette (hereinafter referred to as the prescribed authority) may, on the application of a bank by order, direct that any amount due to the bank on account of financial assistance given to an agriculturist be paid by the sale of the land or any interest therein or other immovable property which is charged on mortgaged for the payment of such amount :

Provided that no order of sale shall be made under this sub-section unless the agriculturist has been served with a notice by the prescribed authority calling upon him to pay the amount due.

(1-A) The provision of the Limitation Act, 1963, shall apply in relation to an application under sub-section (1), as if such application were a suit in civil court for sale of the land or interest therein or other immovable property for enforcing recovery of the sum referred to in that sub-section.

(2) An order passed by the prescribed authority shall, subject to the result of appeal under Section 12, be final and be binding on the parties.

(3) Every order passed by the prescribed authority in term of sub-section (1) or by the appellate authority under Section 12 shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court by the civil court having jurisdiction.

11-A. Recovery in the case of personal security. - (1) Where any amount of financial assistance is granted by a bank to an agriculturist and the agriculturist fails to pay the amount together with interest on the due date, then without prejudice to the provisions of Sections 10-B and 11, the local principal officer of the bank, by the whatever name called may forward to the Collector a certificate in the manner prescribed, specifying the amount due from the agriculturist.

(2) The certificate referred to in sub-section (1) may be forwarded to Collector within three years from the date when the amount specified in the certificate fell due.

(3) On receipt of the certificate, the Collector shall proceed to recover from the agriculturist, the amount specified therein together with expenses of recovery, as arrears of land revenue, and the amount due to the bank shall be paid after deducting the expenses of recovery and satisfying any Government dues or other prior charges, if any.

Explanation. - For the purposes of this section, the expression 'Collector' means the Collector of the district in which the agriculturist ordinarily resides or carries on the activities referred to in clause (a) of Section 2 or where any movable or immovable property of the agriculturist is situate, and includes any officer, authorised by him in that behalf."

6. From a plain reading of the three sections, 10-B, 11 and 11-A, it appears that they prescribe three procedures for recovery of the loan advanced to an agriculturist. Section 10-B will be applicable when steps are taken for sale of any moveable property or agricultural produce. Section 11 prescribes the procedure for sale of land or any interest therein or any other immovable property which had been charged or mortgaged for payment of the amount advanced. So far as Section 11-A is concerned, it contains a special provision "without prejudice to the provisions of Sections 10-B and 11" under which the Bank may forward to the Collector a certificate in the manner prescribed specifying the amount due from the agriculturist. Thereafter the Collector has to proceed to recover from the agriculturist the amount so specified as arrears of land revenue.

7. As the amount due is to be recovered as arrears of land revenue, Revenue Authorities have to proceed in accordance with Section 279 of the aforesaid U.P. Zamindari Abolition and Land Reforms Act. The relevant part of Section 279 is as follows :

"279. Procedure for recovery of an arrears of land revenue. - (1) An arrears of land revenue may be recovered by any one or more of the following processes :

(a) by serving a writ of demand or a citation to appear on any defaulter,

(b) by arrest and detention of his person,

(c) by attachment and sale of his moveable property including produce,

- (d) by attachment of the holding in respect of which the arrear is due,
- (e) by lease or sale of the holding in respect of which the arrear is due,
- (f) by attachment and sale of other immovable property of the defaulter, and
- (g) by appointing a receiver of any property, moveable or immovable of the defaulter."

8. In Section 279, for realisation of the amount in question, different modes have been prescribed. Although framers of the Act have prescribed different modes for recovery of the dues, the question which has to be answered is as to whether it is open to the Bank (i) to proceed under Section 10-B of the Act for attachment and sale of the moveable property pledged with the Bank; (ii) to follow the procedure for recovery under Section 11 by filing an application before the prescribed authority for sale of the lands which have been mortgaged in connection with the financial assistance; and at the same time (iii) to take steps under Section 11-A aforesaid against the agriculturist concerned by forwarding to the Collector a certificate in the manner prescribed, attracting the provisions of Section 279 of the U.P. Zamindari Abolition and Land Reforms Act for realisation of the same amount. Once Section 279 becomes applicable not only any other moveable property but even any other immovable property of the agriculturist, which has been mortgaged, can be sold and the agriculturist can also be arrested and kept in detention.

9. All these different modes for realisation of the dues of the Bank under the provisions of the Act, pose a question as to whether the right to realise the amount due by the Bank under three different provisions and procedures is so unfettered, unrestricted and absolute in nature that it is open to the Bank to pursue the agriculturist to whom the financial assistance had been given, by initiating simultaneous proceedings.

10. From time to time this question has been examined in connection with Section 51 of the Code of Civil Procedure (hereinafter referred to as 'the Code'). Section 51 of the Code provides that, subject to such conditions and limitations as may be prescribed, on application of the decree-holder the Court may order execution of the decree by different modes mentioned in the said section including

- "(a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property; and
- (c) by arrest and detention in prison for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section;"

11. It has been said the difficulties of a litigant "begin when he has obtained a decree". It is a matter of common knowledge that far too many obstacles are placed in the way of a decree-holder who seeks to execute his decree against the property of the judgment-debtor. Perhaps because of that there is no statutory provision against a number of execution proceedings continuing concurrently. Section 51 of the Code gives an option to the creditor, of enforcing the decree either against the person or the property of the debtor; and nowhere it has been laid down that execution against the person of the debtor shall not be allowed unless and until the decree-holder has exhausted his remedy against the property. Order 21, Rule 30 of the Code provides that "every decree for the payment to money, including a decree for the payment of money as the alternative to some other

relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both".

12. In case of Padrauna Rajkrishna Sugar Works Ltd. v. Land Reforms Commissioner, U.P. [(1969) 1 SCC 485 : AIR 1969 SC 897] in connection with realisation of the income tax dues, sugarcane cess and the price of the sugarcane, treating them as arrears of land revenue, in accordance with the procedure prescribed by Section 279 of U.P. Zamindari Abolition and Land Reforms Act aforesaid itself, it was said by this Court : (SCC pp. 489-90, para 9)

"The power exercisable by the Collector in recovering arrears of income tax which are recoverable as arrears of land revenue are, it is clear, not restricted to the Land Revenue Code : the Collector is entitled to exercise all the powers of a Civil Court for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure, and the Code of Civil Procedure imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before immovable property may be attached...

By virtue of Order 231, Rule 30(e) of the Code of Civil Procedure simultaneous execution both against the property and person of the judgment-debtor is allowed."

But still the discretion in the Court to order simultaneous execution must be exercised in a judicial manner. Order 231, Rule 21 of the Code itself provides that "the Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor".

13. While upholding the power of the Court to execute a decree for payment of money by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both, in the case of Padrauna Rajkrishna Sugar Works Ltd. v. Land Reforms Commissioner, U.P. [(1969) 1 SCC 485 : AIR 1969 SC 897] itself it was said by this Court : (SCC pp. 490-91, para 11)

"It was urged in the alternative that after selling the immovable property which realized more than Rs 23,50,000 the Collector should both have sold the movable property, for the claim for which the properties of the Company were put up for sale was only Rs 8,38,176-13-0. At first blush there is force in this argument. Why the Collector thought it necessary to sell the movable after the immovable property was knocked down to the Cawnpore Sugar Works Ltd., for Rs 23,50,000 was never explained. After the immovable property belonging to the Company was knocked down to the purchasers for an amount of Rs 23,50,000 it was apparently not necessary to hold the auction for sale of moveables valued at Rs 7,64,817 and to accept a bid of only Rs. 2,75,000."

It was pointed out by Sulaiman, C.J., in a Full Bench judgment, in the case of Anadilal v. Ram Sarup [AIR 1936 All 495 : 1936 ALJ 605] :

"....all the various modes mentioned in Section 51 are not open to an executing court in every case; it to be guided by the procedure laid down in the schedule, and must resort to the method appropriate to each case."

14. In the case of Mono Mohan v. Upendra Mohan Pal [AIR 1935 Cal 127 : 154 IC 606] it was said :

"It is quite true that in Section 51 of the Code the remedies open to a judgment-creditor are detailed in the five clauses (a) to (e) to that section and it is also true that where the holder of a decree for money comes before the court and wants process against the person of a judgment-debtor for his arrest, and if there are no special circumstances present, it is not open to the court to say that the decree-holder must proceed against the properties of the judgment-debtor before applying for warrant of arrest against him..... But we are clearly of opinion that here may be circumstances present in a case which would not only justify a refusal to allow the decree-holder to have process for the arrest and detention of the judgment-debtor, but, we are prepared to go further and say that there may be circumstances which would demand such a refusal."

15. Same view was reiterated in the case of A. K. Subramania Chettiar v. A. Ponnuswami Chettiar [AIR 1957 Mad 777 : (1957) 1 Mad LJ 208] saying :

"[T]he Court has a discretion under Order 21, Rule 21 CPC, to refuse simultaneous execution and to allow the decree-holder to avail himself of only one mode of execution at a time."

16. In the case of Uma Kanta Banerjee v. Renwick and Co. Ltd. [AIR 1953 Cal 717] also it was said :

"[P]ower of the decree-holder is, however, subject to the exercise by the court of a judicial discretion vested in it under Order 21, Rule 21 of the Code."

17. It is true that the proverbial law's delay is more frequently and strikingly exemplified in execution proceedings than even in the initial dispute, and as such, courts have to aid the creditor in realising the dues from the debtor. But at the same time in the special facts and circumstances of a particular case, the court can direct the decree-holder or the creditor not to put any property on sale if by the modes already opted by the decree-holder or the creditor, the amount due has been realised or likely to be realised without any further delay.

18. The tractor which had been pledged with the Bank was admittedly attached and was taken in custody by the Tehsildar in accordance with the procedure prescribed by Section 10-B of the Act. The recovery proceedings of the Tehsildar themselves show that on that day the value of the tractor was more than the total amount due. Neither before the High Court nor before this Court it has been disclosed as to what happened to the tractor which had been attached and removed from the custody of the appellant in exercise of the power conferred on the respondents by Section 10-B and as to whether the amount recovered has been transferred to the Bank as required by Section 10-B(4) of the Act.

19. On behalf of the appellant it was urged that in view of the fact that it is an admitted position that the tractor in question was attached and removed from the custody of the appellant by the Tehsildar in exercise of the power under Section 10-B of the Act, it shall be deemed that the appellant has been absolved from his liability to pay the amount in question to the Bank. Reliance in this connection was placed on a Full Bench judgment in the case of Jai Indar Bahadur Singh v. Brij Indar Kaur [AIR 1929 Oudh 231 : 6 OWN 334] where it was held that if the property which came into the hands of a receiver appointed by the Court and which was to be sold by him for the purpose of making payments to the decree-holder had been misappropriated by him, the loss must be borne

by the decree-holder and the judgment-debtor is absolved of the liability to pay to the decree-holder. In that connection reference was also made to the judgment of the Madras High Court in the case of Orr v. Muthia Chetti [ILR (1894) 17 Mad 501] as well as the judgment of the appellate court of the same case Muthia Chetti v. Orr [ILR (1897) 20 Mad 224 (FB)]. But that view did not find favour with the Privy Council in case of Brij Indar Kuar v. Thakur Jai Indar Bahadur Singh [AIR 1932 PC 191 : 137 IC 900]. The judgment of the Full Bench of the Oudh Court was reversed saying that decree had created a charge, and payment to receiver was at judgment-debtor's risk, as such decree-holder can enforce the charge.

20. Whatever may be said in connection with an execution proceeding under the provisions of the said 'Code', according to us, the analogy may not be apposite where the recovery proceedings are statutory in nature and the creditor is itself the State or as here an authority within the meaning of Article 12 of the Constitution. The tractor in question was seized and removed in accordance with a statutory provision. The right of the Bank to follow one or the other modes, separately or simultaneously, for the realisation of the dues has to be recognised. But that right does not extend to the extent of selling the different moveable or immovable properties of the debtor under different provisions and through different procedures without ascertaining whether the amount due has already been realised by sale of the property already attached in the proceedings which were initiated for the purpose. The Court should, on the facts and circumstances of a particular case, decide as to whether simultaneous proceedings should be permitted against the debtor for realisation of the same amount. It is true while exercising such discretion, Court has to be conscious of the fact that the debtors are generally interested in delaying the realisation of the debts.

21. However, so far as the present case is concerned, steps for sale of the tractor had admittedly been taken. What happened to the proceedings initiated under Section 10-B of the Act and to the tractor of the appellant is not known. Accordingly, the appeal is allowed to the extent that the respondents are directed to ascertain the amount which has been recovered or shall be deemed to have been recovered from the tractor, towards the dues. It is only if the total amount of the dues of the Bank has not been realised, the respondents shall be at liberty to proceed with the sale of the lands which had been mortgaged with the Bank in accordance with the provisions of Section 11-A of the Act read with Section 279(1) of the U.P. Zamindari Abolition and Land Reforms Act. The lands which had been mortgaged shall be deemed to be under attachment in view of the steps already taken under Section 279(1) of the U.P. Zamindari Abolition and Land Reforms Act. In the facts and circumstances of the case there shall be no order as to costs.

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