

# SUPREME COURT OF INDIA

Punjab National Bank

Vs.

State of U.P.

(B.N.Kirpal, D.P.Mohapatra and Ruma Pal JJ.)

16.01.2001

## ORDER

1. The appellant had, after respondent No. 4's management was taken over by the U. P. State Textile Corporation Limited (respondent No. 3) under the Industries (Development and Regulation) Act, advanced some money to the said respondent No. 4. In respect of the advance so made, respondents Nos. 1, 2 and 3 executed deeds of guarantee undertaking to pay the amount due to the bank as guarantors in the event of the principal borrower being unable to pay the same.

2. Subsequently, respondent No. 3 which had taken over the management of respondent No. 4 became sick and proceedings were initiated under the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short "the Act"). The appellant filed suit for recovery against the guarantors and the principal-debtor of the amount claimed by it.

3. The following preliminary issue was, on the pleadings of the parties, framed:

"Whether the claim of the plaintiff is not maintainable in view of the provisions of Act No. 57 of 1974 as alleged in para. 25 of the W. S. of defendant No. 2 ?"

4. The trial court as well as the High Court both came to the conclusion that in view of the provisions of Section 29 of the Act, the suit of the appellant was not maintainable.

5. We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. This Act only deals with the liabilities of a company which is nationalised and there is no provision therein which in any way affects the liability of a guarantor who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this court in *Maharashtra State Electricity Board, v. Official Liquidator, High Court, Ernakulam*<sup>1</sup>: where the liability of the guarantor in a case where liability of the principal-debtor was discharged under the insolvency law or the company law, was considered. It was held in this case that in view of the unequivocal guarantee such liability of the guarantor continues and the creditor can realise the same from guarantor in view of the

language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act.

6. In our opinion, the principle of the aforesaid decision of this court is equally applicable in the present case. The right of the appellant to recover money from respondents Nos. 1, 2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not be able to recover money from the principal-borrower. It may here be added that even as a result of the Nationalisation Act the liability of the principal-borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act.

7. For the aforesaid reasons, this appeal is allowed, the preliminary issue framed by the trial court is decided in favour of the appellant and the case is remanded to the trial court for decision on merits. No costs.

8. I. A. No. 3 filed in this court by respondent No. 3 under Section 22 of the *Sick Industrial Companies (Special Provisions) Act, 1985*, is dismissed as withdrawn with liberty to the applicant to move the appropriate application before the trial court.

<sup>1</sup>(1983) 1 SCR 561