SUPREME COURT OF INDIA

Shivanand Gaurishankar Baswanti

Vs.

Laxmi Vishnu Textile Mills

C.A.No.4324 of 2008

(C.K. Thakker and D.K. Jain JJ.)

11.07.2008

JUDGMENT

C.K. Thakker, J.

1. Leave granted.

2. The present appeal is directed against summary dismissal of writ petition No. 5664 of 2006 on February 12, 2007 by the High Court of Judicature at Bombay observing that it was not a fit case to entertain the petition in exercise of extraordinary jurisdiction under Article 226 of the Constitution.

FACTUAL BACKGROUND

3. The case has a chequered history and with a view to appreciate the contentions raised by the parties, the background is required to be kept in view. Laxmi Vishnu Textile Mills (`Company' for short)—respondent No.1 herein was formerly known as Vishnu Cotton Mills Ltd. It was registered on May 19, 1908 under the *Indian Companies Act, 1873* (then in force). It was operating through two cotton textile mills, namely, (i) Laxmi Mill, and (ii) Vishnu Mill. Somewhere in the year 1961, Laxmi Mill was merged in Vishnu Mill and was given the present name i.e. Laxmi Vishnu Textile Mills Ltd. There were large number of workers in the mill and there was considerable profit in the business. By the passage of time, however, the Company started incurring losses and things turned worse in later eighties. *Proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985* (hereinafter referred to `SICA') had been initiated. On April 28, 1994, the Board of Industrial and Financial Reconstruction, New Delhi (`BIFR' for short) issued an order declaring the Company as `sick unit' and in exercise of powers conferred on it under Section 22A of the Act, it restrained the promoters/management from disposing or transferring its assets described in the order without prior permission of the Board. It was also stated that violation of the order passed by the Board would be dealt with under Section 33 of SICA.

4. It is also the case of the appellant that without issuing notice and without obtaining permission from the Appropriate Authority as required under Sections 25-O and 25-N of the *Industrial Disputes Act, 1947*, the management of the Company resorted to illegal closure and lockout of the Company. Thus, from February 28, 1995, the Company is illegally closed.

5. According to the appellant, BIFR considered the facts and circumstances of the case in their entirety and on December 30, 1996 passed an order recording its satisfaction as required by sub-section (1) of Section 20 of the Act that it was not possible for the Company to revive and it was just and equitable that Company should be wound up. The opinion was forwarded to the High Court of Judicature at Bombay with a request that banks and financial institutions may explore the possibility of sale of the assets of the Company. It was proposed to entrust the work of sale of assets to State Bank of India (SBI), the lead bank in the case. The Operative Agency (OA), namely, IDBI was directed to hold a joint meeting of all participating banks and financial institutions and to furnish a detailed report on sale of assets of the Company through SBI latest by February 28, 1997.

6. It may be stated at this stage that SBI was one of the major creditors. It initiated recovery proceedings against the Company by filing Original Application No. 2638 of 1999 and got a decree from Debt Recovery Tribunal (DRT)-1, Mumbai for a sum of Rs.84.39 crores with interest. Other financial institutions had also initiated proceedings for recovery of their dues. Receiver was appointed by DRT-1, Mumbai, who took possession of the properties of the Company. Steps were also taken to protect properties by employing police force. The Receiver also met representatives of Rashtriya Girni Kamgar Sangh, recognized Union--respondent No.8 herein. The Receiver was in possession of the property except those properties which were occupied by the employees who were in service of the Company and were residing in the quarters provided to them while they were in employment. Possession of the machinery and other movable properties of the Company was also taken over. Since the dues of workers were neither settled nor paid, several workers approached Controlling Authority under the *Payment of Gratuity Act, 1972* for gratuity. Orders were passed in their favour directing the Company to pay full amount of gratuity with interest thereon. The said amount was also not paid. Meanwhile, Trans Asia Global Company--respondent No.7 expressed its desire to purchase the property. According to the appellant, respondent No.8--Union had no authority to represent the interests of workers of respondent No.1--Company and yet on March 8, 2005, it purportedly entered into a tripartite agreement with respondent No.1--Company, respondent No.8--Union and respondent No.7-M/s Trans Asia Global Company. Respondent No.1- Company under the tripartite agreement sold the property to respondent No.7for Rs.46.65 crores. The claim of the workmen was settled at Rs.22.21 crores whereas in fact, the claim of the workmen was more than Rs.132 crores. The purported agreement never brought to the notice of the workmen and they were kept in complete dark. The property of the Company was worth Rs.250 crores which could have satisfied claims of SBI, legitimate dues of the workmen as also of financial institutions and other creditors. According to the appellant, the other agreement was also entered into between secured and unsecured creditors, labour representatives, the Company and the purchaser on April 20, 2005. The agreement states that all secured creditors, unsecured creditors and representatives of the workmen had a meeting and they all agreed on One

Time Settlement (OTS) and accepted the scheme of selling the entire property by a private treaty to respondent No.7 and accordingly the property was sold. The action, however, was totally illegal, uncalled for and in contravention of various provisions of law.

PIL WRIT PETITION

7. According to the appellant, as soon as he came to know about the above agreements, sale of property by private negotiations and without taking workers in confidence, he submitted a representation to the Chief Justice of High Court of Bombay pointing out several illegalities committed by respondent No.1-- Company in not settling the dues of workmen. The representation was converted into Public Interest Litigation (PIL) and was registered as PIL Writ Petition No.126 of 2005. The appellant herein filed an affidavit in the said petition on June 27, 2006. The writ petition came up for hearing before a Division Bench of the High Court on July 13, 2006 and after hearing learned counsel for the parties, the writ petition was disposed of by the Court observing that the grievance of the workers could be redressed before `appropriate forum'. The complaint against sale of property by private treaty also could be adjudicated in `proper proceedings' and the controversy did not deserve to be taken into PIL. Liberty, however, was granted by the Court to all aggrieved parties to pursue `appropriate remedy' for redressal of their grievances.

PRESENT WRIT PETITION

8. The appellant, thereafter, filed present Writ Petition No. 5664 of 2006 in the High Court of Bombay under Article 226 of the Constitution and prayed for a writ of certiorari or any other appropriate writ, direction or order quashing all the actions in the matter of recovery proceedings before the Recovery Officer, Mumbai Debt Recovery Tribunal No.1 and by examining the validity, propriety and correctness of such proceedings and to quash and set aside order of sale of properties --movable and immovable--of respondent No.1-- Company in favour of respondent No.7. A writ of mandamus was sought directing DRT-1, Mumbai not to disburse any amount to anyone till the claims of the workers have been properly adjudicated and the amount paid. A prayer was made to continue to employ all workers till their services are legally terminated or till lawful closure is effected. Interim relief was also prayed.

ORDER OF HIGH COURT

9. The High Court, as observed above, dismissed the writ petition observing that it was not a fit case to interfere with by an order dated February 12, 2007 in exercise of extraordinary jurisdiction under Article 226 of the Constitution. The said order is challenged by the appellant in this appeal.

10. Notice was issued by this Court on September 7, 2007 and meanwhile order passed by DRT was stayed. Affidavits and further affidavits were thereafter filed by the parties. The Registry was directed to place the matter for final disposal and that is how the matter is before us.

11. We have heard learned counsel for the parties.

APPELLANT'S SUBMISSIONS

12. Learned counsel for the appellant contended that all orders passed and actions taken by the Authorities are unlawful, illegal and contrary to law. It was submitted that the first respondent-Company had resorted to illegal closure and unlawful lockout due to which workers had suffered a lot. It was also submitted that when proceedings had been initiated under SICA and an order was passed by BIFR restraining the management of the 1st respondent-Company from transferring, alienating or disposing its property, no action could have been taken for sale of the property. Apart from the fact that such action is illegal and in violation of the order passed by BIFR, it is also contrary to law and is punishable under Section 33 of SICA. A grievance was also made that though there were several secured and unsecured creditors and more than 4,000 workers, whose dues had not been paid, they were never taken in confidence and private settlement had been arrived at. Such action could not be said to be legal or in consonance with law. Moreover, the property of the 1st respondent-Company which is worth more than Rs.250 crores had been sold away by a `throw away' price of less than Rs.50 crores. It has prejudicially affected the interest of families of thousands of workers who would have otherwise got their legitimate dues but for the illegal settlement by `interested' persons. According to the appellant, most of the workers were not in favour of so called settlement of acceptance of an amount of Rs.22.21 crores towards full and final settlement of their dues when they were actually entitled to six times more the said amount. Respondent No.7 could not have represented all the workers and entered into such settlement by accepting less than 20% of their dues. According to the appellant, most of the workers have objection against such settlement and they have supported the appellant and several employees had expressed their opinion in writing to that effect. The appellant had stated that when he came to know about the decree passed by DRT and execution proceedings in pursuance of the said decree and sale of property, he drew the attention of the Hon'ble Chief Justice of High Court of Bombay by making a representation which was treated as PIL Writ Petition. The High Court ought to have granted relief in that proceeding. The High Court, however, disposed of the writ-petition by granting liberty to the parties to take appropriate proceedings in accordance with law. The appellant, therefore, filed fresh petition but the High Court by a `cryptic' order, dismissed the same without entering into the merits of the matter. It was, therefore, submitted by the appellant that the impugned order passed by the High Court deserves to be set aside quashing and setting aside the order of sale in favour of respondent No.7 and by directing the authorities to decide the matter afresh in accordance with law.

RESPONDENTS' SUBMISSIONS

13. The contesting respondents, on the other hand, strongly urged that the appeal deserves to be dismissed and no interference by this Court is called for. The appellant has no locus standi to file a petition either in the High Court or to prefer an appeal in this Court. It was contended that respondent No.1-- Company was in continuous loss since several years and in

the year 1995, it was closed down. Crores of rupees were required to be paid to State Bank of India, other financial institutions as also to workers. Proceedings had been initiated under SICA and BIFR was satisfied that the Company could not be revived and it favoured winding up of the Compny. A decree was passed in favour of SBI by DRT-1, Mumbai for substantial amount of more than Rs.80 crores with interest. Over and above the said amount, there were other secured and unsecured creditors. Moreover, outstanding dues of workers were also there. Movable and immovable property of the Company was not enough to clear up all the dues. It was, therefore, felt that a fair settlement could be arrived at so that all the parties could get an equitable share and proper and reasonable amount from the property owned and possessed by respondent No.1-Company. It is in the light of the above facts that the parties i.e., (i) Company; (ii) Secured and unsecured creditors; and (iii) Union sat together, discussed the problem and settled the matter. SBI which was having a decree for Rs.84 crores with interest thereon, agreed to let go substantial part of the amount so that workers may not be prejudicially affected. Other creditors also adopted positive and constructive attitude. The Union considered the fate of families of several workers and in the capacity of `Representative Union' under the Bombay Industrial Relations Act, 1946 exercised the power and agreed to the settlement. In fact, it was the case of respondent No.7-Union that during the intervening period of about one decade after the closure of the Mills in 1995, about 400 workers died. If settlement would not have been arrived at, it would have resulted into further agony to the remaining workers and their families as also the families of those workers who lost their lives during the pendency of proceedings. It was in these circumstances that the best solution had been thought by way of settlement and no fault can be found against Representative Union in agreeing to such settlement.

14. It was also submitted that under the Act of 1946, it is the Representative Union which alone has exclusive right in any industry to represent the entire class of workmen in the local area. The appellant had no locus or standing to agitate grievance or raise dispute on behalf of workers/ labourers. But, even otherwise, a representation which was treated as PIL Writ Petition was dismissed by the High Court and that order had never been challenged by the appellant by approaching this Court and the decision had become final. It was contended that from the order of the Court it was very clear that liberty was granted to aggrieved parties to take appropriate remedy, in appropriate forum in appropriate proceedings. The appellant, however, neither approached Labour Forum nor went to Debt Recovery Appellate Tribunal but filed a fresh writ- petition. Obviously, the subsequent petition in which the impugned order is passed was not PIL as it was registered as Writ Petition instituted by an individual. The High Court was, therefore, wholly right and fully justified in dismissing the said petition in limine, particularly in the light of the order passed in previous PIL Writ Petition.

15. It was submitted that the situation today is irreversible inasmuch as after the settlement had been arrived at between the parties, the purchaser-respondent No.7 had deposited the entire purchase price with DRT. The secured creditors as well as labourers were paid their dues as per the said settlement and their respective shares. Creditors had issued `discharge certificates'. The Assistant Labour Commissioner had disbursed the amount to the workers and their family members who are more than four thousand. The appellant who was also

one of the workers was paid more than Rs.60,000/- and he issued a receipt in token of acceptance of the said amount. The order of sale in favour of respondent No.7 was confirmed by DRT and the sale became final. Sale certificate was also issued in favour of the purchaser. It had also paid an amount of Rs.2.25 crores towards stamp duty and got the property registered in its name. All those orders were never challenged by the appellant by taking `appropriate proceedings'. If at this stage, this Court interferes and sets aside the orders passed by the authorities from time to time, irreparable injury and loss would be caused not only to the purchaser-respondent No.7, but to other respondents as well. For instance, it would be very difficult for the workers who had received the amount to refund or pay back the said amount which would be the direct consequence. It would be difficult for respondent No.7 also if it will not be able to recover the amount which it has paid. Moreover, no secured or unsecured creditor has come forward and has made a complaint to this Court that though he was entitled to a particular amount, he had not been paid and he has grievance against the settlement. The appellant who is only one person and has received his dues, has approached the High Court under Article 226 of the Constitution after dismissal of Public Interest Litigation and it is he who contends that several creditors have not been paid their dues and workers have also suffered and the settlement should be set aside. It was submitted that the High Court was right in not entertaining such petition and this Court, in exercise of power under Article 136 of the Constitution, may not interfere with the said order.

CONSIDERATION OF RIVAL CONTENTIONS

16. Having heard the learned counsel for the parties and having gone through the records and proceedings of the case, in our opinion, this is not a fit case for exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution.

17. It is clear that so far as the present proceedings are concerned, they are not in the nature of por bono publico. The appellant herein had made representation to the Hon'ble Chief Justice of High Court of Judicature at Bombay earlier which was treated as Writ Petition (PIL) and the petition was disposed of by the Court granting liberty to the aggrieved parties to approach appropriate forum in appropriate proceeding without granting any relief. Prima facie, therefore, in our opinion, the contention of the contesting respondents is well-founded that if the appellant herein was aggrieved by certain orders passed by Debt Recovery Tribunal (DRT)- I, Mumbai, he ought to have approached Debt Recovery Appellate Tribunal (DRAT) by filing appeals against those orders. If he had grievance against the Company or inaction on the part of the Authorities under Labour Laws on the ground that they had not protected the interests of workers of Laxmi Vishnu Textile Mills, he ought to have approached Labour Forum. The appellant, however, did neither. As soon as the PIL Writ Petition was disposed of, within few days, he filed another writ petition in his individual capacity. The High Court, in our opinion, therefore, was right in dismissing it in limine by passing the impugned order that it was not a fit case to exercise extraordinary jurisdiction under Article 226 of the Constitution.

MERITS OF THE MATTER

18. On merits also, we find no substance in the contention raised by the learned counsel for the appellant. From the record, it is clear that from eighties the respondent No. 1- Company was in financial doldrums. Day-by-day, the position deteriorated and it had incurred heavy losses. So much so that the Mill was required to be closed down somewhere in 1995. Admittedly, after February, 1995, the Company has never revived. It is also clear from the record that substantial amount was due and payable by the Company to State Bank of India, several other financial institutions, secured and unsecured creditors and to workers. Proceedings had been initiated under SICA. BIFR had passed orders from time to time and finally it recommended winding up of the Company on being satisfied that rehabilitation of the Company was not possible. A recommendation was, therefore, made and papers were forwarded to the High Court concerned, i.e. the High Court of Judicature at Bombay. It is further clear that in favour of one major creditors, i.e. State Bank of India a decree was passed by DRT- I, Mumbai for Rs.84.39 crores with interest thereon. It has been brought on record that several other financial institutions had approached DRT and either orders were passed in their favour or proceedings were pending. It is brought to our notice that many workers had gone to Controlling Authority under the Payment of Gratuity Act, 1972 and obtained orders in their favour directing the first respondent Company to pay gratuity with interest thereon. The Company was not in a position to pay entire dues. In the circumstances, DRT-I, Mumbai ordered to take appropriate steps so that joint meeting of all financial institutions and representatives of workers be held and the matter could be settled. Meanwhile, respondent No.7-Trans Asia Global Trade expressed its desire to purchase the property. On March 8, 2005, a tripartite agreement had been arrived at between respondent No. 1-Company, representatives of respondent No.8-Union of workers and Trans Asia Global Trade-intending purchaser. In the agreement it was stated that the Company had huge liability and there were several secured creditors. The property owned by the Company was not enough to meet with all liabilities. The representatives of respondent No.8 Union were aware of the said fact and agreed to accept amount of Rs.22.21 crores towards full and final settlement of dues of workers. Respondent No. 7 decided to purchase the property for Rs.46.65 crores. The agreement was executed on March 8, 2005 and signed by all the three parties to the agreement, i.e. by the Mill-Company, by the purchaser of property and also by representatives of respondent No.8 Union. A joint meeting of secured and unsecured creditors was also held on April 20, 2005 wherein secured and unsecured creditors of the first respondent-Company agreed to share sale proceeds of Rs.46.65 crores by accepting and finalizing One Time Settlement (OTS). Final decision was taken on the basis of the agreement arrived at earlier on March 8, 2005. It was decided to sell the property to respondent No.7 for Rs.46.65 crores. The amount which was to be paid as per the final agreement came as under;

Institutions/Banks/ Labour	Principal O/S On 31.3.1999	Rs. (in Crore) Proposed share

SBI	28.05	14.02
IDBI	4.08	2.04
ICICI	1.24	0.61
IFCI	1.28	0.63
IIBI	1.54	0.76
Labour		22.21
Bank of Maharashtra	1.50	0.50
MSEB	5.37	4.00
Sales Tax		0.99
Solapur Municipal Corporation and Octroi		0.89
GRAND TOTAL		46.65

19. On October 6, 2005, an order was passed by Recovery Officer, DRT-I, Mumbai in which all the above facts had been stated. The Recovery Officer referred to tripartite agreement and payment of amount to creditors and workers. The order also recited that as per the direction of the High Court, the workers' claim was to be adjudicated by DRT. The applicant Bank was, therefore, directed to issue advertisement and invite workmen as per the guidelines formulated by DRT. All the workers were directed to lodge their claims in appropriate format in the Tribunal and all such claims were ordered to be placed before the Presiding Officer for adjudication.

20. Regarding valuation of property, it was stated;

> "Since the valuation was done in the year 2002, before considering the proposal, the property was valued again from the approved valuer from the panel of DRT. According to the valuation report, offer of the purchaser is above the distress valuation price".

21. It was mentioned that the Tribunal accepted the offer of M/s Trans Asia Global Trade for purchasing movable and immovable property of the Company in the custody of Receiver appointed by DRT for an amount of Rs.47.82 crores. The auction-purchaser had deposited the amount of Rs.47,81,57,777 towards sale consideration and other expenses. The recovery officer directed the purchaser to pay balance amount. The matter was adjourned for confirmation of sale. An order was passed to send report to BIFR after confirmation of sale.

> “The above order has not been challenged by the appellant in accordance with the provisions of 1993 Act.”

22. On December 6, 2005, again, the matter was placed before the Recovery Officer, DRT-I, Mumbai. Reference was made to all proceedings settlement arrived at between the parties and sale of property for Rs.47.82 crores. It was noted that no objection had been received from any person under Rule 60, 61 or 62 of the Second Schedule to the Income Tax Act, 1961 for setting aside sale and the sale was required to be confirmed. Accordingly, the sale was confirmed. Even this order was not challenged under the Act.

23. On January 20, 2006, the Recovery Officer, DRT-I, Mumbai issued a sale certificate for immovable property for Rs.45 crores in favour of respondent No.7-Purchaser. Another certificate of sale for movable properties for Rs.2.82 crores was issued by DRT. Those orders have remained unchallenged except in the present proceedings.

24. The learned counsel for the appellant strenuously urged that on April 28, 1994, BIFR had issued interim order restraining the first respondent-Company from alienating, transferring or disposing the property of the Company without prior permission of the Board. It was stated that if any action would be taken in violation of the said order, it would be punishable under Section 33 of SICA. In view of the said order, neither the property could have been sold without the prior permission of BIFR nor could such sale have been confirmed. It was also urged that even under 1993 Act, Recovery Officer could not have permitted or confirmed sale and it could have been done only by the Debt Recovery Tribunal. Hence, all proceedings were non est and are required to be ignored altogether.

25. The learned counsel for the contesting respondents, on the other hand, submitted that the order passed by BIFR was merely an interim order and in 1996, it directed winding up of the Company and forwarded its opinion to the High Court. Moreover, no such point had been taken by the appellant earlier. As discussed above, even prior to the present petition which had been filed by the appellant-herein in the High Court under Article 226 of the Constitution, he had submitted a representation to the Chief Justice which was registered as PIL Writ Petition. No such contention was taken in that petition. Even in the present proceedings, what was contended by the appellant before the High Court was as regards a transaction under which property was sold by Chairman of the first respondent-Company Mr. M.L. Apte through his constituted Attorney Kantilal Shankarlal Shah. Nothing was stated as to other properties.

26. But even on merits, the impugned action calls for no interference. The order dated April 28, 1994 passed by BIFR reads as under;

> "Whereas a draft scheme for rehabilitation of M/s Laxmi Vishnu Textile Mills has been prepared, circulated and published by the Board under Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1935 in pursuance of its proceedings held/orders face in the case on 14.2.1994.
>
> And whereas, the Board is of the opinion that in the interest of rehabilitation of the sick industrial company, creditors, shareholders as also in public interest, it is necessary to direct the existing promoters/management of sick industrial company;

M/s Laxmi Vishnu Textile Mills not to disposed of, except with the consent of the Board, any of its fixed and other assets charged/hypothecated to the financial institutions, banks and other creditors, the board, in exercise of powers conferred on it by Section 22A of the Sick Industrial Companies (Special Provisions) Act, 1985 hereby directs the existing promoters/ management is invited to the provisions of Section 33, where under violation of any of the orders of the Board is punishable in the manner laid down therein".

27. Plain reading of the order makes it clear that the Board was of the opinion that in the interest of rehabilitation of the sick industrial company, its creditors, shareholders as also in public interest, certain directions were necessary. The Company was, therefore, restrained from disposing the property which was charged /hypothecated to financial institutions. The submission of the learned counsel for the contesting respondents is that there was no question of revival of the Company in view of order passed by BIFR in 1996 and its recommendation for winding up of the Company. Regarding interests of creditors and other persons, it was stated that in March, 2005, tripartite agreement had been arrived at wherein representatives of labour Union, first respondent-Mill Company and the purchaser were present and the agreement was signed by all of them. Likewise, in April, 2005, joint meeting of secured and unsecured creditors, representatives of Union and vendor and vendee was held and all of them agreed for OTS and expressed their willingness to accept lesser amount. In the circumstances, charge imposed and prohibition issued by BIFR on the Company no more remained operative. On October 6, 2005, therefore, it was observed by the Recovery Officer of DRT-I, Mumbai to send information to BIFR after confirmation of sale. Consequential action of confirmation of sale was thereafter taken on December 6, 2005 and sale certificate was also issued on January 20, 2006. All the actions were taken only after March/April 2005. They, therefore, could not be said to be contrary to law or in violation of the order passed by BIFR.

28. Even otherwise, on the facts and in the circumstances of the case, we are fully satisfied that had the agreements in question not been arrived at, all parties including workers for whom great concern had been shown by the appellant would have suffered. In fact, in an affidavit filed on behalf of the State Bank of India, it was stated that in the light of the decree passed in favour of State Bank of India by DRT-I, Mumbai, the Bank would be entitled to Rs.222.34 crores. Similarly, other institutions were also entitled to substantial amount. It was because of conjoint and combined efforts of all the parties that agreements could be arrived at. It was stated that a Cabinet Minister used his good offices and One Time Settlement (OTS) had been arrived with Banks and financial institutions and workmen were able to get the amount which had not been paid to them for many years. The contention that secured and unsecured creditors and workers have not received their dues has no force.

29. Again, who has approached this Court? Neither a secured nor an unsecured creditor Nor a representative of a labour union. Nor even a person acting pro bono publico. As already adverted to earlier, PIL Writ Petition at the instance of the appellant was dismissed by the High Court and the said decision was never challenged by him. Here is an employee who is

also one of the workers, who has been paid his dues. He accepted the amount of Rs.62,555/- and issued `No Objection Certificate' (No Dues Certificate) -no doubt by putting an endorsement "Accepted under Protest". He has urged that the workmen have not been paid their dues and injustice had been done to them. To us, even there, the appellant is not right. A Representative Union has taken a decision which is binding on all employees. That aspect, however, we will deal with at a later stage.

30. The learned counsel strongly relied upon a decision of this Court in *NGEF Ltd. v. Chandra Developers (P) Ltd.*[1]. In that case, this Court held that the provisions of SICA would prevail over the provisions of the Companies Act since it is a special statute and a `complete code' in it self. The Court also held that the jurisdiction of the Company Court in the matters relating to winding up of a sick Company would arise only when BIFR or AAIFR exercises its jurisdiction under Section 20 of SICA recommending the winding up of the Company upon arriving at a finding that there does not exist any chance of revival of the *Company. Referring to Gray's Inn Construction Co. Ltd., Re,*[2] and *Pankaj Mehra v. State of Maharashtra*[3] however, the Court observed that "disposition of assets during the interregnum may not be irretrievably void but the courts are required to exercise power with caution and circumspection".

STATUS AND POSITION OF REPRESENTATIVE UNION

31. The learned counsel for the appellant contended that respondent No. 8 could not have agreed to accept a meager amount of Rs.22 crores when the outstanding dues were more than Rs.130 crores. It was also stated that majority of workers are with the appellant and they are opposed to the settlement. Thousands of workers have so stated in writing and informed the appellant that the grievance raised by the appellant is well-founded and they are entitled to much more amount than what had been paid under the settlement.

32. Even this contention has no force. The learned counsel for the Union, in our opinion, is right in submitting that under the Bombay Industrial Relations Act, 1946, it is the `Representative Union' which has all powers to enter into a settlement on behalf of workers in the industry and it is only that Union which can take a decision under 1946 Act. The said decision would bind not only the members of the Union, but also to those workers who are not members of such Union.

33. The learned counsel, in this connection, invited our attention to various provisions of 1946 Act. As the Preamble of the Act declares, the Act has been enacted "to regulate the relations of employers and employees, to make provision for settlement of industrial disputes and to provide for certain other purposes". The Act contains elaborate provisions for registration of Unions and their powers.

34. Section 2 defines various terms. Chapter II deals with Authorities constituted or appointed under the Act. Chapter III provides for registration of Unions. Chapter IV relates

to Approved Unions. Chapter V titles "Representatives of Employers and Employees, and appearance on their behalf".

35. Section 27 enables the State Government to recognize any combination of employers as Association of Employers in an industry in any local area and to represent an employer in any proceeding under the Act. Section 27A correspondingly provides for appearance on behalf of employees. It is, however, in negative terms and enacts that save as provided in certain cases (Sections 32 and 33), "no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees". The section thus puts an embargo on appearance of any employee except through the representative of employees.

36. Section 14 empowers Registrar to register a `Representative Union' for any `Industry' in any `Local Area'. It is thus clear that there can be only one Representative Union for one Industry in one Local Area. Section 30 enumerates representatives of employees and provides for order of preference in which such representatives are allowed to appear or act in any `Industry' in any `Local Area'. It reads thus;

> "30. Representative of employees Subject to the provisions of section 33A, the following shall be entitled to appear or act] in the order of preference specified as the representative of employees in an industry in any local area-
>
> (i) a Representative Union for such industry;
>
> (ii) a Qualified or Primary union of which the majority of employees directly affected by the change concerned are members;
>
> (iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;
>
> (iv) the Labour Officer if authorized by the employees concerned;
>
> (v) the persons elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees themselves;
>
> (vi) the Labour Officer:
>
> Provided -
>
> Firstly, that the persons entitled to appear or act under clause (v) may authorise any Qualified or Primary Union in respect of such industry to appear or act instead of them;

Secondly, that where the Labour Officer is the representative of the employees, he shall not enter into any agreement under section 44 or settlement under section 58 unless the terms of such agreement or settlement, as the case may be, are accepted by them in the prescribed manner;

Thirdly, where in any proceeding the persons entitled to appear or act under clause (v) are more than five, the prescribed number elected from amongst them in the prescribed manner shall be entitled to appear or act instead."

37. It is thus clear that Representative Union is having priority and `preference' over other Unions to appear on behalf of employees of such industry in the area. Section 42 in Chapter VIII provides for change and lays down procedure for such change. It reads;

42. Notice of change

(1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particulars case.

(2) Any employee desiring a change in respect of an industrial matter not specified in Schedule I or III give a notice in the prescribed form to the employer through the representatives of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed.

(3) When no settlement is arrived at in any conciliation proceeding in regard to any industrial dispute which has arisen in consequence of a notice relating to any change given under sub-section (1) or sub-section (2), no fresh notice with regard to the same change or a change similar in all material particulars shall be given before the expiry of two months from the date of the completion of the proceeding within the meaning of section 63. If at any time after the expiry of the said period of two months, any employer or employee again desires the same change or a change similar in all material particulars, they shall give fresh notice in the manner provided in sub-section (1) or (2), as the case may be.

(4) Any employee or a representative union] desiring a change in respect of (i) any order passed by the employer under standing orders, or (ii) any industrial matter arising out of the application or interpretation of standing orders, or (iii) an industrial matter specified in Schedule III, except item (5) thereof shall make an

application to the Labour Court and as respects change desired in any industrial matter specified in item 5 of Schedule III, to the Industrial Court:

Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

38. The aforesaid provisions came up for consideration before this Court in *Girja Shankar Kashi Ram v. Gujarat Spinning & Weaving Co. Ltd.*[4]. In that case, `G' closed its business and sold its assets to `T'. The old company discharged all its workmen when it closed the business. The new company re-started the business and employed all the workmen of the old company. At the time of closure of `G', a dispute was pending between the company and its workmen with respect to bonus. A `Representative Union' of the Textile Workers in the city of Ahmedabad filed an application before the Labour Appellate Tribunal wherein the dispute was pending and the matter was sub-judice. The matter was compromised and `G' consented to pay agreed bonus. The Representative Union accepted the amount and gave an undertaking not to claim compensation in future. Later on, however, about 400 employees issued a notice and claimed compensation for closure. The Representative Union appeared before the Labour Court and contended that the application was liable to be dismissed in view of the compromise arrived at between the Mill Company and Representative Union. The Labour Court upheld the objection and dismissed the application. The order was confirmed by Industrial Court in appeal as well as by the High Court in a petition under Article 227. The employees approached this Court.

39. This Court considered the relevant provisions of the 1946 Act, the object underlying conferment of power on Representative Union and the action taken by it and held that when a Representative Union appears in any proceeding under the Act, none else can be allowed to appear not even the employee at whose instance proceedings might have been started under Section 42(4) of the Act. The Court held that if the Representative Union appears, the decision taken by that Union would be final and binding.

40. Explaining the scheme of the Act, the Court stated;

"It will be seen that s. 27A provides that no employee shall be allowed to appear or act in any proceeding under the Act, except through the representative of employees, the only exception to this being the provisions of Sections 32 and 33. Therefore, this section completely bans the appearance of an employee or of any one on his behalf in any proceeding after it has once commenced except through the representative of employees. The only exceptions to this complete ban are to be found in Sections 32 and 33; to which we shall presently refer. But it is clear that bona fides or mala fides of the representative of employees can have nothing to do with the ban placed by Section 27A on the appearance of any one else except the representative of employees as defined in Section 30 and that if anyone else can appear in any proceeding we must find a provisions in that behalf in either Section 32 or

Section 33 which are the only exception to Section 27A. It may be noticed that there is no exception in Section 27A in favour of the employee, who might have made an application under Section 42(4), to appear on his own behalf and the ban which is placed by Section 27A will apply equally to such an employee. In order however to soften the rigour of the provisions of Section 27A, for it may well be that the representative of employees may not choose to appear in many proceedings started by an employee under s. 42(4), exceptions are provided in ss. 32 and 33. The scheme of these three provisions clearly is that if the Representative Union appears, no one else can appear and carry on a proceeding, even if it be begun on an application under s. 42 (4) but where the Representative Union does not choose to appear there are provisions in ss. 32 and 33 which permit others to appear in proceedings under the Act.

Section 32 gives power to a conciliator, a board, a wage board, a labour court and the industrial court to permit an individual, whether an employee or not, to appear in any proceeding before him or it. This shows that the complete ban imposed by s. 27A can be removed if the authorities under the Act think it expedient to permit another person to appear and that person may be an employee or not. Thus the employee who has made an application under s. 42(4) may be permitted to appear before the authorities under the Act; but this provision is subject to a proviso namely that no such individual which would include an employee who has himself made an application under s. 42(4), shall be permitted to appear in any proceeding in which the Representative Union has appeared as the representative of employees. Reading therefore ss. 27A, 30 and 32 together, it is clear that on one else can appear in any proceeding under the Act except a representative of employees; but the authorities are empowered to permit anyone to appear whether he be an employee or not, if they consider it expedient for the ends of justice (and we have no doubt that where representative of employees does not choose to appear the authorities will generally permit the employee who has made the application under s. 42(4) to appear), but this power is subject to the proviso, namely, that on one will be allowed to appear if the Representative Union has made an appearance. It will be seen that the proviso puts the Representative Union in a special position out of the six classes mentioned as representatives of employees in s. 30. Thus s. 32 makes it clear that where the Representative Union of the six classes s. 30, appears no one else can appear, including the persons who might have made an application under s. 42(4). If the other five classes which are mentioned in s. 30 as representatives of employees appear, the authorities have the power to allow the employee or any other person to appear along with them.

Then we come to s. 33, which starts with a non-obstante clause and deals with the appearance of an employee or a representative union through any person. Section 33 thus is a exception to s. 27A and authorises an employees who could not appear in any proceeding under the Act except through the representative of employees under s. 27A, to appear through any person in certain proceedings mentioned in s. 33, but this again is subject to provisos, with the first of which we are not concerned here. The

second proviso lays down that no employee shall be entitled to appear through any person in any proceeding under the Act in which the Representative Union has appeared as the representative of employees. This proviso again gives a special position to the Representative Union out of the six classes of representatives of employees provided in s. 30 and makes it clear that though an employee may appear in certain proceedings specified in s. 33 through any person in spite of s. 27A, he cannot do so where a Representative Union has appeared as the representative of employees. Here again the position is the same as in s. 32; if a representative of employees other than a Representative Union has appeared in the proceeding the employee can also appear through any person in the proceedings mentioned in s. 33; but he cannot did so where the representative of employees which has appeared even in proceedings under s. 33 is the Representative Union".

41. The Court also held that bona fides or mala fides of the representative Union has nothing to do with the complete ban imposed by the Act on the appearance of any one else except the representative of employees under Section 30 of the Act.

42. It was argued that if such interpretation is accepted, there would be tyranny of the Representative Union.This Court, however, negatived even that argument and observed that the so-called tyranny or motive of Representative Union cannot change the legal position and it has no relevance if the intention of the Legislature is clear and unambiguous.

43. The Court, therefore, concluded;

"The result therefore of taking ss. 27A, 32 and 33 together is that s. 27A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in ss. 32 and 33. Section 32 is concerned with all proceedings before the authorities and gives power to the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but his permission cannot be granted where the representative Union has appeared as a representative of employees. Section 33 which is the other exception allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared; but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear therefore that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance the proceedings might have begun under s. 42(4). But where the appearance is by any representative of employees other than Representative Union authorities

under s. 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in s. 33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceeding under the act and the representation must be confined only to the representative Union. The complete ban therefore laid by s. 27A on representation otherwise than through a representative of employees remains complete where the representative of employees is the Representative Union that has appeared; but if the representative of employees that has appeared is other than the Representative Union then ss. 32 and 33 provide for exceptions with which we have already dealt. There can therefore be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee under s. 42(4) of the Act, the Representative Union alone can represent the employee and the employee cannot appear or act in such proceeding".

44. Again, in *Textile Labour Association, Bhadra, Ahmedabad v. Ahmedabad Mill Owners Association, Ahmedabad*[5] this Court held that once Representative Union of Textile Industry in the local area of Ahmedabad entered into a compromise, such compromise would bind all the employees and those employees who are not members of the Representative Union cannot contend that they are against such compromise and are not bound by it.

45. In *Santuram Khudai v. Kimatrai Printers & Processors Pvt. Ltd. & Ors.*[6], a similar question arose. The Court reiterated the law laid down in Girja Shankar and held that once the Representative Union appears on behalf of the employees in a proceeding before a Labour Court under 1946 Act, individual workman has no locus standi. According to the Court, combined reading of Sections 27A, 30, 32, 33 and 80 of the Act make it clear that consistent with the avowed policy and prevention of exploitation of workmen and augmentation of their bargaining power, the Legislature has clothed the Representative Union with plenary power to appear or act on behalf of employees in any proceeding under the Act. Keeping in view the said object, it has deprived individual employees or workmen of the right to appear or act in any proceeding under the Act where the Representative Union enters appearance or acts as representative of the employees.

46. Following Girja Shankar, the Court observed that mala fides or bona fides of the Representative Union has no relevance in construing the relevant provisions of the Act. In case the employees find that the Representative Union is acting in a manner which is prejudicial to their interests, their remedy lies in invoking the aid of the Registrar under Chapter III of the Act requesting him to cancel the registration of the union.

47. Respondent No.8 in its affidavit asserted that it is a Representative Union under the Act of 1946, in Textile Industry in Sholapur Municipal Corporation Area. It was further stated that once a Representative Union exists in any industry in a given local area, it alone has the exclusive right to represent the entire class of workmen in that industry in the concerned local area. In the instant case in the local area of Solapur District, respondent No. 8 is

admittedly the only Union which has the status of Representative Union in Textile Industry under the Act. In view of the above fact, no other Union/Association of employees or individual employees have right to represent the workmen of that industry in that area.

48. In the counter-affidavit, it was stated by the Representative Union that there were about 4500 employees in respondent No.1 Mill when it was closed down in February, 1995. Within a period of about a decade, 400 workmen had already died. None of them, however, received any wages or other benefits because of the pendency of several proceedings in different courts. The Representative Union considered their legitimate grievance and thought it proper to get the matter settled if reasonable amount could be paid to them, keeping in view well-known saying "one in hand is better than two on bush". They considered the matter in its entirety, financial condition of the first respondent-Company, claim of secured and unsecured creditors, a number of decrees and orders passed by various Authorities under different laws and the properties of the Company. In the larger interest, the Union decided to accept the amount of Rs.22.21 crores for workers towards full and final settlement. By no stretch of imagination, such action could be held improper, illegal or mala fide. We are of the view that the approach adopted and decision taken by the Representative Union-respondent No.8 suffers from no infirmity and cannot be regarded as illegal or otherwise unreasonable.

EQUITABLE JURISDICTION UNDER ARTICLE 136

49. There is one more reason for not interfering with the order passed by the High Court and impugned in the present appeal. The appellant has invoked Article 136 of the Constitution. The said Article does not confer a right of appeal on any party. It merely confers discretionary power on this Court to grant special leave to appeal in suitable and appropriate cases. In several cases, this Court has held that the provision confers right on a litigant merely to prefer an application seeking leave to appeal and the discretion is vested in this Court to grant or refuse such leave in its wisdom. In view of the language of Article 136, this Court is not expected to act as `regular Court of appeal' settling disputes by converting into a `Court of Error'. It interferes only when justice demands intervention by the highest Court of the country.

50. It is undoubtedly true that the power of this Court is plenary, overriding and extensive and there are no words qualifying, restricting or limiting that power. The very conferment of discretionary power defies any attempt at exhaustive definition of that power. The power, however, has to be exercised for doing full and complete justice. But wider the discretionary power, the more sparing its exercise. Times out of number this Court has stressed that though parties promiscuously provoke this jurisdiction, the Court parsimoniously invokes the power [vide *Sadhanathan v. Arunachalam*[7]].

51. While exercising power under Article 136 of the Constitution, this Court not only acts as a Court of law but also as a Court of equity and hence the power exercised by this Court under Article 136 must subserve ultimately the cause of justice. The Court must decide all issues coming before it on the considerations of justice, equity and good conscience. Legal

formulations cannot be divorced from ground realities, fact-situations before the Court and the effect of laws on the human beings for whom they are meant. Discretionary jurisdiction under Article 136, therefore, has to be tampered with equity. This Court would be failing in its duty if it does not notice equitable considerations.

52. We are reminded of the following pertinent and instructive observations of Lord Watson in *La Cite de Montreal v. Les Eccelesiasticues*[8].

> "Cases vary so widely in their circumstances that the principle upon which an appeal ought to be allowed do not admit of anything approaching to exhaustive definition. No rule can be laid down which would not necessarily be subject to future qualification, and an attempt to formulate any such rule might therefore prove misleading... A case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify."

53. As observed by this Court in *Statesman Ltd. v. Workmen*[9] the very width of the power under Article 136 is a warning against its `freewheeling exercise save in grave situations'. Circumspection and circumscription must, therefore, induce the Court to interfere with the decision under challenge only if the extraordinary flaws or grave injustice or other recognized grounds are made out.

54. We have elaborately dealt with the facts of the present case. Respondent No.1--Company was closed down in February, 1995. It never started functioning thereafter. Financial liability continued mounting up day by day. There were several secured and unsecured creditors and dues of workers. Proceedings under SICA had been initiated, decrees and orders were passed against the Company and the property owned by the Company was not sufficient to clear up all debts and liabilities. Keeping in view the entire facts and circumstances that initially, tripartite agreement was entered into between respondent No.1-Company, Representative Union and intending purchaser on March 8, 2005, a joint meeting was held between secured and unsecured creditors, representatives of the Union, the Company and the purchaser in April, 2005 and in that meeting, One Time Settlement (OTS) had been reached. Several actions were taken in pursuance of the settlement. The amount was deposited by the purchaser, dues of creditors were paid, workers and laborers were informed and they were also paid the amount. The property was sold by respondent No.1 to respondent No.7 on October 6, 2005, sale was confirmed on December 6, 2005, possession of the property was given to respondent No.7 on December 14, 2005, sale certificate was issued on January 20, 2006, respondent No.7 got the property registered in its name on January 30, 2006 by paying stamp duty of Rs.2.25 crores, secured creditors gave discharge to respondent No.1-Company on March 30, 2007. By May 17, 2007, 4054 workers were paid and the said figure, at the time of hearing of this appeal reached to 4105. It was also stated by respondent No.7-purchaser that plant and machinery were removed and sold as scrap materials.

55. If, at this stage, we set aside sale in favour of respondent No.7, serious prejudice will be caused not only to respondent No.1 and respondent No.7--vendor and vendee, respectively, but also to others like banks, financial institutions, other creditors and also to workers for whose benefit and welfare the appellant is fighting. It is pertinent to note that no secured or unsecured creditor has come forward making grievance that though he was entitled to more amount, he has not been paid such amount. So far as workers are concerned, we have already dealt with rights of Representative-Union in detail and have held that the Representative Union has preferential right to appear in the proceedings under the Act. Hence, taking any view of the matter, in our opinion, this is not a fit case to exercise discretionary and equitable jurisdiction under Article 136 of the Constitution.

FINAL ORDER

56. For the forgoing reasons, in our opinion, the appeal has no substance. It deserves to be dismissed and is hereby dismissed. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

[1](2005) 8 SCC 219 *[2](1980) 1 All ER 814: (1980) 1 WLR 711* *[3](2000) 2 SCC 756*
[4](1962) Supp.2 SCR 890 *[5](1970) 3 SCC 890* *[6](1978) 1 SCC 162*
[7](1980) 3 SCC 141 *[8](1889) 14 AC 660* *[9](1976) 2 SCC 223*