

SOBRAN SINGH Vs. STATE OF U.P.
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LAWS(SC)-2014-9-133
Supreme Court Of India
Decided on September 23,2014

SOBRAN SINGH

Appellant

VERSUS

STATE OF U.P.

Respondents

JUDGEMENT

T.S. Thakur, J. - (1.) LEAVE granted.

(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 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 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 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. 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 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 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.

(3.) WHEN the matter came up for hearing on 12 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. ;

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