

CALCUTTA HIGH COURT

Harish Tara Refractories (P) Ltd

Vs.

Certificate Officer

Civil Rules Nos. 11567 (W) and 11568 (W) of 1981

(Sahas Chandra Sen, J.)

17.05.1984

ORDER

Sahas Chandra Sen, J.

1. M/s. Harish Tara Refractories Private Limited, the petitioner herein, is a company having its registered office at No. 31/G, Beadon Row, Calcutta. The company carries on business at Mccluskuegang, Ranchi in the State of Bihar. The petitioner company had entered into several agreements with the State Bank of India, Main Branch, Ranchi, the Respondent No. 3 herein, for cash credit and other facilities. The case of the State Bank of India is that there were various dealings and transactions between the parties and a large sum of money became due and payable by the petitioner company to the Bank. The admitted liability of the petitioner company "as on 1st Oct, 1979 was Rs. 31,18,993,55 P. (inclusive of stamp costs). The petitioner company formally closed its business on or about 16th Aug, 1977 and as it had no chance of revival, the bank called upon the petitioner company to pay the accumulated dues together with interest. The Directors of the Company who had guaranteed the repayment of the loans advanced by the State Bank of India were also called upon to pay off the loan amount. Since the repayment of the loan was not made in spite of demands, on or about 8th Dec, 1980, the Branch Manager of the State Bank of India, Main Branch, Ranchi, sent a requisition for a certificate in Form No. 2 under Section 5 of the Bihar and Orissa Public Demands Recovery Act (hereinafter described as the said Act) for recovery of the outstanding loan amount together with interest. In the requisition form the nature of the demand was described as "Advances for cash credit, bill advance, medium term loan and installment credit". The Branch Manager certified in the requisition form that he was satisfied after enquiry that the amount was due from the petitioner company. A letter was also sent along with the requisition dated 8th Dec, 1980 in which it was noted that the interest had been calculated up to 15th October, 1980 and the interest at the rate of 15.10% per annum had to be realized from 16-10-1980 to the date of realization. Thereupon, the Certificate Officer issued a certificate for a sum of Rs. 31,18,999.10P. under Sections 4 and 6 of the Bihar and Orissa Act IV of 1914. The Certificate Officer certified in the certificate "I further certify that the above mentioned sum of Rs. 31,18,999. 10p. was recoverable and its recovery by suit is not barred by law". This certificate has been challenged by the petitioner company on mainly two grounds. It has been contended that the certificate was issued without any application of mind

mechanically and without any compliance with the requirements of the statute. Secondly, it has been contended that in any event, the Bihar and Orissa Public Demands Recovery Act, in so far as it permits recovery of any debt due to the State of Bank of India by certificate proceeding, is *ultra vires* the Constitution.

2. In support of the contention that the certificate was issued without any application of mind, my attention was drawn to the certificate itself and also the order sheet. It appears from the order sheet that it was recorded on 13th Jan, 1981, inter alia, that a requisition had been issued from the State Bank of India, Ranchi Branch and "From the examination of the requisition, I am satisfied that the demand is recoverable and the recovery suit is not barred by law". It was recorded on 21st Jan, 1981 that Court-fees stamp of Rs. 19,500/- had been filed on that day and notices were issued to all certificate debtors under Section 7 of the Act. The contention of the petitioner is that at the time of filing of the certificate, the Certificate Officer had nothing but a requisition for certificate under Section 5 under, a covering letter of the Branch Manager of the State Bank of India. Under Section 6 the Certificate Officer had to be satisfied (1) the demand was recoverable, and (2) the recovery was not barred by law before a certificate could be filed. The contention of the petitioner is that the certificate as well as the covering letter did not contain any material on the basis of which the Certificate Officer could be satisfied that the demand was recoverable, or that the recovery of the demand was not barred by law. The Certificate Officer merely reproduced the language of the section in the order sheet without any basis or any material.

3. On behalf of the Respondents it has been contended that in the requisition it was categorically stated by the Branch Manager that the amount was justly recoverable and that its recovery by suit was not barred by law. The nature of the loan amount was given in the requisition. The Certificate Officer was entitled to rely upon the statements made by a high official of the State Bank of India and the requisition itself was sufficient material on the basis of which the Certificate Officer was entitled to act. It was further contended that it cannot be stated as a matter of law that the statement of the Bank Manager was not a material on the basis of which the requisite satisfaction of the Certificate Officer could not be arrived at.

4. It was further contended that in any event, the State Bank of India was represented by a Lawyer and the Lawyer concerned, Mr. D. N. Chatterjee, duly appeared before the Certificate Officer and showed him all the materials in connection with the loan facilities of the State Bank of India given to the petitioner and the Certificate Officer was satisfied that the amount was recoverable, and the recovery was not barred by law.

5. In my opinion, in the facts of this case, it is not necessary to express any opinion on the question whether the Certificate Officer was entitled to act on the basis of the requisition alone. It has been stated by Sri Bidyadhar Tribedi, the Branch Manager of the State Bank of India, Ranchi, in his affidavit affirmed on 27th March, 1982 that Sri D. N. Chatterjee, Advocate, appeared before the Certificate Officer and produced before him all the necessary documents and the Certificate Officer was satisfied on the basis of those documents that the claim of the Bank was duly recoverable and was not barred by any law. Mr. D. N. Chatterjee has also filed an affidavit affirmed on 17th March 1982 in which he has stated that he had appeared before the Certificate Officer on 13th Jan, 1981 and had shown the documents relating to the demands of the State Bank of India to the Certificate Officer. It is true that the entry in the order sheet does not make any reference to the appearance of Mr. D. N. Chatterjee or production of any

documents by Mr. D. N. Chatterjee. From the records that have been produced in Court, it appears that a Vakalatnama was filed by Mr. D. N. Chatterjee before the Certificate Officer on or about 13th Jan, 1981. The Certificate Officer has also affirmed an affidavit in which he has stated that the documents mentioned by Mr. D. N. Chatterjee were produced before him. The Certificate Officer, however, has not mentioned the date on which the documents were produced.

6. Although the order sheet does not record the presence of Mr. D. N. Chatterjee and does not mention the fact of production of any documents, there is no reason to disbelieve the statements made on affidavit on behalf of the Bank as well as Mr. D. N. Chatterjee personally. Section 6 requires the Certificate Officer to be satisfied that the amount was recoverable and it was not barred by law. The Certificate Officer has recorded his satisfaction. It is not required by the section that the Certificate Officer must record the reason or the basis for his satisfaction in the order sheet. The Certificate Officer has recorded his satisfaction and when it has been challenged in Court that the Certificate Officer had no material before him to be so satisfied, the Certificate Officer as well as the State Bank of India have filed affidavits to show the materials that were produced before the Certificate Officer on the basis of which the requisite satisfaction was reached. There is nothing in the order sheet to indicate that the statements made on affidavit are false.

7. The satisfaction that the Certificate Officer has to reach under Section 6 about the recoverability of the amount and the absence of any legal bar to the recovery must be a *prima facie* satisfaction. It is not necessary to hear the Certificate Debtor before filing a certificate. It is only after filing of the certificate that a notice is given to the Certificate Debtor under Section 7 of the Act and a hearing takes place under Section 9 when a petition denying his liability is presented by the Certificate Debtor under Section 9. In my opinion, it is for the petitioner to prove that the Certificate Debtor could not possibly have been satisfied about the requirements of Section 6. The facts that are on record and the affidavits go to show that there were materials on the basis of which the Certificate Officer could have the requisite satisfaction. Therefore, the first objection of the petitioner as to the validity of the certificate fails.

8. The second contention of the petitioner is that only public demands can be recovered under the provisions of the Bihar and Orissa Public Demands Recovery Act. By the provisions of the amending Act IV of 1974, any money payable, inter alia, to the State Bank of India was included in the list of the public demands set out in Schedule I to the Act. It has been contended that the said provisions of the Act could not be utilized for recovery of something which was not public demand at all. In this connection, reference was made to the preamble of the Act where it has been stated that the Act was an Act to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa".

9. This argument which was pressed very forcefully will not bear scrutiny. It is true that the Act was passed for the purpose of recovery of public demands; but the Act has enumerated what are the "public demands". Under Sub-section(6) of Section 3 which is the definition section it has merely been stated that "public demand" means any arrear or money mentioned or referred to in Schedule I. In the First Schedule, along with the arrears of revenue and other moneys due to the State, a number of items have been included which are not moneys payable to the State at all Rule 8 relates to rent payable in respect of property belonging to a private individual which is under the charge of or is managed by any Court of Wards or the Revenue Authorities on behalf

of that private individual. Rule 9 is in respect of money payable to a servant of the Government or of any local authority. Rule 12 is in respect of any money awarded as compensation under Section 2 of the Bengal Land Revenue Sales Act, 1868 and Rule 14 relates to any money ordered by Liquidator appointed under Section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a Society o

10. Therefore, it is clear that "public demands" under the Bihar and Orissa Public Demands Recovery Act, 1914 include not only moneys, payable to the State but also moneys which cannot ordinarily be regarded as public demands. Construing similar provisions of the Bengal Public Demands Recovery Act, Bachawat J. observed in the case of *N. C. Mukherjee and Co. v. Union of India*¹:-

"The Bengal Public Demands Recovery Act, 1913, enables recovery of public demands referred to in schedule I of the Act. A reference to the schedule shows that under the Act there can be recovery of not only arrears of land revenue but also of (a) other revenue, (b) demands of the Government other than revenue, (c) demands due to persons other than the Government".

11. Having regard to the provisions and also the scheme of the Bihar and Orissa Public Demands Recovery Act, it is not possible to uphold the contention that the money payable to the State Bank of India not being a 'public demand' could not be realized under the Bihar and Orissa Public Demands Recovery Act. In this connection, it should also be borne in mind that the State Bank of India is a body fully owned and controlled by the Central Government. It was nationalized for public purpose and it is managed by or on behalf of the Government of India for the benefit of the public. It is not an independent body like the British Broadcasting Corporation. It was held by a Division Bench of the Bombay High Court in the case of *State Bank of India v. Kalpaka Transport Co. Pvt. Ltd.*² that the State Bank of India was an agency of the Government.

12. The next point that was argued was about legislative competence of the State Legislature to pass any laws in respect of "Banking". It has been argued that Entry 45 of the Union List in the Seventh Schedule of the Constitution relates to "Banking". Therefore, any legislation in respect to any aspect of "Banking" must be passed by the Central Legislature. The State Legislature exceeded the limitation imposed by the Constitution by incorporating "any money payable to the State Bank of India" within the list of public demands appended to the Bihar and Orissa Public Demands Recovery Act. It has further been argued that it was competent for the State Legislature to pass any Act for recovery of public debts of the State by virtue of Entry 43 of the List II of the Seventh Schedule; but the State Legislature was not competent to pass any law in respect of recovery of any money payable to a bank nor could it give an unnatural meaning to the expression "public debt" and pass a law in respect of something which is not inherently a

¹ AIR 1964 Cal 165 at p. 171

² AIR 1979 Bom 250

"public debt" at all. By passing the Amending Act IV of 1974, the Bihar Legislature had encroached upon the territory reserved for the Central Legislature. By this amendment, any money payable, inter alia, to the State Bank of India was included in the list of public demands set out in Schedule I of the Act. "Any money payable to the State Bank of India" cannot be a "public debt of the State" and it was not competent for the State Legislature to pass any law in

respect of such debts.

13. Reference was also made to Entry 3 of the State List and it was contended that the Amending Act IV of 1974 had nothing to do with the "procedure in rent and Revenue Courts" and any money payable to the State Bank of India was neither rent nor revenue. It was, therefore, contended that the Bihar and Orissa Public Demands Recovery Act, in so far as it seeks to recover any money payable to the State Bank of India by way of certificate proceeding, was *ultra vires* the Constitution.

14. The Bihar and Orissa Public Demands recovery Act like its counter part in West Bengal, the Bengal Public Demands Recovery Act seeks to recover not only arrears of land revenue but also (a) other revenue, (b) demands of the Government other than the revenue, and (c) demands due to persons other than the Government. I have already referred to the list of demands set out in schedule I and it is to be noted that the demands that are recoverable under the Act are not confined to rent and revenue payable to the State or to "public debts" alone.

15. The question of competence of the State Legislature to pass such a law was raised in the case of *Mukherjee and Company v. Union of India*³ In that case, it was held by a Division Bench of this Court that the Bengal Act was well covered by Entries 3 and 45 of the State List. It was observed by Bachawat J. at pages 171-172 :

"By Section 48 every Collector and Certificate Officer acting in discharge of his functions under the Act is deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 and by Section 49 they have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, and enforcing attendance of witnesses and compelling the production of documents. The orders passed under the Act are made subject to appeal, revision and review by Sections 51, 53 and 54. Appellate powers are given to the Collector, the Commissioner and the Board of Revenue and revisional powers are given to the Commissioner and the Board of Revenue. By Section 56(2) certain provisions of the Limitation Act, 1908 are made applicable to all proceedings under the Act as if a certificate filed under it were a decree of a Civil Court. By Section 57 a Certificate Officer is deemed to be a Court and any proceeding before him is deemed to be a civil proceeding within the meaning of Section 14 of the Limitation Act, 1908. It is plain that the Certificate Officer is charged with the duty to decide disputes in a judicial manner. The parties are entitled as a matter of right to adduce evidence and to be heard in support of their claims and objections. The officer is also under a duty to decide the matter before him on a consideration of the evidence adduced and in accordance with law. He has power to give decisions which of their own force bind the parties and he truly represents the judicial power of the State".

³ AIR 1964 Cal 165

Bachawat J. again went on to observe at page 172 :

"But it is well to bear in mind that the object of this peculiar procedure is to enable speedy recovery of public demands. Consistently with this object, the procedure of Revenue

Courts is in many respects different from the procedure of the Civil Courts. I may also observe that in England the Court of Exchequer was the first tribunal to break away from the Curia Regis and introduced a peculiarly efficacious procedure for the recovery of the monies due to the Crown. The Court of Exchequer entertained not only purely fiscal disputes, but also many pleas between subject and subject. A Revenue Court, if so authorised by law, may entertain not only claim for revenue but also claim for other demands. In the instant case the true interpretation of the relevant entries in the Lists in Schedule VII of the Constitution is in issue. It is well settled that the entries in the Lists are fields of legislation and not powers and that the widest import and significance must be given to the language used in the various entries see *Balaji v. Income-tax Officer*⁴,

16. The scheme of Bihar and Orissa Public Demands Recovery Act, 1914 is the same as that of the Bengal Act which was examined by Bachawat, J. Under Section 9 the Certificate debtor can file a petition denying his liability. Under Section 10 the Certificate Officer has been empowered to hear the objection petition and to take evidence, if necessary for the purpose of determination whether the Certificate Debtor is liable for the whole or any part of the amount for which the certificate was issued. If the debt involves a *bona fide* claim of right to property, the Certificate Officer has to refer the petition to the Collector who can make an order cancelling the certificate in such cases. Under Section 58 the Certificate Officer has been vested with the powers of the Civil Court for the purpose of receiving evidence, administering oaths and enforcing the attendance of witnesses and compelling production of documents. Under Section 57 every Collector, Certificate Officer, Asstt. Collector or Deputy Collector and other Govt. Officer making a requisition under Section 5 is deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850. There are provisions of appeal against an order passed by the Certificate Officer under Section 60. There is also a provision for revision of the orders passed by the Certificate Officer, Asstt. Collector or passed by the Commissioner can also be revised by the Board of Revenue. Section 63 provides for review of any order passed under the Act. Section 64 makes certain provisions of the Limitation Act applicable to a certificate proceeding.

17. Therefore, it will be seen that the main features of the Bengal Act which were brought out by Bachawat J. in the case of Mukherjee and Company are all present in the Bihar Act. In that case, it was emphasised by Bachawat J. :-

"A Revenue Court, if so authorized by law, may entertain not only claim for revenue but also claim for other demands".

18. I fail to see why the Revenue Court created by the Bihar Act cannot be authorized by law to entertain the claim of the State Bank of India in this case. The competence of the State Legislature for passing the Bengal Act was sustained by the Calcutta High Court in

⁴ AIR 1962 SC 123 at p. 125

the case of Mukherjee and Company under Entries 45 and 3 of the State List as it stood at that time and not under Entry 43 which relates to "Public Debt of the State".

19. List II Entry 43 of the Seventh Schedule relates to "Public debt of the State". Entry 45 relates

to land revenue and other allied subjects. The Court that has been set up by the Bihar and Orissa Public Demands Recovery Act, however, is not for recovery of public debt of the State or land revenue only. A reference to the Schedule I of the Bihar Act will show that under the Act "demands due to persons other than the Government" can also be recovered! The only question before us is whether the State Legislature was competent to enlarge the jurisdiction of the Certificate Officer by amending the Schedule I so as to include monies payable to the State Bank of India as public demand.

20. It is well settled that the Certificate Officer is a Court, [Abanindra Kumar Maity y. A. K. Biswas AIR 1954 Calcutta 355]. It is also well settled that the power to confer jurisdiction, both civil and criminal, upon the Courts set up by the State Legislature belongs to the State. This power was enjoyed by the State Legislature by virtue of List II, Entry 3 before its amendment in 1976.

21. Entry 3 before its amendment stood as under : -

"Administration of justice; constitution and organization of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all Courts' except the Supreme Court".

22. By virtue of the amendment made by the Constitution (42nd Amendment) Act, 1976, "Administration of justice; constitution and organization of all Courts, except the Supreme Court and the High Court" has been deleted from Entry 3 and brought under Entry 11A of the Concurrent List.

23. Therefore, the position after the amendment is that the State Legislature has exclusive jurisdiction to pass legislation regulating procedure in rent and Revenue Courts. It is also competent though not exclusive to pass legislation in respect of "administration of justice and constitution and organization of all Courts except the Supreme Court and the High Court".

24. In the case of *State of Bombay v. Narottamdas Jethabhai*⁵ it was held by the Supreme Court that "Administration of Justice" and "constitution and organization" of Courts were expressions of the widest amplitude and would include within its' ambit legislative power in respect to jurisdictions and powers of Courts for the purpose of administration of justice. In that case, the Supreme Court had to consider the scope and effect of Entries I and II of the Provincial List of Schedule 7th to the Government of India Act, 1935 which were as under :-

"1.....the administration of justice, constitution and organisation of all Courts except the Federal Court.....

2.....Jurisdiction and powers of all Courts except the Federal Court, with respect

⁵ AIR 1951 SC 69

to any of the matters in the List...."

25. In that case, the question was whether the legislature of the State of Bombay had jurisdiction to create an additional Civil Court for Greater Bombay having jurisdiction to try, proceed and dispose of all suits and other proceedings of a civil nature not exceeding a certain value. One of

the arguments in that case was that the legislation setting up the City Civil Court was bad because it conferred jurisdiction on the new Court not only in respect of matters upon which the Provincial Legislature was competent to legislate but also in regard to matters in respect of which only the Central Legislature could legislate (such as, promissory notes). In that case, Patanjali C.J. observed at page 78 :-

"After giving the matter my careful consideration, I am convinced that both the language of the provisions and the antecedent legislative practice support the conclusion that the Provincial Legislatures, which have the exclusive power of constituting and organizing Courts and of providing for the administration of justice in their respective provinces, have also the power of investing the Courts with general jurisdiction".

Fazal Ali J. observed :

"A reference to the three Legislative Lists shows that 'administration of justice' is entirely a provincial subject on which only the Provincial Legislature can legislate. The same remark applies to 'constitution and organization of all Courts except the Federal Court'.

.....

This power must necessarily include the power of defining, enlarging, altering, amending and diminishing the jurisdiction of the Courts and diminishing their jurisdiction territorially and pecuniarily".

26. Mahajan J. held that "It seems to me that the legislative power conferred on the Provincial Legislature by Item 1 of List II has been conferred by use of language which is of the widest amplitude (Administration of justice and constitution and organisation of all Courts.) It was not denied that the phrase employed would include within its ambit legislative power in respect to jurisdiction and power of Courts established for the purpose of administration of justice. Moreover, the words appear to be sufficient to confer upon the Provincial Legislature the right to regulate and provide for the whole machinery in connection with the administration of justice in the Province. Legislation on the subject of administration of justice and constitution of Courts of Justice would be ineffective and incomplete unless and until the Courts established under it were clothed with the jurisdiction and power to hear and decide causes. It is difficult to visualise a statute dealing with administration of justice and subject of constitution and organization of Courts with a definition of jurisdiction and powers of those Courts as without such definition such a Statute would be like a body without a soul. To enact it would be an idle formality. By its own force it would not have power to clothe a Court with any power of jurisdiction whatsoever. It would have to look to an outside authority and to another statute to become effective. Such an enactment is, so far as I knew, unknown to legislative practice and history. The Parliament by making administration of justice a provincial subject could not be considered to have conferred power of legislation on the Provincial Legislature of an ineffective and useless nature".

27. "Administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Court" has now been brought under Entry 11A of the Concurrent List. It is no more the exclusive power of the State Legislature to legislate on these matters. But "Administration of justice" is certainly a subject on which the State Legislature can legislate. In view of the interpretation given to this phrase by the Supreme Court, this power must necessarily

include the power of enlarging or diminishing the jurisdiction of the Courts. The Bihar Legislature by the Amending Act IV of 1974 has merely enlarged the jurisdiction of the Certificate Officer so as to enable the State Bank of India and other Banks specified in the Schedule to take recourse to the speedier remedy provided under the Bihar and Orissa Public Demands Recovery Act. Possibly, this was done to enable the Banks to avoid the proverbial law's delay and to realise their claims speedily by the expeditious remedy provided by that Act. Whatever may be the reason for passing this legislation there cannot be any doubt that the amendment clearly comes under the Entry 11A of the Concurrent List. The Amending Act 4 of 1974 has merely brought a dispute relating to money payable to the State Bank of India within the jurisdiction of the Certificate Officer. In effect, what has been done is to enlarge the jurisdiction of the Revenue Court.

28. The question that has been raised can also be looked at from another angle. Entry 13 of the Concurrent List relates to "Civil Procedure, including all matters included in Civil Procedure Code at the commencement of this Constitution, limitation and arbitration". It clearly follows that the State Legislature can lay down the procedure that will have to be followed in the Courts. Having regard to the importance of the nationalised banks in the country's economy and also in view of the time taken usually by Courts following the usual procedure for disposal of suits, the Bihar legislature wanted to lay down a special procedure to be followed for recovery of monies lent by the banks. In order to achieve that object what the Bihar State Legislature has done is to enlarge the jurisdiction of the Revenue Courts so as to enable the Banks to take advantage of the speedier remedy provided by a Court which was already in existence. Instead of laying down a special procedure for trial of disputes relating to bank loans by ordinary Courts, what the State Legislature has done is to enlarge the jurisdiction of the Certificate Officer so as to make the speedier procedure of that Court available to the Banks for recovery of loans granted by it. The State Legislature, even after the amendment of Entry 3 of the State List, has not lost its jurisdiction to pass a legislation enlarging or abridging the jurisdiction of a Court or regulating the procedure thereof. In my judgment, the impugned legislation clearly comes within the ambit of Entries 11A and 13 of the Concurrent List.

29. There is an additional factor to be borne in mind in this case and that is that the Amendment Act 4 of 1974 passed by the Bihar Legislature had been reserved for and had actually received the assent of the President under Article 254(2) of the Constitution.

30. The argument that the Bihar Legislature has encroached upon a field reserved for the Parliament is also without any substance. "Banking" has been kept in the Union List in the Seventh Schedule under Entry 45. The banking laws have not set up any special Court or laid down any procedure for resolving disputes arising between a Bank and its customers. These disputes have to be resolved by taking recourse to the established Civil Courts and also by following the procedure that have been laid down. As has been noted earlier in the judgment that establishment of Courts and laying down of the procedure to be followed in those Courts come within the ambit of the legislative competence of the State Legislatures. In pith and substance, the State Legislature has merely enlarged the jurisdiction of an existing Court to entertain and try certain types of cases relating to banks. Before this amendment was made, a Bank had to file a suit in a Civil Court in the ordinary way for realisation of money due to it. The amendment enables the Bank to approach the Certificate Officer and avail of the speedier remedy of that Court. The purpose of the amendment is quite clear. The law has been passed only to make the speedy remedy of the Certificate proceedings available to the Banks. As I have held earlier that it

is competent for the State Legislature to enlarge the jurisdiction of a Court and also to legislate on matters of procedure. It is true that "Banking" comes under the Union List; but that does not mean that any legislation which affects the Banks in any way must be passed by the Parliament. I have held earlier in the judgment that the impugned legislation comes squarely within entries 11A and 13 of the Concurrent List. Even if the legislation incidentally trenches upon the field reserved for the Central Legislature, it will not be bad on that account. This principle of law has been emphasised by the Supreme Court in a number of cases. In the case of *Ishwari Khetan Sugar Mills v. State of U. P.*⁶, it was held by Desai J. that "when validity of a legislation is challenged on the ground of want of legislative competence, and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to, the Court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one Entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, the Act as a whole would be valid notwithstanding such incidental trenching".

31. It is well settled that Entries in the three Lists should be construed liberally. It is possible, and it is very often the case, that in passing a legislation which is within its competence, a Legislature may incidentally encroach upon the field which has been earmarked in another List exclusively for the Parliament. But that by itself will not make the legislation void, the test is to find out whether the legislation comes within any specific Entry of the State List or the Concurrent List. If in pith and substance, it is a legislation in respect of a matter which comes within the ambit of the power of the State Legislature, then even though, it incidentally trenches upon a field reserved for the Parliament, the legislation will not be bad. In the instant case, there is an additional fact that the Act was reserved for assent and has received the assent of the President.

32. Incidentally, it may also be mentioned that "money lending" and "money lenders" come under Entry 30 of the State List. The dispute in this case is whether monies lent by the State Bank of India to the petitioners can be recovered by certificate proceedings. I was referred to a judgment of the Judicial Committee of the Privy Council in the case of *Prafulla Kumar Mukherjee v. Bank of Commerce Limited, Khulna*⁷ where Lord Porter J. observed :-

"Three questions, therefore, arise, namely (1) Does the Act in question deal in pith and substance with money lending? (2) If it does, is it Valid though it incidentally trenches on matters reserved for the Federal Legislature; (3) Once it is determined whether the pith and substance is money lending, is the extent to which the Federal field is invaded a material matter?"

⁶ AIR 1980 SC 1953

⁷(1947) 74 Ind App. 23: (AIR 1947 P. C. 60)

33. It was argued on behalf of the respondents that the impugned legislation also comes within Entry 30 of the State List. In the view that I have taken of this matter, it is not necessary to express any opinion on this issue. In my opinion, the legislation comes squarely within Entries 11A and 13 of the Concurrent List. In pith and substance, the Amending Act 4 of 1974 passed by the Bihar Legislature had the effect of merely enlarging the jurisdiction of the Certificate Officer. By this amendment, the Bihar Legislature made an already existing speedy procedure of a Court established by it available to the State Bank of India and some other Banks. This legislation was within the competence of the Bihar Legislature and will not be bad even if it incidentally trenches

upon the field reserved for the Parliament under List I of the Seventh Schedule.

34. The petition, therefore, fails and is dismissed. All interim orders are vacated. The Rule is discharged.

35. There will be no order as to costs. The prayer for stay of operation of the order is refused.

36. A point was raised about the jurisdiction of this Court, to entertain this writ petition at all. It was argued that no part of the cause of action in this case arose within the jurisdiction of this Court. Therefore, the writ petition should be dismissed in limine. In the view that I have taken, it is not necessary to go into this aspect of the matter and I do not express any opinion on this point.

37. The facts and circumstances in the case of *M/s. Kayee Ceramics (P) Ltd. v. The Certificate Officer and ors.* being similar to the case of *M/s. Harish Tara Refractories (P) Ltd. v. Certificate Officer*; I hold that this petition also fails and is dismissed. All interim order are vacated.

38. In the result, the Rules being C. R. Nos. 11567(W) of 1981 and 11568(W) of 1981 are discharged.

39. There will be no order as to costs.

40. The prayer for stay of operation of the order is refused.

Order accordingly.