K.P. Khemka vs Haryana State Industrial And ... on 8 May, 2024

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Bench: Surya Kant

2024 INSC 396 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6144 OF 2024
(@ SLP (C) No. 14213 of 2015)

K.P. Khemka & Anr. … Appellant (s)
Versus
Haryana State Industrial and Infrastructure
Development Corporation Limited & Ors. ...Respondent(s)

With

CIVIL APPEAL NO. 6145 OF 2024
(@ SLP (C) No. 23041 of 2015)

Charanjeet Gaba … Appellant (s)
Versus
State of Haryana & Ors. ...Respondent(s)

ORDER

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeals arise from the judgment of a Division Bench of the High Court of Punjab and Haryana at Chandigarh dated 24.04.2015 in CWP No. 15983 of 2013 and CWP No. 26452 of 2014. By the said judgment, the High Court dismissed the writ petitions and rejected the contention of the appellants herein that if a debt is time-barred under the Limitation Act, 1963, the same cannot be recovered by resorting to the Haryana Public Moneys (Recovery of Dues) Act, 1979 (for short “the Recovery of Dues Act”) read with the State Financial Corporation Act, 1951. In so holding, the Division Bench applied the well established principle that the Limitation Act, which applies to Courts, merely bars the remedy and does not extinguish the debt.

3. The appellants herein had relied upon the judgment of a three-Judge Bench of this Court in State of Kerala and Others vs. V.R. Kalliyanikutty & Anr. (1999) 3 SCC 657 to contend that a time-barred debt under the Limitation Act cannot be recovered under the Recovery of Dues Act. While dealing with this contention, the High Court relied upon the judgment of a Constitution Bench of this Court

in Bombay Dyeing and Manufacturing Company Limited vs. The State of Bombay and Ors., 1958 SCR 1122 to reiterate the principle that the Limitation Act merely bars the remedy and does not extinguish the debt. The High Court also distinguished the judgment in V.R. Kalliyanikutty (supra) by holding that the judgments of this Court in Bombay Dyeing and Manufacturing Company Limited (supra) and Tilokchand and Motichand and Others vs. H.B. Munshi and Another, (1969) 1 SCC 110 were not brought to the notice of the Bench deciding V.R. Kalliyanikutty (supra).

4. Facts in Civil Appeal arising out of SLP (C) No. 14213 of 2015 are as follows:

> i. Respondent No.3 - M/s Khemka Ispat Limited was a Company engaged in the business of manufacture, production, import, export, sale and distribution of all types of Cold Rolled Strips, steel sockets, pipe and tube products, and other allied goods.
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> ii. On 07.03.2003, Respondent No.3 had taken a Term Loan under an Equipment Finance Scheme from Respondent No.1 - Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as "the HSIDC Ltd.") for a sum of Rs.105.90 lakhs. In view of the said Term Loan, Respondent No.3 had entered into a Loan Agreement with HSIDC Ltd. along with the personal guarantees of the appellants herein.
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> iii. On 31.03.2003, the sanctioned loan amount to the tune of Rs.105 lakhs was disbursed to Respondent No.3. On 15.07.2003, further amount of Rs. 2 lakhs was disbursed.

The Loan was to be repaid in five years with a moratorium period of six months w.e.f. 01.10.2003.

iv. On 19.08.2004, the First Default Notice was issued to Respondent No.3 by HSIDC Ltd. along with intimation of a right under Section 29 of the State Financial Corporations Act.

v. In the meantime, Respondent No.3 became a Sick Company and reference was made to the Board for Industrial and Financial Reconstruction (for short "the BIFR"). On 31.07.2006, the outstanding as on date to HSIDC Ltd. was Rs.99.32 lakhs.

vi. On 17.08.2006, BIFR declined Respondent No.3's Reference and the One-Time Settlement request. ING Vysya Bank also informed the BIFR that it had taken over possession of the unit, in accordance with which the BIFR ordered the reference to have abated. Respondent No. 3 informed the said ING Vysya Bank that the latter will not be responsible for the dues of the HSIDC Ltd, and that the machinery is in possesison of the Company. On 01.06.2007, HSIDC Ltd. took possession of the movables.

vii. While proceedings were carrying on against the principal borrower, on 08.08.2007, Respondent No.1 HSIDC Ltd. issued a show cause notice under Section 3(1)(b) of the Recovery of Dues Act to Respondent No.3, which notice was returned back with the remarks "closed/left". viii. On 25.09.2007, a winding up petition was filed by one of the creditors of Respondent No.3 in C.P. NO.

171 of 2007 before the High Court of Delhi, wherein a provisional order to wind-up was passed and a provisional liquidator appointed. Further, Final Order of winding up of Respondent No.3 appears to have been passed on 24.03.2009. ix. When the matter stood thus, on 29.10.2009, Respondent No.1 issued a show cause notice under Section 3(1)(b) of the Recovery of Dues Act to the Appellants and the same was returned with the remarks "left/closed".

x. Thereafter, on 10.01.2012, recovery notice sent to the appellants by Respondent No.2, the Additional General Manager of HSIDC Ltd., under Section 3(1)(b) of the Recovery of Dues Act was returned with the remarks "left/closed". The order determining the amount due as Rs. 213.19 lakhs w.e.f 10.01.2012 was passed by the HSIDC Ltd. xi. On 02.02.2012, the HSIDC Ltd. sent a notice under the provisions of the Recovery of Dues Act to the Appellants and the Respondent No. 3 indicating the sum determined to be due from them, which was to the tune of Rs.213.19 lakhs. On 01.03.2012, the appellants filed their reply. This was rejected by the Respondent No. 2, Additional General Manager of HSIDC Ltd., on 15.11.2012. Thereafter, the Respondent No. 2, Additional General Manager of HSIDC Ltd., issued a Final Notice under the provisions of the Recovery of Dues Act dated 15.11.2012 calling upon the appellants to pay Rs. 213.19 lakhs which was determined to be due from the Appellants and Respondent No. 3. xii. On 11.01.2013, recovery certificate under Section 3(1) of the Recovery of Dues Act for a sum of Rs. 243.11 lakhs, was issued.

xiii. On 12.07.2013, appellants filed CWP No. 15983 of 2013 challenging the recovery notice. The relevant ground was raised in the following terms:

> "G. BECAUSE the Impugned Orders deserve to be quashed as the recovery which has been initiated by first sending the notice on 10.01.2012 under the provisions of Haryana Public Moneys (Recovery of Dues) Act, 1979 is much beyond the limitation to recover any dues by the Corporation. The period of limitation if any was 3 years from 31.07.2004, when the amount stood and payable by Respondent No. 3 Company (in Liqn.). The period to recovery from either the Company or the Guarantors who stood surety for the said amount expired in the year 2007. The recovery as per the notices sent by the Respondent Corporation admittedly have been sent on 10.01.2012 and subsequent thereto and therefore any adjudication or determination of a sum due in view of the above said Act is unsustainable and is in any case time barred" xiv. The Writ Petition was dismissed vide the impunged order.
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> 5. The facts in Civil Appeal arising out of Special Leave Petition (C) No. 23041 of 2015 are as under:
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> i. The Haryana Financial Corporation sanctioned a term loan of Rs.88,74,000/- to Respondent No.5 - Cosmo Flex Private Limited on 31.01.1996. The loan was to be repaid within a period of eight weeks by way of quarterly instalments and the agreed rate of interest was 19.5% with half yearly rests. On 17.03.1997, the loan agreement was executed.

ii. The appellant, who was a Director of the R-5 Company, claims that he resigned from the Directorship of the Respondent No. 5 Company on 06.04.1998.

iii. On 29.07.1998, the loan was recalled by the Haryana Financial Corporation.

iv. In the meantime, the appellant claims that on account of his resignation from Directorship of the Respondent No. 5 company, he was paid a full and final settlement from the Company on 23.10.1998. Thereafter, he claims that the Registrar of Companies was also intimated about the fact of his resignation, on 12.10.1998.

v. The Haryana Financial Corporation, on 19.08.1999, sent a notice for taking over possession of the Company's assets and thereafter took possession on 31.08.1999.

vi. The Haryana Financial Corporation has set-out the time-line of events where multiple recovery notices under the Recovery of Dues Act were issued, leading up to the determination of the sum due from the Appellants herein, in the following terms:

"4. ...On continous non-repayment of dues, the possession of the mortgaged properties was taken over under section 29 of the State Financial Corporations Act, 1951. The primary security was disposed of by the Corporation for Rs. 61.00 lakh on 16.12.1999. The Recovery Certificate was issued on 22.09.2000 to the Collectors Gurgaon, Delhi & Srinagar and were returned in the year 2001 on the ground that no immovable/movable properties were available in the names of directors/guarantors and they were not residing at the given addresses. The fresh Recovery Certificate was issued on 10.08.2005 u/s 3 of Haryana Public Moneys (Recovery of Dues) Act, 1979 in the name of Collectors, Sri Nagar, Delhi & Gurgaon through Collector, Gurgaon. The Recovery Certificate pertaining to Collectors, Sri Nagar & Delhi were returned by Collector, Gurgaon to send the same directly to the concerned Collectors as there was no provisions to send the same by one Collector to another Collector.

After obtaining legal opinion as per which, it was advised that as per Section 3 of the Revenue Recovery Act, the Collector may send a certificate to other Collector, Recovery Certificates were returned to Collector, Gurgaon. However, Recovery Certificate in the name of Collector Gurgaon was being pursued. As Recovery Certificate with Collector Delhi was not traceable in his office, photocopy of the Recovery Certificate was re- lodged with Collector Delhi on 16.04.2008. It was informed by Collector Delhi that the Recovery Certificate lodged with them was not in their jurisdiction and as such recovery cannot be effected. Further, the directors residing at Gurgaon & Delhi had shifted to some unknown places. However, as the new addresses of one of the Directors Sh. Charanjeet Gaba were found out, fresh RCs were issued to Collectors Delhi (Central, East, South & West), Gurgaon & Sri Nagar (Kashmir) on 19.04.2010 u/s 32G of the State Financial Corporations Act. However, the Recovery Certificate dated 19.04.2010 was quashed by the High Court of Punjab and Haryana vide order dated 02.12.2011 passed in CWP No. 12226 of 2010 on the ground that the same was issued without affording the Petitioners an opportunity of personal hearing. The Corporation was given liberty to proceed after hearing the petitioner and giving him opportunity to

file his objections.

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7. Accordingly, personal hearings were given to defaulting borrowers/guarantors for sum determination under Section 32-G of the State Financial Corporations Act, 1951 on 11.12.2013, 19.03.2014 and 06.08.2014, objection raised by Sh. Charanjeet Gaba, borrower/guarantor verbally during the personal hearing as well as through various representations were dealt in detail in the proceeding of personal hearing held on 06.08.2014. However, as no constructive proposal for repayment/settlement under the new Settlement Policies of HFC-2011 was recived from Sh. Charanjeet Gaba or other borrowers/guarantors, Recovery Certificate was issued to Collectors, Srinagar, Solan (HP), Gurgaon & Delhi on 08.10.2014 for the recovery of Rs.

14,55,11,275/- with further interest @24% from 01.03.2014, the same stand challenged by the petitioner before the Hon'ble High Court as stated above." (emphasis supplied) vii. The appellant challenged the proceedings dated 06.08.2014 by filing CWP No. 26452 of 2014. By the Impugned Order, the Writ Petition was dismissed.

viii. In the Special Leave Petition filed before this Court, the case of the Appellant as regards the debt being time-barred is as follows:

> "A. Because the order/proceedings dated 06.08.2014 passed by Respondent No. 3 under Section 32 (G) of the State Financial Corporation Act for recovery of Rs. 14,55,11,275/- along with pendente lite and future interest could not have been issued as the recovery had already become time barred against the petitioner. Since the recovery on the basis of mortgaged property had already been effected by way of sale dated 16.12.1999 the remaining amount could not be recovered beyond the limited time of three years" Contentions of the Parties
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> 6. Before us, learned counsel for the appellants contend that the judgment in V.R. Kalliyanikutty (supra) directly covers the issue as according to them, in substance, there is no difference between the provisions of the Kerala Revenue Recovery Act, with which V.R. Kalliyanikutty (supra) was concerned, and the Recovery of Dues Act of the State of Haryana. According to the learned counsel, V.R. Kalliyanikutty (supra) has clearly held that Acts, like the Recovery of Dues Act, are intended for speedy recovery of loans and do not create a new right in the creditor. It is their contention that on that reasoning the word "due" in the Recovery of Dues Act cannot be interpreted to include time-

barred debts.

7. Learned counsel for the respondent-Corporations strongly refuted these contentions and contended that the impugned order was perfectly justified in holding that the decision of this Court in V.R. Kalliyanikutty (supra) has not considered the holding in Bombay Dyeing (supra) and

Tilokchand Motichand (supra). Questions that arise for this Court's consideration

8. The questions that fall for consideration are, firstly, are the appellants right in contending that the recovery proceedings initiated against them under the Recovery of Dues Act are barred in view of the principle laid down in V.R.Kalliyanikutty (supra). Secondly, if they are right, then is the decision in V.R. Kalliyaikutty (supra) contrary to the holding in Bombay Dyeing and Manufacturing Company Limited (supra) and if so what is the course open for this two-Judge Bench.

Reasoning in V.R. Kalliyanikutty (supra)

9. To appreciate these contentions, we need to first understand the law laid down in V.R. Kalliyanikutty (supra). The primary question of law involved in V.R. Kalliyanikutty (supra) was, whether a debt which is barred by the law of limitation can be recovered by resorting to recovery proceedings under the Kerala Revenue Recovery Act, 1968. This apart, the Bench, after setting out the scheme of the Kerala Revenue Recovery Act, examined the further question as to whether the object of the Kerala Revenue Recovery Act was only for speedy recovery or if the said Act also enlarged the right to recover. Additionaly, the Bench addressed the question as to whether the words "amount due" would refer to the amounts repayable under the terms of the Loan Agreement executed between the debtor and the creditor irrespective of whether the claim was time- barred or whether the words refer to only those claims which are legally recoverable.

10. Relying upon Hansraj Gupta vs. Dehra Dun-Mussorie Electric Tramway Co. Ltd., AIR 1933 PC 63, the Bench in Kalliyanikutty (supra) held that the Kerala Recovery Act did not create any new right and that it merely provided a process for speedy recovery. In view of the same, it held that since the Act did not create any right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable. The Bench thereafter distinguished the judgment in Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, (1978) 1 SCC 44 as having no applicability to the interpretation of the Kerala Revenue Recovery Act. It further relied on the judgment of this Court in Director of Industries, U.P. vs. Deep Chand Agarwal (1980) 2 SCC 332 to reinforce its holding on the interpretation of the word 'due' under the Kerala Revenue Recovery Act. The plea that the statute of limitation merely bars the remedy and does not touch upon the right was not accepted by the Court by holding that the rights of the parties are not enlarged by the Kerala Revenue Recovery Act and that unless the Act expressly provided for enlargement of claims extending to the recovery of barred debts, that principle will not apply. Ultimately, the Court held that under the provisions of the Kerala Revenue Recovery Act a debt which is barred by the law of limitation cannot be recovered.

11. The Division Bench, in the impugned order, has relied on Bombay Dyeing (supra) to reinforce the point that the statute of limitation only bars the remedy and does not extinguish the debt. The decision in Bombay Dyeing (supra) was a case where the Constitution Bench of this Court reiterarted the principle that statutes of limitation only bar the remedy and do not extinguish the right and so holding, it found that the definition of "unpaid accumulations" in that case did apply to wages of employees that were time-barred. The Court went on to hold that while time-barred wages did vest in the State, since the Act did not, in that case, provide for disbursement of the wages to the

workers whose claims could be established and since there was no provision for the workers making the claim, the Act was held to be contrary to Article 31(2) of the Constitution, which then existed.

12. It is well settled that the laws of limitation only bar the remedy and do not extinguish the right, except in cases where title is acquired by prescription. We may note here that V.R. Kalliyanikutty (supra) did not dispute the principle that the statute of limitation only bars the remedy and does not extinguish the debt. After considering this principle it went onto hold that there was no enlargement of right in the Kerala Revenue Recovery Act. The impugned order, in the present case, further holds that Bombay Dyeing (supra) and Tilokchand and Motichand (supra) were not brought to the notice in V.R. Kalliyanikutty (supra). The decision in Tilokchand and Motichand (supra) was a case which inter alia dealt with extension of the principles of laches and res judicata to writ proceedings and have no direct relevance to the present controversy. The impugned order, in the present case, thereafter goes on to hold that the machinery for recovery under the Recovery of Dues Act or the State Financial Corporations Act do not have the trappings of a Court to hold that the provisions of the Limitation Act have no application for the same. Discussion and Reasoning:-

13. In our view, the findings of the Division Bench in the impugned order do not directly address the holding in V.R. Kalliyanikutty (supra) that the Kerala Revenue Recovery Act did not create any additional right to recover and enforce the outstanding amounts due.

14. The real question that arises is do the State Financial Corporations Act, 1951 and the Recovery of Dues Act create a distinct right and provided an alternative mechanism of enforcement to reover the amount due, even if the amounts due were time barred? To answer this question, we need to examine the relevant statutory provisions.

15. The objects and reasons of the State Financial Corporations Act are relevant for the purposes of the present case. They read as under:

> "The intention is that the State Corporations will confine their activities to financing medium and small scale industrial and will, as far as possible, consider only such cases as are outside the scope of the Industrial Finance Corporation. The State Governments also consider that the State Corporations should be established under a special Statute in order to make it possible to incorporate in the Constitution necessary provisions in regard to majority control by Government, guaranteed by the State Government in regard to the repayment of principal, and payment of a minimum rate of dividend on the shares, restriction on distribution of profits and special powers for the enforcement of its claims and recovery of dues. The main features of the Bill are as follows:-
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> (vii) The Corporation will be authorised to make long-term loans to industrial concerns and to guarantee loans raised by industrial concerns which are repayable within a period of not exceeding 25 years. The Corporation will be further authorised to underwrite the issue of stocks, shares, bonds or debentures by industrial concerns, subject to the provision that the Corporation will be required to dispose of any

> shares, etc., acquired by it in fulfilment of its underwriting liability within a period of 7 years.

(ix) The Corporation will have special privileges in the matter of enforcement of its claims against borrowers" (emphasis supplied) Section 32-G of the State Financial Corporations Act reads as under:-

> "32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.—Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue." (emphasis supplied)

16. This apart, for the purposes of the present case, the relevant provisions of the Recovery of Dues Act, being Section 2(c) and Section 3 of the Recovery of Dues Act, are for the sake of convenience set out hereinbelow:

> "2. Definitions In this Act, unless the context otherwise requires, -
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> (c) "defaulter" means a person who either as principal or as surety, is a party –
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> (i) to any agreement relating to a loan, advance or grant given under that agreement or relating to credit in respect of, or relating to hire-purchase of, goods sold by the State Government or the Corporation, by way of financial assistance;

and such person makes any default in repayment of the loan or advance or any instalment thereof or, having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof or otherwise fails to comply with the terms of the agreement;

3. Recovery of certain dues as arrears of land revenue (1) Where any sum is recoverable from a defaulter –

(a) by the State Governemnt, such officer as it may, by notificaitaon, appoint in this behalf;

(b) by a Corporation or a Government company, the Managing Director thereof, shall determine the sum due from the defaulter.

(2) The Officer or the Managing Director, as the case may be, referred to in sub-section (1), shall send a certificate to the Collector mentioning the sum due from the defaulter and requesting that such sum together with the cost of proceedings be recovered as if it were an arrear of land revenue. (3) A certificate sent under sub-section (2) shall be conclusive proof of the matters stated therein and the Collector, on receipt of such certificate, shall proceed to recover the amount stated therein as an arrear of land revenue.

(4) No civil court shall have jurisdiction –

(a) to entertain or adjudicate upon any case; or

(b) to adjudicate upon or proceed with any pending case; relating to the recovery of any sum due as aforesaid from the defaulter. The proceedings relating to the recoery of the sums due from the defaulters, pending at the commencement of this Act in any civil court, shall abate." (emphasis supplied)

17. It will be clear from Section 32-G of the State Financial Corporations Act that the Section confers a right of recovery on the financial corporation, without prejudice to any other mode of recovery which includes the right to file a suit. The conferment of such a right to recover an 'amount due' as arrears of land revenue, notwithstanding any other remedy, is for a public purpose and in public interest.

18. At this point, we deem it appropriate to refer to a passage from Salmond on Jurisprudence, 12th Edition, on the concepts of "Right" and "Power" [Page 224, 229 & 230]:

> "42. Legal rights in a wider sense of the term We must now consider the wider use of the term, according to which rights, do not necessarily correspond with duties. In this generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. Of rights in this sense there are four distinct kinds. These are (1) Rights (in the strict sense), (2) Liberties, (3) Powers, and (4) Immunities. Each of these has its correlative, namely (1) Duties, (2) No-Rights, (3) Liabilities, and (4) Disabilities.
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> A debt is not the same thing as a right of action for its recovery. A former is the right in the strict and proper sense, corresponding to the duty of the debtor to pay; the latter is a legal power, corresponding to the liability of the debtor to be sued. That the two are distinct appears from the fact that the right of action may be destroyed (as by prescription) while the debt remains A power may be defined as ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons. Powers are either public or private. The former are those which are vested in a person as an agent or instrument of the functions of the state; they comprise the various forms of legislative, judicial, and executive authority...The correlative of power is a liability. This connotes the presence of a power vested in someone else, as against the person

> with the liability. It is the position of one whose legal rights (in the wide sense) may be altered by the exercise of a power...the most important form of liability is that which corresponds to the various powers of action and prosecution. Such liability is independent of the question whether the particular action or prosecution will be successful, and is therefore independent of (say) the duty to pay damages for a civil wrong" (emphasis supplied) As would be clear from the passage above, a debt is not the same thing as the right of action for its recovery. While the debt is the right in the creditor with the corelative duty on the debtor the right of action for recovery is in the nature of a legal power.
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> While the process of filing a civil suit may be barred because of the statute of limitation, the power to recover vested through Section 32-G of the State Financial Corporations Act read with Section 2(c) and Section 3 of the Recovery of Dues Act is a distinct power which continues notwithstanding that another mode of recovery through a civil suit is barred. Understood in that sense, it does appear that there is an additional right to enforce the claims of the financial corporations notwithstanding the bar of limitation. The same is the case with the provisions of the Kerala Revenue Recovery Act which fell for consideration of this Court in V.R. Kalliyanikutty (supra).

19. No doubt, even where the statute of limitation does not apply, the power has to be exercised within a reasonable time. In that scenario the further question would be: Whether the time available would analogously be the time available for execution of decrees? Since no specific arguments have been advanced and since the Division Bench in the Impugned Order was not engaged with that issue, we refrain from dealing with the same.

20. In the context of the Kerala Revenue Recovery Act, the decision in V.R. Kalliyanikutty (supra) needs to be discussed. The relevant portions of the judgment is extracted hereinbelow:

> "3. ...Under Section 71, however, there is a provision for extending the Act to recovery of certain other dues if the Government is satisfied that it is necessary to do so in public interest. Under Section 71 it is provided as follows:
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> "71. Power of Government to declare the Act applicable to any institution.—The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."
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> 4. In exercise of its powers under Section 71, the State Government has issued a notification bearing SRO No. 797 of 1979 by which the provisions of the said Act have been made applicable to the recovery of the amounts due from any person to any bank on account of any loan advanced to such person by that bank for agriculture or agricultural purposes. Under another notification SRO No. 851 of 1979 issued under

Section 71 by the State Government the provisions of the said Act are also made applicable to the recovery of amounts due from any person or class of persons to the Kerala Financial Corporation. Thus in public interest the State Government has made the said Act applicable for speedy recovery of loans given by a bank for agricultural purposes as well as for speedy recovery of loans given by the Kerala Financial Corporation. The overall scheme of the Act, therefore, is to provide for speedy recovery, not merely of public revenue but also of certain other kinds of loans which are required to be recovered speedily in public interest.

5. Explaining analogous provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1965, this Court in Director of Industries, U.P. v. Deep Chand Agarwal [(1980) 2 SCC 332 :

AIR 1980 SC 801] held that the said Act is passed with the object of providing a speedier remedy to the State Government to realise the loans advanced by it or by the Uttar Pradesh Financial Corporation. Explaining the need for speedy recovery, it says that the State Government while advancing loans does not act as an ordinary banker with a view to earning interest. Ordinarily it advances loans in order to assist the people financially in establishing an industry in the State or for the development of agriculture, animal husbandry or for such other purposes which would advance the economic well-being of the people. Moneys so advanced have to be recovered expeditiously so that fresh advances may be made for the same purpose. It is with the object of avoiding the usual delay involved in the disposal of suits in civil courts and providing for an expeditious remedy that the U.P. Act had been enacted. It was on this ground that this Court upheld the classification of loans which are covered by the said U.P. Act in a separate category. It held that this is a valid classification and the provisions of the Act are not violative of Article 14.

6. The same reasoning would apply to the loans which are covered by the said notifications under Section 71 of the Kerala Revenue Recovery Act. Agricultural loans and loans by the State Financial Corporation are also loans given in public interest for the purpose of economic advancement of the people of the State, to help them in agricultural operations or establishment of industries. For this reason the Kerala Revenue Recovery Act has been made applicable to such loans so that there can be a speedy recovery of such loans and the amounts can be utilised for similar objects again.

18. In the premises under Section 71 of the Kerala Revenue Recovery Act claims which are time-barred on the date when a requisition is issued under Section 69(2) of the said Act are not “amounts due” under Section 71 and cannot be recovered under the said Act. Our conclusion is based on the interpretation of Section 71 in the light of the provisions of the Kerala Revenue Recovery Act.” Under the said provision, the Government in public interest could make the Revenue Recovery Act applicable to recovery of amounts due to any person or class of persons or to any specified

> institution or any class or classes of institutions and on such notification by the provisions of the Act was applicable to such recovery. Admittedly, in V.R. Kalliyanikutty (supra) a notification was issued making the provisions of the Kerala Revenue Recovery Act applicable to the Kerala Financial Corporation. The Kerala Financial Corporation is also a Corporation under the said Financial Corporation Act to which Section 32-G applied.

21. In our view, while the Court focused on the implication of a notification under Section 71 of the Kerala Revenue Recovery Act whereunder the Government could declare the Act applicable to any institution, the attention of the Court in V.R. Kalliyanikutty (supra) was not drawn to the powers envisaged under the State Financial Corporations Act which were also applicable to the recovery of debts in Kerala. As noticed above, the statement of objects and reasons of the State Financial Corporations Act refers to providing State Financial Corporations with 'special privileges in the matter of enforcement of claims against borrowers'. This is reflected through Section 32-G of the State Financial Corporations Act which we have set-out hereinabove.

22. This Court in V.R. Kallliyanikutty (supra) held that the words 'amounts due' occuring in the Kerala Revenue Recovery Act would only include legally recoverable debts i.e. debts which are not time-barred. For this purpose, it may be apposite to refer to the relevant portions from the decision in V.R. Kalliyanikutty (supra):

> "9. In the case of Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [AIR 1933 PC 63 : 60 IA 13] the Privy Council was required to interpret the words "money due" under Section 186 of the Companies Act, 1913. Section 186 dealt with the recovery of any money due to the company from a contributory. Interpreting the words "money due", the Privy Council said that the phrase would only refer to those claims which were not time-barred.
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> 10. The same reasoning would apply in the present case also.

The Kerala Revenue Recovery Act does not create any new right. It merely provides a process for speedy recovery of moneys due. Therefore, instead of filing a suit, (or an application or petition under any special Act), obtaining a decree and executing it, the bank or the financial institution can now recover the claim under the Kerala Revenue Recovery Act. Since this Act does not create any new right, the person claiming recovery cannot claim recovery of amounts which are not legally recoverable nor can a defence of limitation available to a debtor in a suit or other legal proceeding be taken away under the provisions of the Kerala Revenue Recovery Act. In fact, under Section 70 of the Kerala Revenue Recovery Act, it is provided that when proceedings are taken under this Act against any person for the recovery of any sum of money due from him, such person may, at any time before the commencement of the sale of any property attached in such proceedings, pay the amount claimed and at the same time deliver a protest signed by himself to the officer issuing the demand or conducting the sale as the case may be. Sub-section (2) of Section 70 provides that when the amount is paid under protest, the officer issuing the demand or the officer at whose instance the proceedings have been initiated, shall enquire into the protest and pass appropriate orders. If the

protest is accepted, the officer disposing of the protest shall immediately order the refund of the whole or part of the money paid under protest. Under sub-section (3) of Section 70, the person making a payment under protest shall have the right to institute a suit for the refund of the whole or part of the sum paid by him under protest.

11. Therefore, under Section 70(3) a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law he would be entitled to submit in the suit that the claim against which the recovery has been made is time- barred. Hence no amount should have been recovered from him. When the right to file a suit under Section 70(3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act which expressly brings about such a result. Provisions of the said Act, however, indicate to the contrary. Moreover, such a wide interpretation of "amount due" which destroys an important defence available to a debtor in a suit against him by the creditor, may attract Article 14 against the Act. It would be ironic if an Act for speedy recovery is held as enabling a creditor who has delayed recovery beyond the period of limitation to recover such delayed claims.

12. In the case of New Delhi Municipal Committee v. Kalu Ram [(1976) 3 SCC 407] relying on the Privy Council decision in Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [AIR 1933 PC 63 : 60 IA 13] this Court interpreted Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 in a similar way. Under that section where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order. While considering the meaning of the words "arrears of rent payable" this Court examined whether Section 7 creates a right to realise arrears of rent without any limitation of time. The Court observed that the word "payable" is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. In the context of recovery of arrears of rent under Section 7, this Court said that if the recovery is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent the determination must be in accordance with law. Section 7 only covers arrears not otherwise time-barred.

16. There is no question, however, in the present case of any payment voluntarily made by a debtor being adjusted by his creditor against a time-barred debt. The provisions in the present case are statutory provisions for coercive recovery of "amounts due". Although the necessity of filing a suit by a creditor is avoided, the extent of the claim which is legally recoverable is not thereby enlarged. Under Section 70(2) of the Kerala Revenue Recovery Act the right of a debtor to file a suit for refund is expressly preserved. Instead of the bank or the financial institution filing a suit which is defended by the debtor, the creditor first recovers and then defends his recovery in a suit filed by the debtor. The rights of the parties are not thereby enlarged. The process of recovery is different. An Act must expressly provide for such enlargement of claims which are legally recoverable, before it can be interpreted as extending to the recovery of those amounts which have ceased to be legally recoverable on the date when recovery proceedings are undertaken. Under the Kerala Revenue Recovery Act such a process of recovery would start with a written requisition issued in the

prescribed form by the creditor to the Collector of the district as prescribed under Section 69(2) of the said Act. Therefore, all claims which are legally recoverable and are not time-barred on that date can be recovered under the Kerala Revenue Recovery Act." (emphasis supplied)

23. In order to arrive at the conclusion that the words 'amounts due' occurring in the Kerala Revenue Recovery Act would only include legally recoverable debts i.e. debts which are not time-barred, the Court in V.R. Kalliyanikutty (supra) relies upon three decisions. First is the decision of the Privy Council in Hansraj Gupta (supra), second is the decision of the this Court in New Delhi Municipal Committee vs. Kalu Ram, (1976) 3 SCC 407 and third, is the decision of this Court Deep Chand (supra).

24. The decision in Hansraj Gupta (supra) was in the context of an application filed by the Official Liquidator praying that the Appellants therein, in their capacity as contributories, must be ordered to pay a debt owed by them to the Company. This Application was made under Section 186(1) of the Indian Companies Act, which provides as follows:

> "Court may, at any time after making a winding-up Order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act." The decision in Hansraj Gupta (supra) involved interpretation of the words 'any money due' occurring in Section 186(1) of the Indian Companies Act. The Privy Council, while following and affirming the judgment of the Lahore High Court in Sri Narain v. Liquidator, Union Bank of India, ILR 4 Lah. 109, held that a time-barred debt could not be enforced by a summary order under Section 186 since the section did not create new liability or confer new rights and since it merely created a summary procedure for enforcing existing liabilities.

25. Additionally, in Hansraj (supra) the Limitation Act applied to the company court, since it was a 'court'. Section 46- B of the State Financial Corporations Act provides that the said Act was to have effect notwithstanding anything inconsistent therewith contained in any other law. The authority under the Recovery of Dues Act not being a 'court', the provisions of the Limitation Act cannot proprio vigore apply.

26. The decision of this Court in Kalu Ram (supra) is again based fully on the interpretation of the Privy Council in Hansraj (supra). That apart, the decision in Kalu Ram (supra) involved the interpretation of the words 'arrears of rent payable' under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The Court noted that the word 'payable' generally means 'that which should be paid' and thereafter concluded that the word can only be interpreted to mean dues which are legally recoverable. The provisions herein use the words 'amounts due' and are provisions which create a right to recover through a separate mechanism, notwithstanding the right to file a civil suit.

27. At this juncture, we also deem it fit to note the decision of this Court in KGU Trust (supra).The decision in KGU Trust (supra) was rendered while interpreting the words 'entire amount of rent due' occurring in Section 20(4) of the U.P Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. While the landlord could file an eviction suit on the ground that the tenant is in arrears of rent, the Tenant was given an option to resist this eviction suit by depositing this 'entire amount of rent due'. While the decision in V.R. Kalliyanikutty (supra) rightly states that the said provision was a benefit being conferred on the tenant, we deem it necessary to refer to the other findings of this Court in KGU Trust (supra) which are of relevance for the purposes of answering the questions before us. In arriving at the conclusion that the 'entire amount of rent due' would include even time-barred claims, the Court in KGU Trust (supra) specifically noted the decision in Bombay Dyeing (supra) and the principle that the Limitation Act only bars the remedy and does not extinguish the debt. The Court also noted Halsbury's Laws of England where it is stated that the Limitation Act would only take away the remedy while leaving the right untouched, and that 'if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Limitation Act does not prevent him from recovering by those means'. [Paragraph 4, 5 of KGU Trust (supra)]

28. Deep Chand (supra) was a case where there was a challenge to the constitutionality of Section 3 of the U.P Public Moneys (Recovery of Dues) Act, 1965. The argument was that Section 3 provided two remedies to the Government – one being a suit and another being a remedy under the Act – and that the latter remedy was more onerous and without any guidelines in law. [Paragraph 2 of Deep Chand (supra)] In upholding the Constitutionality of the U.P Act, the Court noted that the object of the U.P Act was to enable speedy recovery of money and that therefore, the classification was valid. [Para 6 of Deep Chand (supra)]

29. While it is true that the U.P Act, similar to the Haryana Revenue Recovery Act [in the present case] or the Kerala Revenue Recovery Act, was enacted with the object to have speedy recovery of dues, this does not take away from the fact that the right was vested in the Financial Corporations to recover the loans through the said Acts, notwithstanding any other right, including the right to file a suit.

30. As far as the finding in V.R. Kalliyanikutty (supra) regarding Section 70(3) of the Kerala Revenue Recovery Act, which provides for a suit by the debtor for refund after payment under protest, is concerned, what is to be noted is that the defence for the State Financial Corporations that the State Financial Corporations Act conferred an additional right to recover amounts due would still be applicable. Therefore, the existence of the right to the debtor under Section 70(3) of the Kerala Revenue Recovery Act cannot be said to be determinative of the issue.

31. It would also be apposite to point out that the applicability of V.R. Kalliyanikutty (supra) to Section 56(2) of the Electricity Act, 2003 recently fell for consideration before a three-judge Bench of this Court in K.C. Ninan v. Kerala State Electricity Board, 2023 INSC 560. One of the questions which the Court was faced with was whether the statutory bar on recovery of electricity dues after the limitation period of two years provided under Section 56(2) of the Electricity Act, 2003 would have an implication on the civil remedies of the Electric Utilities to recover such arrears. The auction purchasers, who had purchased premises where electricity had been disconnected due to defaults of

the previous owners, argued that the period of limitation would apply to such dues and that Electric Utilities could not demand such time-barred dues from them. The Court in K.C. Ninan (supra), after a comprehensive analysis of the scheme of the Electricity Act, held that the power to initiate proceedings to recover the electricity dues was independent of the power to disconnect electrical supply. Thereafter, the Court noticed the decision in V.R. Kalliyanikutty (supra) and concluded that statute of limitation only barred a remedy, while the right to recover the loan through 'any other suitable manner provided' remains untouched. Having so held, the Court rejected the argument of the auction purchasers and concluded that the bar of limitation under Section 56(2) of the Electricity Act would only restrict the remedy of disconnection under Section 56 of the Electricity Act and that the Electric Utilities were entitled to reocver electricity arrears through civil remedies or in exercise of its statutory power.

32. In view of what has been pointed out hereinabove, we are of the opinion that, for a comprehensive consideration and an authoritative pronouncement after taking into account all aspects, including those dealt with hereinabove, the matter needs to be placed before the Hon'ble Chief Justice of India to constitute an appropriate three-judge bench.

33. Let the papers along with this order be placed before Hon'ble the Chief Justice of India for seeking appropriate directions from His Lordship, in this regard.

.....J. (Surya Kant) .....J. (K.V. Viswanathan) New Delhi;

May 08, 2024