

Solidaire India Ltd vs Fairgrowth Financial Services Ltd. And ... on 7 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 958, 2001 AIR SCW 733, 2001 (1) UJ (SC) 582, 2001 UJ(SC) 1 582, (2001) 2 JT 639 (SC), 2001 (1) COM LJ 400 SC, 2001 (2) SCALE 1, 2001 (2) LRI 193, 2001 (3) SCC 71, (2001) 1 COM LJ 400, 2001 (3) SRJ 294, 2001 (2) JT 639, (2001) 41 CORLA 1, (2001) 1 BANKCAS 656, (2001) 1 SUPREME 638, (2001) 2 RECCIVR 198, (2001) 2 SCALE 1, (2001) BANKJ 473, (2001) 2 BANKCLR 612, (2001) 3 BOM CR 82

Bench: B.N. Kirpal, Ruma Pal, Brijesh Kumar

CASE NO.:

Appeal (civil) 3760 of 1995

PETITIONER:

SOLIDAIRE INDIA LTD.

RESPONDENT:

FAIRGROWTH FINANCIAL SERVICES LTD. AND ORS.

DATE OF JUDGMENT: 07/02/2001

BENCH:

B.N. KIRPAL & RUMA PAL & BRIJESH KUMAR

JUDGMENT:

JUDGMENT 2001 (1) SCR 932 The Judgment of the Court was delivered by KIRPAL, J. The appellant herein on 3rd March, 1992, 20th March, 1992 and 25th March, 1992 took a loan of Rs. 50 lakhs, Rs. 25 lakhs and Rs. 25 lakhs respectively from respondent No. 1. According to the appellant, the agreement was to repay the loan amount within three years together with interest at 18 per cent per annum.

Repayment not having been made and respondent No. 1 having been notified under Section 3 of the Special Court (Trial of Offences Relating to Transactions and Securities) Act, 1992 (hereinafter referred to as "Special Court Act"), proceedings were initiated by the Custodian before the Special Court for the recovery of the said money.

There was no dispute before the Special Court with regard to the fact that Rs. 1 crore had been taken on loan by the appellant. The claim against the appellant before the Special Court was for a sum of Rs. 1,57,20, 216.24 consisting of principal plus interest. The main contention raised before the Special Court related to the rate of interest. The respondent had claimed interest at the rate of 21.5 per cent on the amount of Rs. 50 lakhs and 23 per cent on the two loans of Rs. 25 lakhs each. The

Special Court came to the conclusion that the appellant herein had been put to notice by the Custodian as far back as 3rd June, 1993 that if it did not deposit the amount it will become liable to pay interest at a higher rate and the payment had not been made. The Special Court came to the conclusion that the claim of interest made by the respondent was justified. The suit of the respondent was, accordingly, decreed as prayed for alongwith costs.

During the pendency of this appeal, a further development had taken place and that is that the appellant has become sick and proceedings are going on under the provisions of The Sick Industrial Companies (Special Provisions) Act, 1985.

It is contended on behalf of the appellant that firstly, the Special Court was not justified in awarding interest in excess of 18 per cent and the second contention was that in view of the special provisions contained in the Sick Industrial Companies (Special Provisions) Act, 1985 no proceedings should have been initiated or continued under the Special Court Act.

As far as the question of interest is concerned, it appears that there was no formal agreement which had entered into between the parties at the time when the loan was advanced in March, 1992. The correspondence which has been placed on record, however, clearly indicates that the respondent had claimed interest at the rate of 21.5 per cent on the loan of Rs. 50 lakhs first advanced and on the balance amount the claim was of 23 per cent, there is no document on the record to show that the amount of interest claimed was immediately refuted, though it was belatedly refuted by the appellant. We do not find any infirmity in the decision of the Special Court in coming to the conclusion that the appellant was liable to pay the rate of interest as claimed by the respondent.

Coming to the second question, there is no doubt that the 1985 Act is a special Act. Section 32(1) of the said Act reads as follows:

"32. Effect of the Act on other laws-(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."

The effect of this provision is that the said Act will have effect notwithstanding anything inconsistent therewith contained in any other law except to the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. A similar non-obstante provision is contained in Section 13 of the Special Court Act which reads as follows:

"13. Act to have overriding effect-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority."

It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows:

Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. & Anr., [1993] 2 SCC 144; Sarwan Singh & Anr. v. Kasturi Lal, [1977] 2 SCR 421; Allahabad Bank v. Canara Bank & Anr., [2000] 4 SCC 406 and Shri Ram Narain v. The Simla Banking Industrial Co. Limited, [1956] SCR 603.

We may notice that the Special Court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd.* [1997] v. 89 Company Cases 547, it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The head-note which brings out succinctly the ratio of the said decision is as follows :

"Where there are two special statutes which contain non-obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

The Special Court (Trial of Offences Relating to Transactions and Securities) Act, 1992, provides in Section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

Under Section 3 of the 1992 Act, all property of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the custodian in respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned

to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only. Under Section 22 of the 1985 Act. recovery proceedings can only be with the consent of the Board for Industrial and Financial Reconstruction or the Appellate Authority under that Act. The Legislature being aware of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985.

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction against considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special Court can, if it is convinced grant time or instalments.

There can, therefore, be no stay of any proceedings for recovery against a sick company so far as the Special Court under the 1992 Act is concerned."

We are in agreement with the aforesaid decision or the case, more so when we find that whenever the Legislature wishes to do so it makes appropriate provisions in the Act in that behalf. Mrs. Shiraz Rustomjee has drawn our attention to Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that the said Act will be in addition to and not in derogation of a number of other Acts including the 1985 Act. Similarly under Section 32 of the 1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land Ceiling Act is not excluded. It is clear that in the instant case there was no intention of the Legislature to permit the 1985 Act to apply notwithstanding the fact that proceedings in respect of a company may be going on before the B.I.F.R. The 1992 Act is to have an overriding effect notwithstanding any provision to the contrary in another Act.

For the aforesaid reasons, we do not find any merit in this appeal. The appeal is dismissed with costs.