Supreme Court of India
Deepak Bhandari vs H.P.State ... on 29 January, 1947
Bench: K.S. Radhakrishnan, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1019/ 2014
[Arising out of Special Leave Petition (Civil) No. 30825 of 2010]

Deepak Bhandari
….....Appellant(s)

Versus

Himachal Pradesh State Industrial
Development Corporation Limited
….....Respondent(s)

J U D G M E N T

A.K. SIKRI, J.

1. Leave granted.

2. Present appeal raises an interesting question of law pertaining to the starting point of limitation for filing the suit for recovery by the State Financial Corporations constituted under the State Financial Corporation Act. We make it clear at the outset itself that we are not treading a virgin path. There are two judgments of this Court touching upon this very issue. At the same time it is also necessary to point out that it has become imperative to clarify the legal position contained in two judgments and to reconcile the ratio thereof as well because of the reason that they are contradictory in nature. It necessitates wider discussion in order to avoid any confusion in the manner such cases are to be dealt with.

3. With the aforesaid preliminary introduction to the subject matter of the present appeal, we now proceed to take note of the facts which have led to the question of limitation that confronts us.

4. Respondent No. 1 viz. Himachal Pradesh State Industrial Development Corporation Limited (hereinafter to be referred as 'the Corporation') is a financial corporation under the State Development Corporation Act (hereinafter to be referred as the Act). It is a statutory body constituted for the purpose of carrying out the objectives of the Act. It is a company incorporated

under the Companies Act, 1956, engaged in the business of providing financial aid to companies for setting up and commencing operations. Respondent No. 2 (hereinafter to be referred as the 'Company') is the industrial concern which defaulted in repayment of the loan disbursed by the Respondent No. 1. It is now under liquidation. Respondent No. 3 is the official liquidator, who was appointed by the High Court of Delhi for the purposes of winding up the Company. Respondent Nos. 4 & 5 were the Directors of the Company at the time of entering into the loan agreements with the Corporation.

5. The appellant who was also a director of the Company, was a Guarantor for the payment of loans taken by the Company vide loan agreements executed between Corporation and the Company. The following loan agreements were executed along with the corresponding amounts and guarantees:

Loan Agreement Date	Amount	Deed of Guarantee Date
5.6.1985	20.67 lacs	5.6.1985
7.4.1986	8.73 lacs	7.4.1986
24.11.1986	15.38 lacs	24.11.1986
28.7.1987	7.76 lacs	
Total	52.54 lacs	

6. The Company defaulted on the repayments of the loan amount disbursed to it by the Corporation. The Corporation issued a Recall Notice bearing No. PAC 84/ 90/ 6705 dated 21.5.1990 recalling an amount of Rs. 77,35,607/-(Rupees seventy seven lakhs thirty five thousand six hundred and seven only) plus further interest to be accrued from 10.9.1990.

7. The Company failed to make the repayment and accordingly the Corporation, proceeded under Section 29 of the State Financial Corporations Act, 1951 to take over the mortgaged/ hypothecated assets of the Company. The assets of the Company were taken over by the Corporation on 10.7.1992. The mortgaged/ hypothecated assets of the Company were sold by the Corporation on 31.3.1994 for a sum of Rs. 96,00,000/- (Rupees Ninety Six Lakhs only) by inviting offers by means of publishing advertisements in the leading newspapers.

8. Since the company was also indebted to HP Financial Corporation, amount realised from the sale of the company's assets was apportioned between these two secured creditors. After adjusting the sale proceeds against the outstanding debts of the Company, in proportion to the term loans advanced by the Corporation and Himachal Pradesh Financial Corporation; a sum of Rs. 68,96,564/- (Rupees Sixty Eight Lakhs Ninety Six Thousand Five Hundred and Sixty Four only) still remained outstanding against the Company.

9. The Corporation preferred a Civil Suit No. 85 of 1995 on 26.12.1994 titled as Himachal Pradesh State Industrial Development Corporation Limited v. M/s RKB Herbals Pvt. Ltd and Ors., for recovery of sum of Rs. 30,60,732/- (Rupees Thirty Lakhs Sixty Thousand Seven Hundred and Thirty Two only). The sum above mentioned was calculated as follows by the Corporation:

Recoverable amount on 31.5.1994	

Principal Amount (Rs./-)	5,16,582
Interest	63,79,982
Total	68,96,564
Less Penal Interest	38,35,832
Net Amount for which suit was filed	30,60,732

10. The Civil Suit No. 85 of 1995 was decreed in favour of the Corporation vide judgment and decree dated 6.6.2008 passed by the Single Judge of the High Court of Himachal Pradesh, granting a decree of Rs. 30,60,732/- (Rupees Thirty Lakhs Sixty Thousand Seven Hundred and Thirty Two only) along with interest at the rate of 12% from the date of filing of suit till the realization of the said amount.

11. Before the learned Single Judge of the High Court a plea was taken by the defendants, including the appellant herein, that the suit was time barred as it was filed beyond the period of 3 years from the date of commencement of limitation period. To appreciate this plea we recapitulate some relevant dates:

Date	Event
21.5.1990	Recall notice sent by the Corporation, recalling the outstanding amount.
10.7.1992	Mortgage/ hypothecated assets of the Company taken over by the Corporation.
31.3.1994	The Mortgage/ hypothecated assets of the Company sold by the Corporation.
21.5.1994	Notice issued to all the three Directors of the Company for payment of outstanding amount.
26.12.1994	Suit for recovery of the balance outstanding filed by the Corporation.

12. As per the defendants cause of action for filing the recovery suit arose on 21.5.1990 when recall notice was issued by the Corporation to the Company and the Guarantors. Therefore, the suit was to be filed within a period of 3 years from the said date and calculated in this manner, last date for filing the suit was 20.5.1993. It was, thus, pleaded that the suit filed on 26.12.1994 was beyond the period of 3 years from 21.5.1990 and, therefore, the same was time barred. The Corporation, on the other hand, contended that action for selling the mortgage/ hypothecated properties of the Company was taken under the provisions of Section 29 of the Act and the sale of these assets were fructified on 21.3.1994. It is on the realization of sale proceeds only, the balance amount payable by the guarantors could be ascertained. Therefore, the starting point for counting the limitation period is 31.3.1994 and the suit filed by the Corporation on 26.12.1996 was well within the period of limitation.

13. The learned Single Judge deciding in favour of the Corporation, held the suit to be well within limitation. The suit was decreed against all the defendants including the appellant herein, holding

them to be jointly and severely liable to pay the decretal amount. The appellant herein preferred an intra court appeal against the judgment and decree dated 6.6.2008. The Division Bench has also negatived the contention of the appellant affirming the finding of the single Judge and holding the suit to be within limitation.

14. We have already taken note of the stand of the parties on either side. It is apparent from the above that the main issue is as to whether the limitation for filing the suit would start on 21.5.1990, when the notice of recall was issued or the starting point would be 31.3.1994, when the assets of the Company were sold and the balance amount payable (for which suit is filed) was ascertained on that date. We have already pointed out in the beginning that there are two judgments of this Court which have dealt with the aforesaid issue. First judgment is known as Maharashtra State Financial Corporation v. Ashok K. Agarwal & Ors. 2006 (9) SCC 617. In that case the appellant Maharashtra State Financial Corporation had sanctioned Rs. 5 lakhs in favour of a Company. The Respondents were directors of the said borrower company and stood sureties for the loan. When the company failed to repay the loan, a notice dated 8.3.1983 was issued calling upon the borrower to repay its due. On 25.10.1983, an application under Ss. 31 and 32 of the State Financial Corporations Act, 1951 was filed by the Corporation. On 11.6.1990 the attached properties of the borrower company were put to sale. There was a shortfall in the amount realised and hence notices dated 27.1.1991 were sent to respondent sureties claiming Rs. 16,79,033 together with interest at the rate of 14.5.% p.a. On 2.1.1992 the appellant Corporation filed an application under Section 31(1)(aa) of the Act for recovery of the said balance amount. The respondent took various objections including that of limitation, contending that Article 137 of the Limitation Act was applicable and not Article 136. According to the respondents, Article 137 of the Limitation Act was applicable and as per that provision such an application could be made within a period of three years. Article 137 applies in cases where no period of limitation is specifically prescribed. It was submitted that as no period of limitation is prescribed for an application under Sections 31 and 32 of the Act, Article 137 would apply. The additional District Judge upheld the contention of the respondents and the application of the Corporation was dismissed as barred by limitation. The appellant Corporation filed an appeal against the said order in the High Court of Judicature at Bombay, Bench at Panaji. The appeal was dismissed by the High Court by the impugned order dated 22.7.1998. The High Court upheld the reasoning of the Additional District Judge. This Court affirmed the order of the High Court holding that Article 137 of the Limitation Act would apply and the suit was to be filed within a period of three years. Contention of the Financial Corporation predicating its case on Article 136 of the Limitation Act on the ground that application under Section 138 was in the nature of execution proceedings and, therefore, period of 12 years for execution of the decrees is available to the Financial Corporation, was repelled by the Court. The Court categorically held that Section 31 of the Act only contains a legal fiction and at best refer to the procedure to be followed, but that would not mean that there is a decree or order of a Civil Court, stricto sensu, which is to be executed, in as much as there is no decree or order of the Civil Court being executed.

15. From the reading of the aforesaid judgment, one thing is clear. The Court was concerned with the proceedings under Section 31 of the Act and the issue was as to whether limitation period would be 3 years as per Article 137 of the Limitation Act or it would be 12 years as provided under Article 136 of the Limitation Act. While dealing with that issue the Court, in the process also dealt with the nature

of proceedings under Section 31 of the Act namely whether this would be in the nature of a suit or execution of decree. The Court answered by holding that for such proceedings Article 137 of the Limitation Act would apply meaning thereby, period of limitation is 3 years. From the reading of this judgment, it becomes abundantly clear that the issue to which would be the starting date for counting the period of limitation, was neither raised or dealt with. Obviously, therefore, there is no discussion or decision on this aspect in the said judgment.

16. We would like to refer to the law laid down by this Court in Oriental Insurance Co. Ltd. vs. Smt. Raj Kumari and Ors.; 2007 (13) SCALE 113. In the said case, well known proposition, namely, it is ratio of a case which is applicable and not what logically flows therefrom is enunciated in a lucid manner. We would like to quote the following observations therefrom:-

> 10. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct," or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an, authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent.(See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (1970) ILLJ 662 SC and Union of India and Ors.v. Dhanwanti Devi and Ors. (1996) 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathern (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.
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> 11.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions

> of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd.v. Horton 1951 AC 737 Lord Mac Dermot observed: The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

The aforesaid principle was reiterated in Government of Karnataka and Ors. vs. Smt. Gowramma and Ors. 2007 (14) SCALE 613, wherein, the Court observed as under:-

> "10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. vs. Horton 1951 AC 737, Lord Mac Dermot observed: The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

17. Other case of this Court, which is relied upon by the High Court as well, is the decision dated 18.12.2003 in C.A. No. 1971 of 1998 titled as HP Financial Corporation v. Pawana & Ors. In that case recall notice was given to the defaulting Company on 4.1.1977; possession of mortgage/ hypothecated assets of the Company was taken over on 25.10.1982 in exercise of powers under Section 29 of the Act; these assets were sold on 29.3.1984 and 14.3.1985; notice for payment of balance amount was issued to the guarantors on 22.5.1985 and suit for recovery of the balance amount was filed on 15.9.1985.

18. A single Judge of the Himachal Pradesh High Court held that the period of limitation for such a suit started after the sale and when balance was found due and, therefore, suit was within the period of limitation. However, when the suit reached hearing before another Judge of the High Court he disagreed with the earlier view and referred the matter to a larger Bench. The Division Bench of the High Court answered the question by holding that the suit for balance amount was filed as a result of the non- payment of debt by the principle debtor which was the date when cause of action arose. Therefore, the suit should have been filed within 3 years from the date of recall notice. The suit was,

thus, dismissed as time barred. This Court reversed the judgment of the High Court. While doing so, it referred to clause 7 of the mortgage deed which was to the following effect:

> "Without prejudice to the above rights and powers conferred on the Corporation by these presents and by Section 29 and 30 of the State Financial Corporations Act, 1951, and as amended in 1956 and 1972 and the special remedies available to the Corporation under the said Act, it is hereby further agreed and declared that if the partners of the industrial concern fail to pay the said principal sum with interest and other moneys due from him under these rpesents, to the Corporation in the manner agreed, the Corporation shall be entitled to realise tis dues by sale of the mortgaged properties, the said fixtures and fittings and other assets, and if the sale proceeds thereof are insufficient to satisfy the dues of the Corporation, to recover the balance from the partners of the industrial concern and the other properties owned by them though not included in this security." (emphasis supplied).

19. On the basis of the aforesaid clause the Court found fault with the approach of the High Court in as much as clause 7 specifically provided that the Corporation could filed recovery proceedings against the partners of the Industrial concern if the sale proceeds of the assets of the industrial concern were insufficient to satisfy the dues of the Corporation.

20. Mr. Dhruv Mehta, learned Senior Counsel appearing for the appellant tried to distinguish this judgment by vehemently arguing that the aforesaid case was based on interpretation of clause 7 of the mortgage deed which was executed between the parties and in the present case such a clause is conspicuously absent. Had the judgment of this Court rested solely on clause 7 of the mortgage deed, the aforesaid argument of Mr. Dhruv Mehta would have been of some credence. However, we find that the Court also specifically discussed the issue as to when right to sue on the indemnity would arise and specific answer given to this question was that it would be only after the assets were sold of. The judgment was also rested on another pertinent aspect viz. since the mortgage deed was executed, the period of limitation would be 12 years if a mortgage suit was to be filed. Following discussion in the said judgment on this aspect squarely answers the contention of the learned Senior Counsel for the appellant:

> "Whilst considering the question of limitation the Division Bench has given a very lengthy judgment running into approximately 50 pages. However they appear to have not noticed the fact that under Clause 7 an indemnity had been given. Therefore, the premise on which the judgment proceeds i.e. that the loan transaction and the mortgage deed, are one composite transaction which was inseparable is entirely erroneous. It is settled law that a contract of indemnity and/ or guarantee is an independent and separate contract from the main contract. Thus the question which they required to address themselves, which unfortunately they did not, was when does the right to sue on the indemnity arose. In our view, there can be only one answer to this question. The right to sue on the contract of indemnity arose only after the assets were sold off. It is only at that stage that the balance due became ascertained. It is at that stage only that a suit for recovery of the balance could have

been filed. Merely because the Corporation acted under Section 29 of the Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely enabled the Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that on the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient.

In this case, it is an admitted position that the sale took place on 28.1.1984 and 14.3.1985. it is only after this date that the question of right to sue on the indemnity (contained in Clause 7) arose. The suit having been filed on 15.9.1985 was well within limitation. Therefore, it was erroneous to hold that the suit was barred by the law of limitation.

Even otherwise, it must be mentioned that the Division Bench was in error in stating that the right to personally recover the balance terminates after the expiry of three years. It must be remembered that the question of recovery of balance will only arise after the remedy in respect of the mortgage deed has first been exhaustive. If a mortgage suit was to be filed, the period of limitation would be 12 years. Of course, in such a suit, a prayer can also be made for a personal decree on the sale proceeds being insufficient. Even though such prayer may be made, the suit remains a mortgage suit. Therefore, the period of limitation in such cases will remain 12 years". [Emphasis Supplied]

21. We thus, hold that when the Corporation takes steps for recovery of the amount by resorting to the provisions of Section 29 of the Act, the limitation period for recovery of the balance amount would start only after adjusting the proceeds from the sale of assets of the industrial concern. As the Corporation would be in a position to know as to whether there is a shortfall or there is excess amount realised, only after the sale of the mortgage/ hypothecated assets. This is clear from the language of sub-Section (1) of Section 29 which makes the position abundantly clear and is quoted below:

"Where nay industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation."

22. It is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely

enabled the Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that only the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract, did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose after the assets were sold. The present case would fall under Article 55 of the Limitation Act, 1963 which corresponds to old Articles 115 and 116 of the old Limitation Act, 1908. The right to sue on a contract of indemnity/ guarantee would arise when the contract is broken.

23. Therefore, the period of limitation is to be counted from the date when the assets of the Company were sold and not when the recall notice was given.

24. The up-shot of the aforesaid discussion is to hold that the present appeal is bereft of any merits. Upholding the judgment of the High Court, we dismiss the instant appeal, with costs.

.....J.

[K.S. RADHAKRISHNAN] .....J.

[A.K. SIKRI] New Delhi.

29th January , 2014