

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9692/2005

(From the judgement and order dated 23/12/2004 in CM No. 55347/2004 of the HIGH COURT OF JUDICATURE AT ALLAHABAD)

R.K.DEWAN(DEAD) BY LRS & ORS

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and with prayer for interim relief and office report)

WITH

SLP(C) NO. 9743 of 2005

(With appln(s) for exemption from filing O.T. and with prayer for interim relief and office report)

Date: 04/01/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s) Mr. Subramonium Prasad,Adv.

For Respondent(s) Mr. M.N. Krishnamani, Sr.Adv.  
Mr. Ajay Sharma,Adv.

Mr. Gunnam Venkateswara Rao ,Adv

Mr. Kamlendra Mishra,Adv.

UPON hearing counsel the Court made the following

ORDER

Leave granted.

Learned counsel for the respondents in support of these appeals, relying upon a decision of this Court in Pawan Kumar Jain vs. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Ors. [2004 (6) SCC 758], would contend that respondent No.3, in terms of U.P. Public Moneys (Recovery of Dues) Act, 1972, could proceed against the

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properties of the principal borrower at the first instance for realisation of the dues and only thereafter a proceeding against the guarantor would be maintainable. The correctness of the decision of this Court in Pawan Kumar Jain (supra) has been doubted by this Court in Sobran Singh vs. State of U.P. & Ors. [SLP(C) No.14065/2006], stating:

"This Court in Pawan Kumar Jain (spra) did not consider the effect of Section 3(1)(D) of the Act. Under the general law, namely, Section 128 of the Indian Contract

Act, the liability of a borrower and that of the guarantor is co-extensive. In our opinion if the State had intended to make any provision contrary or inconsistent with the said general provision it should have specifically been so stated in the Act. Furthermore, Section 4(2)(b) is an exception to Section 3 thereof. General power of recovery of dues as arrears of land revenues is provided for in Section 3. Section 4(2)(b), however, in our opinion speaks of a situation where the defaulter's immovable property is mortgaged, charged or otherwise encumbered and only in that event the same is required to be sold first and only in the event the entire amount is not recovered thereby any other proceeding may be initiated thereafter subject to the conditions laid down therein. We may, however, note that Section 4(2)(b) of the Act covers the case of a defaulter and not that of a guarantor. Even otherwise, ordinarily the property of a guarantor would not be subjected to any mortgage, charge, pledge or other encumbrance. Section 4(2)(b) of the Act, therefore, being an exception to the general provision, namely, Section 3 thereof, we are of the opinion that it may not be correct to hold that a guarantor is also covered by the said provision.

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For the reasons aforementioned, we are of the opinion that the ratio in Pawan Kumar Jain (supra) case may ultimately be found not to be correct. As we doubt the correctness of the said decision, we are of the opinion that the matter should be referred to a larger Bench. We direct accordingly."

For the aforementioned reason, we are of the opinion that this matter should also be referred to a larger Bench.

Let the records of the matter be placed before the Hon'ble Chief Justice for passing appropriate orders.

(A.S. BISHT)  
COURT MASTER

(PUSHAP LATA BHARDWAJ)  
COURT MASTER