

C.A.No. 11528 OF 1996

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ITEM No.108

COURT No. 2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.11528 of 1996.@@
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State of Madhya Pradesh and Another Appellants

VERSUS

State Bank of Indore and Others Respondents

(With appln.(s) for stay and office report)

Date : 15/03/2001 This appeal was called on for hearing today

CORAM :

HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE N.SANTOSH HEGDE
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Appellant (s) Mr. Sakesh Kumar,Adv.
Mr. Anil Kr. Pandey,Adv.
Mr. Satish K. Agnihotri,Adv.

For Respondent(s) Mr. Niraj Sharma,Adv.

UPON hearing counsel the Court made the following
O R D E R

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The civil appeal is allowed.

No order as to costs.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

State of Madhya Pradesh and Another ...Appellant (s)

Versus~

State Bank of Indore and OthersRespondent (s)

O R D E R@@
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The judgment and order under challenge was passed by a Division Bench of the High Court of Madhya Pradesh at Indore. It dismissed the First Appeal filed by the present appellant, the State of Madhya Pradesh.

The second respondent had obtained from the first respondent-Bank a term loan of Rupees forty thousand on 5th September, 1974. In this behalf, the second respondent had executed a promissory note and had pledged to the Bank certain machinery. A second loan was taken on 23rd January, 1979 and a third loan on 25th January, 1979.

In the meantime, with effect from 19th January, 1976, Section 33-C was inserted into the M.P. General Sales Tax Act, 1958. It read thus:

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"Tax to be first charge - Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and/or penalty, if any, payable by a dealer or other person under this Act shall be a first charge on the property of the dealer of such person."

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In respect of the second respondent's sales tax dues, the State claimed a first charge under Section 33-C upon the machinery in priority to the charge held by the Bank. The trial court and the High Court did not accept the State's submission in this behalf. In the view of the High Court, the Bank's charge on the machinery was created on 5th September, 1974, that is, prior to the enforcement of Section 33-C, and the subsequent loans taken on 23rd January, 1979 and 25th January, 1979 did not alter the position in favour of the State. In its view, "The charge created once remained valid and operative till repayment of the loan as borrowed". The High Court also took the view that the appeal before it was flawed because it challenged the judgment of the trial court

and not its decree.

Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevailed over the charge created in favour of the Bank in respect of the ...3/-

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loan taken by the second respondent. There is no question of retrospectivity here, as, on the date when it was introduced, Section 33-C operated in respect of all charges that were then in force and gave sales tax dues precedence over them. This position in law is discussed in detail in the judgment of this Court in Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co. &@@

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Ors. (2000 (5) S.C.C.694).@@
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We are also of the view that the High Court was in error in dismissing the appeal before it on the ground that what had been challenged therein was the judgment of the trial court and not its decree. All that was required to be done in a case like that was to remove the technicality by permitting the amendment of the memo of appeal.

In the circumstances, the civil appeal is allowed and the judgment and order under appeal is set aside.

No order as to costs.

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.....J.
(S.P. Bharucha)@@
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.....J.
(N.Santosh Hegde)@@
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.....J.
(Y.K. Sabharwal)@@
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New Delhi,
March 15, 2001.