

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(s). 4055 OF 1998

RAJASTHAN FINANCIAL CORPN. & ANR  
llant

Appe

(s)

VERSUS

THE OFFICIAL LIQUIDATOR & ANR

Respondent

(s)

Date: 13/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Appellant(s)

Mr. Altaf Ahmad, Sr. Adv.

Mr. Sushil Kumar Jain, Adv.

Mr. Pradeep Agarwal, Adv.

Mr. A.P. Dhamija, Adv.

Mr. Sarad Singhania, Adv.

Mr. H.D. Thanvi, Adv.

For Respondent No.1 Mr. A.K. Chitale, Sr. Adv.

Mr. Niraj Sharma, Adv.

Mr. Vikrant Sharma, Adv.

Mr. Vikrant Singh Bais, Adv.

Mr. M. Mannan, Adv.

For Respondent No.2 Mr. Sudarsh Menon ,Adv.

Mr. Raj Nathan, Adv.

Mr. Manendra Pratap Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Altaf Ahmad, learned senior counsel appearing for

the Appellants commenced his arguments at 11.00 A.M. and

concluded at 2.10 P.M. Thereafter, Mr. A.K. Chitale, learned

senior counsel for Respondent commenced his arguments and

concluded at 2.50 P.M.

Hearing concluded.

Judgment reserved.

Anita

(Jasbir Singh)

Court Master

ITEM NO.101

COURT NO.2

SECTION XV

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5382 OF 1998

RAJASTHAN FINANCIAL CORPN.

Appellant (s)

VERSUS

M/S. JAIPUR SPINNING AND WEAVING MILLS LIMITED AND ANR.

Respondent

(s)

(With appln(s) for stay)

Date: 13/09/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

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For Appellant(s)

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Mr. Sushil Kumar Jain, Adv.

Mr. Pradeep Agarwal, Adv.

Mr. A.P. Dhamija, Adv.

Mr. Sarad Singhania, Adv.

Mr. H.D. Thanvi, Adv.

For Respondent(s)

Ms. Madhurima Tatia, Adv.

Mr. Aruneshwar Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is dismissed in terms of the signed  
order.

(K.K. Chawla)  
Court Master

(Jasbir Singh)  
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5382 OF 1998

RAJASTHAN FINANCIAL CORPN.

Appellant (s)

VERSUS

M/S. JAIPUR SPINNING AND WEAVING MILLS  
LIMITED AND ANR.

Respondent(s)

O R D E R

This Appeal is against an order dated 19th February,

1997 by which the Division Bench of the High Court of

Rajasthan dismissed two Appeals one against an order dated

22nd February, 1991 and another against an order dated 25th

August, 1994.

Briefly stated the facts are as follows:-

Long after a winding up order was passed and the

assets of the Company including the plant, machinery and

movables, including generating sets, of the Company had

been sold by the liquidator, the Appellants filed a claim

before the Official Liquidator claiming to be secured

creditors. The Official Liquidator dismissed the claim on

the ground that it had been filed belatedly. As against

that order, the Appellants filed a Company Application

No.2 of 1991 which was allowed by order dated 22nd

February, 1991. The Official Liquidator was directed to

consider the claim in accordance with law.

The Official Liquidator thereafter considered the

claim and admitted the Appellants as ordinary creditors.

The Appellants, therefore, filed an appeal against the order of the Official Liquidator. In that Appeal some reliefs were given. However, it was dismissed by the order dated 25th August, 1994 qua the claim of the Appellants that they were secured creditors. The dismissal was based on Section 125 of the Companies Act which provides that if a charge is not registered then the charge would become void as against the Official Liquidator.

In our view, no provisions of the State Financial Corporations Act, 1951 (hereinafter referred to as "1951 Act") is contrary to the provisions of Section 125 of the Companies Act. The 1951 Act provides for speedy recovery of loans in the manner laid down under the 1951 Act and/or for taking over of the management of the concerned Company. The Appellants had not resorted to the provisions of the 1951 Act before the order of winding up

was passed. Their application, to the Official

Liquidator, would therefore be governed by the provisions

of the Companies Act. This view is also supported by a

reading of Section 32(10) of the 1951 Act which reads as

under:-

"(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of Section 31, nothing in this Section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law."

This also shows that the Appellants cannot now get

any preference over other creditors, in cases like the

present.

We, therefore, see no infirmity in the impugned

order. We see no reason to interfere. The Civil Appeal

is dismissed.

.....J.

(S.N. Variava)

.....J.

(Tarun Chatterjee)

.....J.

(P.K. Balasubramanyan)

New Delhi;

September 13, 2005.