

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6900-6901/2011

SUPERINTENDENT

CENTRAL EXCISE & CUSTOMS

Appellant(s)

VERSUS

M/S KOTAK MAHINDRA BANK LTD. & ANR.

Respondent(s)

WITH

SLP(C) No. 20699/2011

O R D E R

CIVIL APPEAL NOS. 6900-6901/2011

The State Bank of India was a secured creditor and the debts were transferred to the respondent Bank. The secured debt was created on 24.06.1985. M/s Amod Petrochem Private Limited which gave the security both of movable and immovable property fell into difficult financial position. The Excise Department has also raised subsequent demands for the period 1985-1986 and 1986-1987 as per an order dated 25.02.2006 in terms whereof there was evasion of duty to the extent of Rs.8,67,011/- and Rs.9,87,477/-. There is also imposition of penalty and the option of fine in lieu of confiscation.

The respondent Bank took out proceedings before the Debt Recovery Tribunal under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The debt was crystallized and thereafter steps were taken in terms of Section 14 of the Said Act before the District Magistrate for attachment of properties. The movable assets undisputedly stand sold. The question before us is of the immovable property.

The aforesaid question has arisen before us on account of a direction sought by the Bank before the High Court *qua* non-implementation by the District Magistrate. In those proceedings, the learned Single Judge by an order dated 03.02.2010 raised certain issues, including, whether the Bank could steal a march over the rights of the central government to recover its dues. The matter was kept pending by the learned Single Judge. The Bank, aggrieved by the same, filed a Letters Patent Appeal and by an elaborate judgment, the Letters Patent Appeal and the Writ Petition both were allowed in terms of the impugned judgment dated 17.09.2010.

At the stage when the matter came up before this Court, notice was issued and *status quo* was directed with regard to the nature, title and possession in respect of the immovable property by an order dated 03.01.2011. Leave was granted thereafter and that is how the matter comes before us after a decade.

We must note the great irony of the situation where the Bank is required to protect an immovable property for more than a decade on account of this issue pending and consequently, incur further amounts for the said purpose.

On hearing learned counsel for the parties, we are of the view that there is little doubt that the situation that emerges is a creation of a secured debt in favour of the State Bank of India on 24.06.1985 and thereafter the transfer of the debt to the respondent Bank. It is the original date of creation of the security which is of relevance.

It is not possible for the appellant to plead that they have crown debt which would take precedence over a secured liability and fairly, the learned Additional Solicitor General does not even seek to contend it.

We find that given the aforesaid position, there is no need to go into other issues sought to be raised by either of the parties before us or through the impugned judgment but suffice to say that the respondent Bank cannot be prevented from exercising its rights as a secured creditor on the pretext that there is a debt to the Excise Department arising from the confiscation order dated 25.02.2006.

We may further observe that on realization of the dues of the Bank, if amounts are still left, those amounts can be utilized to satisfy the dues of the Excise Department and

naturally, if there are still amounts left, the debtor would be the beneficiary of the same. All we can say is that possibly the passage of time may have resulted in real estate escalation which may in turn result in satisfaction of everybody's claim! That is the only positive aspect of this long prolongation of dispute of over a decade.

The appeals accordingly stand dismissed leaving the parties to bear their own costs in terms aforesaid.

SLP(C) No.20699/2011

Delay condoned.

In view of the orders passed in Civil Appeal Nos.6900-6901/2011, the present Special Leave Petition, only being tagged with the same and the facts being even more gross because the alleged crown debt of the Excise Department came into being after the respondent had purchased this property in pursuance to an auction to realize debts of a respondent corporation, the Special Leave Petition is dismissed leaving parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HRISHIKESH ROY]

NEW DELHI;
AUGUST 12, 2021.

ITEM NO.101 Court 6 (Video Conferencing)

SECTION III

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). 6900-6901/2011

SUPDT. CENTRAL EXCISE & CUSTOMS

Appellant(s)

VERSUS

M/S KOTAK MAHINDRA BANK LTD. & ANR.

Respondent(s)

WITH

SLP(C) No. 20699/2011 (XI)

IA No. 1/2011 - CONDONATION OF DELAY IN FILING)

Date : 12-08-2021 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s)

Mr. Balbir Singh, ASG
Mr. Akshay Amritanshu, Adv.
Ms. Binu Tamta, Adv.
Mr. Shyam Gopal, Adv.
Mr. M.K. Maroria, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s)

Mr. Aravind Varma, Sr. Adv.
Ms. Mayuri Raghuvanshi, AOR
Mr. Vyom Raghuvanshi, Adv.
Ms. Purvat Wali, Adv.

Mr. Amar Dave, Adv.
Ms. Nandinin Gore, Adv.
Ms. Sonia Nigam, Adv.
Mr. Raghvendra Pratap Singh, Adv.
M/S. Karanjawala & Co., AOR

Ms. Sakshi Kakkar, AOR
Shakti Singh, Adv.

Mr. Ardhendumauli Kumar Prasad, AOR
Mr. Ashish Madaan, Adv.

Mr. Rupesh Kumar, AOR
Mr. Rajeev Sharma, Adv.
Ms. Neelam Sharma, Adv.

Ms. Pankhuri Shrivastava, Adv.
Mr. Pravesh Bahuguna, Adv.
Mr. Alekshendra Sharma, Adv.

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

Civil Appeal No(s). 6900-6901/2011

The appeals stand dismissed in terms of the signed
order.

Pending application, if any, stands disposed of.

SLP(C) No. 20699/2011

Delay condoned.

The Special Leave Petition is dismissed in terms of the
signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)

[Signed order is placed on the file]