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K.B. DADDARAJJIAPPA & ORS.

v.

STATE OF KARNATAKA & ORS.

JANUARY 16, 1989

B

[G.L. OZA AND S. RATNAVEL PANDIAN, JJ.]

Mysore State Aid to Industries Act 1951 Sections 7 and 19—Loan secured by Industries—Recovery of—State Government standing as surety and guarantor to repayment—Default in repayment of loan—State Government entitled to recover as arrears of land revenue—'All C *moneys payable under this Act'—Interpretation of.*

The appellants owned an industrial concern and sought aid from the State Government under the Mysore State Aid to Industries Act, 1951 with a view to improve the industry and develop it further. An D **application for aid was made to the concerned authorities and the competent authority granted the financial assistance by way of loan. This financial assitance was secured from the Bank of Mysore and the State Government agreed to stand as surety and also to guarantee the repayment of the loan with interest to the Bank. The appellants who received the aid executed a deed of simple mortgage in favour of the State** E **Government of their properties in consideration of their promise to guarantee the repayment of the loan. The State Government in turn executed a deed of guarantee in favour of the Bank. The appellants in addition also executed a pronote in favour of the Bank agreeing to repay the said sum with interest.**

F **The appellants were not in a position to pay the loan within the stipulated period as the concern had become financially unsound. The State Government started compelling the appellants to pay off the loan to the Bank and as it was not paid the State Government got the properties of the appellant sold under the proceedings for recovery of land revenue and got the money recovered.**

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The appellants filed a civil suit and contended that the sale of the properties was without the authority of law, and that the money could only be recovered from the appellant if the State Government had paid the loan of the Bank first and even thereafter the only course open to the State Government was to file a suit for reimbursement on the basis of H **the mortgage.**

The suit was dismissed by the trial court and the order was confirmed by the High Court in appeal. A

The Trial Court and the High Court came to the conclusion that the Government of Karnataka was entitled to recover the amount which they secured as an aid to the respondents under the scheme of the Act and for that purpose lawfully resorted to the sale of the properties by following the procedure of recovery of arrears of land revenue as provided for in Section 19 of the Act. B

In the appeal to this Court, it was contended on behalf of the appellants that the view taken by the High Court that if any sum was payable under the Act, the State Government could take steps under Section 19 of the Act was not justified. C

Dismissing the Appeal,

HELD: 1. The scheme of the Mysore State Aid to Industries Act, 1951 indicate that whether the aid has been provided for by the State or has been secured by the State from other financial agencies, it was contemplated that the State would secure the repayment of the loan or recovery of whatever aid was given, and with a view to secure those repayments Section 19 was specifically enacted. [113D-E] D

2. Legislature in its wisdom therefore did not use the words 'payable to the State' but used 'all moneys payable under this Act' in the Section, it appears with a clear intention that whenever money becomes payable which was secured to the industry under the scheme of the Act, it will be open to the State Government to follow the procedure for recovery as has been provided for in clause (1) of Section 19. [113E-F] E F

3. It is only in respect of the moneys payable under the scheme of this Act that section 19(1) comes into operation and it appears that it was in accordance with the scheme of the Act that the Legislature in its wisdom chose not to use the further phrase payable to the Government under Section 19(1). [114B] G

S. Peer Mohammed **v.** *B. Mohan Lal Sowcer,* **[1988] 2 S.C.C. 513, referred to.**

CIVIL APPELLATE JURISDICTION: Civil appeal No. 239-240 of 1975. H

A From the Judgment and Decree dated 13.3.1974 of the Karnataka High Court in R.F. Appeal No. 103, 111, 120 of 1970 and 11 & 12 of 1971 and 142 of 1972 with Cross-objections in R.F.A. No. 111 of 1970.

K.N. Bhatt, G. Vishvanatha Iyer, T.S. Krishnamurthy, M.K.
B Pandit, P.H. Parekh, K.R. Nagaraja, M. Veerappa, P.R. Ramasesh, Vineet Kumar, S.S. Javalai, R.B. Datar, and R.S. Hegde, for the appearing parties.

The Judgment of the Court was delivered by

C **OZA, J:** These two appeals have been filed by the two appellants against the judgment of the High Court of Karnataka, Bangalore dated 30.3.1974. This appeal has been filed in this Court after getting a certificate from the High Court of Karnataka under Article 133(1)(a) and (b) of the Constitution.

D The brief facts giving rise to the present appeal are that the appellants owned an Industrial concern by the name of Bangalore Fancy Fire Works and with a view to improve the industry and develop it further they sought aid from the Government of Mysore, one of the respondents, under the Mysore State Aid to Industries Act, 1951 (hereinafter referred to as the Act) and application for this aid was
E made to the concerned authorities of the State on 23.1.1953 wherein an aid in the nature of financial assistance to the tune of Rs. one lac was sought. By the orders of the competent authority dated 3.9.1953 the financial assistance of Rs.60,000 by way of loan was sanctioned. This financial assistance by way of loan was secured from the Bank of Mysore Ltd. and the State Government agreed to stand as surety and
F also to guarantee the repayment of loan with interest to the Bank of Mysore Ltd. It was also agreed that the appellants who receive the aid will execute a deed of mortgage in favour of the Government of Mysore of their properties in consideration of their promise to guarantee the repayment of sums to be advanced to them by the Bank of Mysore. Pursuant to these arrangements the appellant executed a deed of simple
G mortgage in favour of the Government of Mysore dated 14.11.1953. The Government of Mysore in their turn executed a deed of guarantee dated 20.2.1954 in favour of the Bank of Mysore Ltd. The appellants in addition also executed a pronote in favour of the Bank of Mysore dated 8.12.1953 for a sum of Rs.60,000 agreeing to repay the said sum together with interest @ 2½ per cent per annum over and above the
H rate of Reserve Bank of India with a minimum 6 per cent per annum.

This amount of Rs.60,000 was given to the appellants as loan by Bank of Mysore according to the directions issued by the Government of Mysore. A

It is not disputed that at that time the banks ordinarily would not have advanced the loan for industry for its further development and would not have advanced on concessional rate of interest as was done in B the present case as admittedly this was an aid arranged by the Government of Mysore under the Act and it was in accordance with the scheme of the Act that the Government of Mysore arranged this loan at a concessional rate from the Bank as an aid under the Act. This loan was to be repaid in two instalments and it is not in dispute that the appellants did not pay the loan on the due dates of the instalments. C According to the appellants as alleged by them before the Trial Court they were not in a position to pay the loan within the stipulated period as the concern became financially unsound and that the respondent, the State Government of Karnataka started compelling the appellants to pay off the loan to the bank and as it was not paid the Government of Karnataka, the respondent got the plaint schedule properties sold D under the proceedings for recovery of land revenue and got the money recovered. It was contended by the appellants that the respondent defendant State could not got the properties sold by public auction in accordance with the procedure of recovery for arrears of land revenue. As they had only a mortgage deed of the property in their favour and that the money could only be recovered from the appellants if the E respondent State had paid the loan of the Bank first and even thereafter the only course open to the respondent State was to file a suit for reimbursement on the basis of the mortgage and it was therefore contended that the sale of the properties was without the authority of law. The learned trial court and also the High Court came to the conclusion that the Government of Karnataka was entitled to recover the amount F which they secured as an aid to the respondents under the scheme of the Act and for that purpose lawfully resorted to the sale of the properties by following the procedure of the recovery of arrears of land revenue as was provided for in Section 19 of the State Act and dismissed the suit filed by the plaintiff respondent.

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Learned counsel appearing for the appellant frankly conceded that the facts in the case are not in dispute. The High Court of Karnataka has taken a view that as this loan was given to the appellant by the State Bank of Mysore but it was secured as an aid under the Act referred to above therefore proceedings under Sec. 19 could be taken but it was contended by learned counsel that the State was only a H

A guarantor and the creditor was the State Bank of Mysore and so long as the loan was not recovered from the guarantor it could not be said that there was anything payable to the State Govt. and in view of the language of Sec. 19 it was contended that so long as there was nothing payable to the State Govt. the action under Sec. 19 could not have B been taken. Learned counsel frankly conceded that although the language in Sec. 19 do not refer to the moneys payable to the State but it only refers to moneys payable under the Act but it was contended that in the scheme of the Act and the transactions between the parties, State Govt. could take action to recover the money only if the State Government has paid the loan in favour of the State Bank of Mysore C on the terms of the guarantee which was executed by the State Government. Learned counsel therefore contended that the view taken by the High Court that if any sum was payable under the Act State Government could take steps under Section 19 is not justified.

The learned counsel for the respondent State and the other res- D pondents who are purchasers of the property in auction contended that the scheme of the Act indicates that in order to industrialise the State this Act was enacted wherein the State took upon itself the responsibility of providing aids in various kinds to the industries and such aids were provided for under the Statutes. One of the modes of providing this aid was to secure a loan from the bank in favour of the industry which E ordinarily was not available and it has been brought to our notice that even in the application which the respondent made for this aid to the State Government clearly admitted that no loan from bank could be available unless the State secured aid under this Act. It was therefore contended that the aid may have been secured from the bank but it was an aid which was secured under the provisions of this Act and in this F view Section 19 clearly comes into operation and hence the moneys were payable under this Act and if it was so the State Government was entitled to realise the amount as arrears of land revenue as contemplated in Section 19. The scheme of the Act was to provide aid to industries. Preamble of the Act itself states:

G Preamble.—Whereas it is expedient to regulate the giving of aid by the Government to industries in the State of Mysore.

Under Section 7 of this Act it was provided that the Government could give aid to the industries in the following ways and sub-clause (b) provided for cash credit facility, overdraft or fix advance with the H bank.

Section 7.—Subject to the provisions of this Act and of the rules framed thereunder, the Government shall have power to give aid to an industrial business or enterprise in one or more of the following ways:

(a) by granting loan;

(b) by guaranteeing a cash credit, overdraft or fixed advance with a bank;

It is not in dispute that this loan which was secured to the appellants from the bank was an aid falling under Sub-clause (b) of Section 7. The provisions of the Act indicate the manner in which the loans could be secured, the manner in which it was to be paid and in view of all this it was not disputed that although this loan became payable in favour of the State Bank of Mysore but it may fall within the ambit of the definition of moneys payable under this Act. The only controversy raised before us that Section 19 could be so interpreted that the Govt. could use the authority under Section 19 for recovery only if moneys were payable to the Government.

As discussed earlier the scheme of the Act indicate that whether the aid has been provided for by the State or has been secured by the State from other financial agencies. It was contemplated that the State would secure the repayment of the loan or recovery of whatever aid was given and with a view to secure those repayments Section 19 was specifically enacted. Legislature in its wisdom therefore did not use the words payable to the State but used 'all moneys payable under the Act' in the Section, it appears with a clear intention that whenever any money becomes payable which was secured to the industry under the scheme of this Act. It will be open to the State Govt. to follow the procedure for recovery as has been provided for in cluase (1) Section 19.

Section 19 sub-clause (1).—All moneys payable under this Act, including any interest chargeable thereon and costs, if any, incurred, if not paid when due, may be recovered from the person aided and his surety if any, under the law for the time being in force, as if they were arrears of land revenue.

It was contended that ordinarily if the State was the guarantor and the creditor was the Bank of Mysore guarantor State could only recover from the appellants if the amount had been paid to the credi-

A tors so far as the normal legal procedures is concerned. It may depend upon the terms and the conditions of the guarantee. But in the present case we are dealing with aids provided for under the scheme of this Act and it is only in respect of the moneys payable under the scheme of this Act that Section 19(1) comes into operation and it appears that it was in accordance with the scheme of the Act that Legislature in its wisdom B chose not to use the further phrase payable to the Government under Section 19(1).

Learned counsel placed reliance on a decision in the case of *S. Peer Mohammed* v. *B. Mohan Lal Sowcar,* [1988] 2 S.C.C. 513. This decision in our opinion is not at all relevant as in the present case we C are dealing with the enactment where a special procedure has been provided for recovery of moneys payable under this Act. In this view of the matter therefore in our opinion the High Court was right in not accepting the contention of the appellant and maintaining the dismissal of the suit. Appeal is therefore dismissed. In the circumstances of the case no order as to costs. D

N.V.K. Appeal dismissed.