R.S.D.V. FINANCE CO. PVT. LTD. A

v.

VALLABH GLASS WORKS LTD.

FEBRUARY 3, 1993

[KULDIP SINGH, N.M. KASLIWAL AND B.P. JEEVAN REDDY, JJ.] B

Code of Civil Procedure, 1908:

Section 20—Jurisdiction—Deposit Receipt containing endorsement subject to jurisdiction of a particular place—Whether excludes jurisdiction of all other Courts otherwise competent to entertain the suit. C

Section 21(1)—Objection to jurisdiction—Plea before Appellate or Revisional Court—Conditions—Whether all the conditions are to be fulfilled.

D

Bombay Relief Undertaking (Special Provisions) Act, 1958 :

Sections 3 and 4(1)(a)(iv)—Notification declaring relief—Undertaking—Extending beyond the State immunity to Relief Undertaking from legal liability—Competence of State Legislature. E

The appellant deposited with the Respondent a sum of Rs. 10,00,000 for a period of 90 days on interest @ 19% p.a. The date of maturity of the said deposit was 3.10.83. The deposit receipt contained an endorsement "Subject to Anand jurisdiction." The Respondent failed to pay the amount on maturity and requested the appellant to continue the said deposit till F **the end of November 1983 and handed over 5 post dated cheques for Rs. 2,00,000 each. A cheque for interest was also given. All these cheques were drawn on a Bombay Bank. Since these cheques bounced back the appellant filed before the High Court a summary suit against the Respondent for recovery of the amount with interest.**

G

The Respondent contested the suit on the ground of jurisdiction. It also contested the claim for interest after maturity on the ground that interest ceased on maturity. The Single Judge who heard the matter decreed the suit in favour of the appellant for a sum of Rs. 10,00,000 with interest. H

A The Respondent preferred an appeal and the Division Bench allowed the same and dismissed the suit.

Aggrieved by the judgment of the Division Bench, the appellant has preferred the present appeal.

B Allowing the appeal, this Court,

HELD : 1.1. Admittedly, leave to defend the suit was obtained by the defendent from the Bombay High Court itself. Therefore, the Division Bench of the High Court was wrong in holding that the suit was not based on the five post dated cheques and that the High Court had no jurisdiction C to try the suit as the deposit receipt contained an endorsement 'Subject to Anand jurisdiction'. The suit was based not only on the deposit receipt of Rs. 10,00,000 but also on the five post dated cheques. When the plaintiff had made a request for allowing him to amend the plaint such request was wrongly refused by the Bench. The Division Bench was totally wrong in D passing an order of dismissal of the suit itself when it had arrived at the conclusion that the High Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit. [462D-F]

E 1.2. Sub-section (1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity. This provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the conditions that such F objection was taken in the Court of first instance at the earliest possible opportunity; that in all cases where issues are settled then at or before such settlement of issues; and that there has been a consequent failure of justice. [462G-H]

G 2. In the instant case the condition of failure of justice is not fulfilled. There was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rs. 10,00,000 by the plaintiff, as well as the issuing of the five cheques. There is no failure of justice to the defendant in decreeing the suit by the Single Judge. On the contrary it would be totally unjust and failure of justice to the plaintiff in case such H objection relating to jurisdiction is to be maintained as allowed by the

Division Bench of the High Court in its appellate jurisdiction. [463 C-D] A

A.B.C. Laminart Pvt. Ltd. & Anr. **v.** *A.P. Agencies, Salem,* **[1989] 2 SCR page 1, relied on.**

3. It cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs. 10,00,000 itself was paid through a cheque B **at Bombay and the same was deposited in the bank account of the defendent in Bombay. The five post dated cheques were also issued by the defendent being payable to the plaintiff at Bombay. The endorsement 'Subject to Anand jurisdiction' has been made unilaterally by the defendent while issuing the deposit receipt. This endorsement does not contain** C **the ouster clause using the words like 'alone', 'only', 'exclusive' and the like. Thus the maxim *expressio unius est exclusio alterius* cannot be applied under the facts and circumstances of the case and it cannot be said that merely because the deposit receipt contained the endorsement 'Subject to Anand jurisdiction' it excluded the jurisdiction of all other courts who were otherwise competent to entertain the suit. [463D-H]** D

4. The legislature of a State is competent to make laws for the whole or any part of the State. It has exclusive power to make laws with respect to any of the matters enumerated in List-II of the Seventh Schedule to the Constitution. Subject to any law made by the Parliament, the State Legis- E **lature can also make a law with respect to any of the matters enumerated in List-III. The Bombay Relief Undertakings (Special Provisions) Act, 1958 is relatable to entry 22 of List -III and probably to entries 20 and 24. The Code of Civil Procedure, which provides where a particular suit has to be instituted, is relatable to entry 13 of List-III. It is a central enactment** F **applicable to the entire country. Both the enactments relate to and deal with different subjects-matters. There is no question of any inconsistency between them. [469G-H, 470A-B]**

State of Bihar **v.** *Charusila Dasi,* **[1959] Supp. 2 SCR 601;** *State of Bihar* **v.** *Bhabapritananda Ojha,* **[1959] Supp. 2 SCR 624 and** *Inderjit C. Parekh & Ors.* **v.** *B.K. Bhatt & Anr.,* **AIR 1974 SC 1183, distinguished.** G

Jaipur Udyog Ltd. **v.** *Punjab University & Anr.,* **I.L.R. (1981) 1 Punjab & Haryana 624, disapproved.**

Binod Mills Ltd. **v.** *Suresh Chandra,* **[1987] 3 SCC 99, referred to.** H

5. The State Legislatures do not possess the power to make a law having extra territorial operation. The Legislature may well confer an immunity (no doubt, temporary) upon the relief undertaking effective within the bounds of state, but it cannot extend that immunity beyond its bounds. A State cannot prevent the other State from levying and realising (by proceeding, if necessary, against the properties and assets of the undertaking situate outside the state) the tax due from the relief undertaking in respect of the sales and purchases effected in that State. Similarly, it cannot say that the properties of the relief undertaking situated in other States shall not be liable to property tax. Nor can it say that those properties cannot be proceeded against for realisation of amounts due from the relief undertaking to third parties in pursuance of decrees/orders made by courts outside the State. Such proceedings may ultimately affect the relief undertaking adversely; they may also tend to defeat the objective underlying the Act and the notification. But that can't be helped. That is the limitation of power. Probably, for this reason has the Parliament enacted the Sick Companies (Special Provisions) Act, 1985. [470D-G]

6. The Gujarat Legislature is not competent to regulate, modify or extinguish the obligations and liabilities incurred by a 'relief undertaking' (declared as such under Section 3 of the Bombay Relief Undertaking (Special Provision) Act, 1953) outside the State of Gujarat nor can it suspend or stay the suit or other proceedings relating to such obligations and liabilities. Section 4(1)(a)(iv) of the Bombay Act is not effective to suspend the plaintiff-appellant's right to money nor can it operate to stay the proceedings in the present suit in the Bombay Court. If and when any execution is levied within the State of Gujarat and/or against the properties of the relief undertaking situated within the State of Gujarat, they can be interdicted by the said notification read with Section 4(1)(a)(iv) of the Bombay Act. [471B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 380 of 1993.

From the Judgment and Order dated 24.10.91 of the Bombay High Court in Appeal No. 982/88 in summary suit No. 566/86.

Harish N. Salve, Berarwale, K.J. John, Ms. Deepa Dixit for M/s Swarup John & Co. for the Appellant.

Raian Karanjawala, Ms. M. Karanjawala and Ms. P. Mullice for the Respondent. A

The Judgment of the Court was delivered by

KASLIWAL, J. Special Leave granted. B

This appeal is directed against the Judgment of the Bombay High Court dated 24th October, 1991. Brief facts of the case are that the appellant R.S.D.V. Finance Company Private Limited (hereinafter referred to as 'the plaintiff') filed a summary suit against the respondent Sh. Vallabh Glass Works Limited (hereinafter referred to as 'the defendent') in the ordinary original civil jurisdiction of the High Court. The case of the C plaintiff was that it had deposited a sum of Rs. 10,00,000 with interest to be charged @ 19% per annum, with the defendant. The said deposit was to be for a period of 90 days. The aforesaid amount of Rs. 10,00,000 was given to the defendant company through cheque No. 933251 dated 5th July, 1983 in the bank account of the defendant at Bombay. The defendant D issued a deposit receipt for the aforesaid amount dated 11.7.1983. The aforesaid deposit receipt contained an endorsement to the effect 'Subject to Anand jurisdiction'. The date of maturity of the aforesaid amount was to expire on 3.10.1983. According to the plaintiff the defendant failed to pay the amount of Rs. 10,00,000 and requested the plaintiff to continue the said deposit till the end of November, 1983 and for that purpose, handed E over to the plaintiff 5 post dated cheques of Rs. 2,00,000 each drawn on a Bombay bank. The defendant had also issued a cheque dated 30th November, 1993 for a sum of Rs. 22,288.32 by way of interest on the said amount of Rs. 10,00,000. This cheque was also drawn in favour of the plaintiff payable in Bombay. The plaintiff submitted the aforesaid 5 cheques for F payment but the same were dishonoured for the reason "insufficient funds". The plaintiff in these circumstances filed a summary suit against the defendant for Rs. 10,00,000 as principal and interest @ 19% per annum with 90 days rests.

The defendant in the written statement submitted that the fixed G deposit receipt contained the endorsement 'Subject to Anand jurisdiction' are as such the Bombay High Court had no jurisdiction to entertain the suit. The defendant also denied that the plaintiff was entitled to claim interest with 90 days rest. The defendant further averred that the plaintiff was not entitled to claim any interest as the deposit receipt provided that H

A interest will cease on maturity. On the basis of the aforesaid pleadings of the parties Learned Single Judge of the High Court framed the following issues.

The Learned Single Judge negatived the contention of the plaintiff
B that it had never agreed to the condition of Anand jurisdiction made on the deposit receipt. The Learned Single Judge, however, accepted the contention of the plaintiff that the suit was also based on the five post cheques of Rs. 2,00,000 each and those cheques being payable in Bombay the Court at Bombay had jurisdiction to decide the case. The Learned Judge also took note of the fact that the High Court at Bombay had already
C granted leave to the plaintiff under Clause XII of the Letters Patent. It was also held that if a party had more than one cause of action and the suit was based on more than one cause of action it was always open to that party to give up any one cause of action or rely only on one cause of action. It was also held that the leave had been granted to the plaintiff on the basis
D of the averments made in para 13 of the plaint which clearly mentioned that the deposit was obtained by the defendant from the plaintiff at Bombay. The monies were deposited by the plaintiff with the defendant at Bombay in the defendant's account in the Bank of Baroda, Nariman Point Branch, Bombay. The cheques for repayment of the deposit were given by the defendant drawn on Bank of Baroda, Nariman Point Branch, Bombay.
E The plaintiff had further stated that though the entire cause of action had arisen in Bombay the plaintiff as an abundant caution was applying for approval under clause XII Letters Patent also since the registered office of the defendant was situated at Vallabh Vidya Nagar 388121, (within the State of Gujarat). The Learned Single Judge also noted that in the written
F statement there was no reply to paragraph 13 of the plaint and Mr. Parekh, Learned counsel appearing for the defendant in his usual fairness stated that the statements made in para 13 of the plaint were correct. The Learned Single Judge further held that the plaintiff in the suit had put its claim not only on the basis of the deposit receipt but had been cautious
G enough to also base its claim on the 5 post dated cheques which were admittedly payable in Bombay. The Learned Single Judge under issue No.2 held that the claim for compound interest cannot be sustained and the said issue was answered in the negative. The Learned Single Judge under issue No. 3 held that as the plaintiff has now restricted the cause of action to the 5 post dated cheques, the claim for interest can only arise from the
H dates on which those cheques become due and payable. The Learned

Single Judge as such passed a decree in favour of the plaintiff and against the defendant in a sum of Rs. 10,00,000 along with interest thereon @ 19% per annum, on a sum of Rs. 2,00,000 from 23rd November, 1983, on a sum of Rs. 2,00,000 from 24th November, 1983, on a further sum of Rs. 2,00,000 from 25th November, 1983 and a sum of Rs. 2,00,000 from 29th November, 1983 and on the last sum of Rs. 2,00,000 from 30th November, 1983. A B

On an appeal filed by the defendant a Division Bench of the High Court by its order dated 24th October, 1991 held that in the circumstances of the case, the leave granted under clause XII of the Letters Patent must be revoked and it must be held that this Court had no jurisdiction to entertain and try the suit. A prayer made on behalf of the plaintiff seeking to amend the plaint was also rejected. The Learned Division Bench allowed the appeal and dismissed the suit. C

Aggrieved against the aforesaid Judgment of the Division Bench of the High Court, the plaintiff has come in appeal before this Court. It may be mentioned at the outset that the deposit of Rs. 10,00,000 with the defendant as well as the issuing of 5 cheques of Rs. 2,00,000 each is admitted by the defendant. The defendant company had a branch office and also carried on business in Bombay. It is also an admitted position that the leave to sue under Clause XII of the Letters Patent was given by the Bombay High Court. It is also an admitted position that the plaintiff had made the total deposit of Rs. 10,00,000 by way of cheque No. 933251 dated 5th July, 1983 drawn on the Canara Bank, Bombay in favour of the defendant and the said amount was deposited in the bank account of the defendant in the Bank of Baroda, Nariman Point, Bombay. It may also be noted that the leave to defend the suit by the Learned Single Judge was given on the condition of making a deposit of Rs. 10,00,000 within four weeks from 11.1.1988. The defendant preferred an appeal against the aforesaid order of the Learned Single Judge dated 11.1.1988. The statement of the Learned counsel for the defendant in the aforesaid appeal proceedings was recorded to the effect that the only defence to the suit was to be on the point that the High Court of Bombay had no jurisdiction to entertain the suit and the defendant would not contest the plaintiff's claim on any other issue except the issue on the point of jurisdiction. The Division Bench in its order dated 19.1.1988 observed that the suit was to be tried as a commercial cause only to the aspect of jurisdiction. D E F G

We have heard Learned counsel for the parties and have perused the H

A record. In our view the Learned Division Bench was wrong in holding that in the facts and circumstances of this case the Bombay High Court had no jurisdiction to entertain the suit. The amount of Rs. 10,00,000 itself was paid by a cheque dated 5.7.1983 drawn on the Canara Bank and the said amount was deposited in the bank account of the defendant at the Bank of Baroda, Nariman Point, Bombay. On 11.7.1983 the defendant issued a B deposit receipt and the said deposit receipt contained an endorsement of 'Subject to Anand Jurisdiction'. The date of maturity was mentioned as 3.10.1983. It is also not in dispute that the amount of Rs. 10,00,000 along with interest was not paid on the due date and the defendant wrote a letter to the plaintiff on 19.10.1983 stating therein that in view of certain problems C they were not in a position to repay the deposit amount on the due date and thereby requested the plaintiff to allow the defendant to keep the deposit till the end of November, 1983 with interest at 19% per annum on the delayed payment as well. The defendant also issued the five post dated cheques for Rs. 2,00,000 each drawn on Bank of Baroda, Nariman Point, Bombay dated 23rd, 24th, 25th, 29th and 30th November, 1983 respectively. D It is also an admitted position that the leave to defend the suit was obtained by the defendant from the Bombay High Court itself. The Learned Division Bench in our opinion was clearly wrong in holding that the suit was not based on the five post dated cheques and that the Bombay High Court had no jurisdiction to try the suit as the deposit receipt contained an endorsement of 'Subject to Anand jurisdiction'. The entire reading of the plaint E clearly shows that the suit was based not only on the basis of the deposit receipt of Rs. 10,00,000 but also on the basis of the five post dated cheques. Even if there was any doubt in the mind of the Division Bench, the Learned counsel for the plaintiff had made a request for allowing him to amend the plaint but such request was wrongly refused by the Learned Division F Bench. The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper court and not to dismiss the suit. It may be further noted that the Learned Single Judge trying the suit had recorded a finding that the G Bombay Court had jurisdiction to entertain and decide the suit. Sub-sec.(1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. H

The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions :-

(i) That such objection was taken in the Court of first instance at the earliest possible opportunity;

(ii) in all cases where issues are settled then at or before such settlement of issues;

(iii) there has been a consequent failure of justice.

In the present case though the first two conditions are satisfied but the third condition of failure of justice is not fulfilled. As already mentioned above there was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rs. 10,00,000 by the plaintiff, as well as the issuing of the five cheques. We are thus clearly of the view that there is no failure of justice to the defendant decreeing the suit by the Learned Single Judge of the Bombay High Court, on the contrary it would be totally unjust and failure of justice to the plaintiff in case such objection relating to jurisdiction is to be maintained as allowed by the Division Bench of the High Court in its appellate jurisdiction.

We may also consider the effect of the endorsement 'Subject to Anand jurisdiction' made on the deposit receipt issued by the defendant. In the facts and circumstances of this case it cannot be disputed that the cause of action had arisen at Bombay as the amount of Rs. 10,00,000 itself was paid through a cheque of the Bank at Bombay and the same was deposited in the Bank account of the defendant in the Bank of Baroda at Nariman Point Bombay. The five post dated cheques were also issued by the defendants being payable to the plaintiff at Bombay. The endorsement 'Subject to Anand jurisdiction' has been made unilaterally by the defendant while issuing the deposit receipt. The endorsement 'Subject to Anand jurisdiction' does not contain the ouster clause using the words like 'alone', 'only', 'exclusive' and the like. Thus the maxim *'expressio unius est excusio alterius'* cannot be applied under the facts and circumstances of the case and it cannot be held that merely because the deposit receipt contained the endorsement 'Subject to Anand jurisdiction' it excluded the jurisdiction of all other Courts who were otherwise competent to entertain the suit. The view taken by us finds support from a decision of this Court in *A.B.C.*

A *Laminart Pvt. Ltd. & Anr.* v. *A.P. Agencies, Salem,* **[1989] 2 SCR page 1.**

At the hearing of the appeal, it was brought to our notice that by a notification dated May 5, 1992 (subsequent to the filing of the S.L.P.) the defendant has been declared a 'Relief Undertaking' under Section 3 of the Bombay Relief Undertakings (Special Provisions) Act, 1958 as amended B and applied to the State of Gujarat. By virtue of the said declaration, it is contended, the suit against the defendant-undertaking shall have to remain suspended during the period of operation of the notification as provided in Section 4(1)(a)(iv) of the said Act.

C The Bombay Act was enacted "to make temporary provisions for Industrial relations and other matters to enable the State Government to conduct or to provide loan, guarantee or financial assistance for the conduct of certain Industrial undertakings as a measure of preventing unemployment or of unemployment relief". Initially, it was applicable only to those industrial undertakings which were started, acquired or otherwise D taken over by the State Government and carried on or proposed to be carried on by itself or under its authority. But by an amendment made in 1960, the Act was made applicable also to industrial undertakings to which any loan, guarantee or other financial assistance has been provided by the State Government. Section 3 expressly declares that on issuance of notifica- E tion thereunder the specified industrial undertaking shall "be conducted to serve as a measure of preventing unemployment or of unemployment relief and undertaking shall accordingly be deemed to be a relief undertaking for the purpose of this Act". Sub-sec. (2) of Section 3 says that notification under section 3(1) shall have effect for such period not exceeding 12 months as may be specified in the notification. It is, however, renewable F for a like period from time to time so, however, that all the periods in aggregate do not exceed five years. Section 4(1) is relevant for our purpose and may be set out in full :

> "4(1) Notwithstanding any law, usage custom, contract, G instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the Official Gazette, direct that :-
>
> (a) in relation to any relief undertaking and in respect of H the period for which the relief undertaking continues as

such under sub-sec. (2) of Section 3-

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt therefrom), or shall, if so directed, by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was provided to it by, or with the approval of, the State Government, for being run as a relief undertaking, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with clauses (i) and (ii) and the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed;

(b) the right, privilege, obligation or liability referred to in clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued :

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under

A clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force".

The main reliance of the counsel for the defendants is upon sub-clause (iv) of Clause (a) of Sub-sec.(1) of Section 4 which says that "any remedy for the enforcement of a liability accrued or incurred before the B undertaking was declared a relief undertaking shall be suspended and all proceedings relative thereto pending before any Court shall be stayed for the duration of the notification under Section 3".

Mr. R.F. Nariman, Learned counsel for the defendant places strong C reliance upon the decisions of this Court in the *State of Bihar* v. *Charusila Dasi,* [1959] Suppl. 2 SCR 601 and *State of Bihar* v. *Bhabapritananda Ojha,* [1959] Suppl. 2 SCR 624. According to the Learned counsel, the said decisions conclusively establish that the suit or other proceedings at Bombay for enforcement of any remedy against the defendant relating to the D said deposit cannot go on so long as the aforesaid notification is in operation. In view of the said contention it has become necessary to examine the said decisions to ascertain their ratio. In both the cases, the trusts were registered in the State of Bihar. The trust properties were situated not only in the State of Bihar but also in the State of West Bengal. The Bihar Legislature enacted Bihar Hindu Religious Trust Act, 1950 to E regulate the management and functioning of the public trusts in Bihar. Action was proposed to be taken against both the trusts under the provisions of the Bihar Act. In the first case, Charusila Dasi questioned the said action *inter alia* on the ground that the Bihar Legislature was not competent to make a law with respect to a Trust whose properties are F situated not only in Bihar but also in other States in India. It was argued that the Bihar Legislature has no extra-territorial jurisdiction and since its attempt to control and regulate the activities of the trust is bound to have effect outside the State of Bihar, the Act in question must be held to be outside the legislative competence of that Legislature. The Constitution Bench which decided Charusila Dasi posed the questioned arising before G it in the following words :

"The question, therefore, narrows down to this: in so legislating, has it power to affect trust property which may be outside Bihar but which appertains to the trust situate H in Bihar".

The question was answered in the following words: A

"In our opinion, the answer to the question must be in the affirmative. It is to be remembered that with regard to an interest under a trust the beneficiaries only right is to have the trust duly administered according to the terms and B this right can normally be enforced only at the place where the trust or religious institution is situate or at the trustees' place of residence: see Dicey's Conflict of Laws, 7th Edition, p.506. The Act purports to do nothing more. Its aim, as recited in the preamble, is to provide for the better administration of Hindu religious trusts in the State of C Bihar and for the protection of properties appertaining thereto. This aim is sought to be achieved by exercising control over the trustees in personam. The trust being situate in Bihar the State has legislative power over it and also over its trustees or their servants and agents who must D be in Bihar to administer the trust. Therefore, there is really no question of the Act having extra-territorial operation. In any case, the circumstances that the temples where the deities are installed at situated in Bihar, that the hospital and charitable dispensary are to be es- tabalished in Bihar for the benefit of the Hindu public in E Bihar gives enough territorial connection to enable the legislature of Bihar to make a law with respect to such a trust".

It would be evident from the above passage that the ground upon F which the competence of the Bihar Legislature was upheld was that the administrative apparatus of the trust was situated within the State of Bihar, wherein it was registered and was also having some properties. The affairs of the said trust were sought to be controlled "by exercising control over the trustees in personam". In other words, the Bihar Act, in effect and G substance, is directed towards regulating the management and administration of the trusts registered in the State of Bihar. The fact that such trusts also possessed properties outside the State of Bihar did not take away the competence of the Bihar Legislature which it acquired on account of territorial nexus. To the same effect is the decision in ***Bhabapritananda.*** In this case there was an additional fact. Long prior to the enactment of the H

A Bihar Act, the Calcutta High Court had framed a scheme under Section 92 of the Civil Procedure Code relating to the temple in question . The Bihar Act, however, specifically excluded the operation of Section 92 C.P.C. Though the temple was situated in the State of Bihar some of its properties were situated within the State of West Bengal. The question again arose with respect to the competence of the Bihar Legislature to B make a law controlling such a trust. It was held by the Constitution Bench that the Bihar Legislature was competent to enact the said law and since the Bihar Act expressly excluded the application of Section 92 C.P.C., the scheme framed by the Calcutta High Court with respect to the said temple ceased to the operative with the coming into force of the Bihar Act. The C reasoning in this decision closely follows the reasoning in Charusila Dasi.

In *Jaipur Udyog Ltd.* v. *Punjab University & Anr.*, I.L.R. (1981) 1 Punjab & Haryana 624 reliance had been placed on a decision of this Court in *Inderjit C. Parekh & Ors.* v. *B.K. Bhatt & Anr.*, AIR (1974) SC. 1183 the D question for consideration was whether the prosecution against the appellants under paragraph 76(a) of the Employees' Provident Funds Scheme, 1952 is liable to be stayed by virtue of the notification issued by the Government of Gujarat on May 6, 1972 issued in exercise of the power conferred by Section 4(i)(a)(iv) of the Act. While dealing with the said question it was held "the obligations and liabilities of these persons is not E comprehended within the words of Sub-s.(4) of Clause (a) of Section 4(1) shows that the power of the State Government is itself restricted to giving directions referred to in sub-clause (iv). "In relation to any relief undertaking". Obligations and liabilities of the directors or other officers of the undertaking are not in a true sense obligations and liabilities in relation to F the relief undertaking. In plain and simple language they are the obligations and liabilities of such persons themselves. Their obligations and liabilities have to be viewed from a different angle than the obligations and liabilities of the company itself which only act impersonally".

G It was thus held that the responsibility to pay the contributions to the provident fund was of the appellants and if they have defaulted in paying the amount, they are liable to be prosecuted under Paragraph 76(a) of the Scheme which says that if any person fails to pay any contribution which he is liable to pay under the Scheme, he shall be punishable with six months' imprisonment or with fine which may extend to Rs. 1,000 or with H both. Such a personal liability does not fall within the scope of Section

4(i)(a)(iv) of the Act. Thus the above case did not deal with the question of the competency of the State to make any law having extra-territorial operation. We further hold that the view taken by the Punjab & Haryana High Court in the case of *Jaipur Udyog Ltd.* (supra) is not correct.

The question is whether the ratio of the said decisions has any application herein and whether it has the effect of suspending the proceedings in the Bombay Court? The suit is not filed within the State of Gujarat nor are any proceedings being taken in any Court in Gujarat not, at any rate, as yet. The proceedings are being taken to establish the plaintiff's right to recover a particular sum of money from the defendant. The argument of Sri Nariman, however, is two-fold: Firstly, he says, Section 4(i)(a)(iv) suspends 'any right', privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking". If the very right/liability itself is suspended, no suit to establish or enforce such right/liability can proceed. Secondly, he says, even though the proceedings are going on in a court outside the State of Gujarat, the outcome of the proceedings are bound to affect the undertaking which is situated within the State of Gujarat. Applying the logic of Charusila Dasi, he says, the Gujarat Legislature is competent to stay the proceedings in a court outside the State so long as such proceedings are likely to have an adverse impact upon the undertaking - adverse impact in the sense that it disables the undertaking being run as an employment relief undertaking.

Mr. Salve, the learned counsel for the plaintiff/appellant, on the other hand, submits that the ratio of the aforesaid decisions has no application herein and that so long as no proceedings are taken and no execution is levied in the State of Gujarat or against the properties of the defendant situated in the State of Gujarat, the bar contained in the Act does not come into play. He relies upon the decision of the Delhi High Court in *State Bank of India v. Jaipur Udyog* and submits that the same has been approved by this Court in *Binod Mills Ltd.* v. *Suresh Chandra,* [1987] 3 SCC 99 at 108.

The legislature of a State is competent to make laws for the whole or any part of the State [Article 245(1)]. It has exclusive power to make laws with respect to any of the matters enumerated in List-II of the Seventh Schedule to the Constitution. Subject to any law made by the Parliament, the State legislature can also make a law with respect to any of the matters

A enumerated in List-III. The Bombay Act is relateable to entry 22 of List-III (Industrial and Labour Disputes) and probably to entry 24 (Welfare of Labour) and entry 20 (Economic and Social Planning). The Code of Civil Procedure which provides where a particular suit has to be instituted, is relatable to entry 13 of List-III. It is a central enactment applicable to the
B entire country. Both the enactments relate to and deal with different subject-matters. There is no question of any inconsistency between them.

The State legislatures do not possess the power to make a law having extra-territorial operation (*See Kochanu v. State of Madras,* AIR 1960 S.C. 1080. Only the Parliament has that power [Art. 245(3)]. Charusila Dasi and
C Bhabapritananda do not say to the contrary as explained hereinbefore. The legislature of Gujarat cannot say that obligations and liabilities incurred by a 'relief undertaking' outside the State of Gujarat shall remain suspended during the period the notification under Section 3 read with Section 4 is in operation and/or that no suit or other proceedings can go on in a court
D outside the State of Gujarat in respect of such an obligation/liability. The legislature may well confer an immunity (no doubt, temporary) upon the relief undertaking effective within the bounds of State of Gujarat, but it cannot extend that immunity beyond its bounds. By way of illustration, it cannot say that the sales/purchase effected by the relief undertaking in other State shall not be liable to sales tax under the law of that other State.
E It cannot prevent the other State from levying and realising (by proceedings, if neeessary, against the properties and assets of the undertaking situate outside the State of Gujarat) the tax due from the relief undertaking in respect of the sales and purchases effected in that State. Similarly, it cannot say that the properties of the relief undertaking situated in other
F States shall not be liable to property tax. Nor can it say that those properties cannot be proceeded against for realisation of amounts due from the relief undertaking to third parties in pursuance of decrees/orders made by courts outside the State of Gujarat. It is true that such proceedings may ultimately affect the relief undertaking adversely; they may also tend to
G defeat the objective underlying the Act and the notification. But that can't be helped. That is the limitation of power. Probably, for this reason has the Parliament enacted 'The Sick Companies (Special Provisions) Act, 1985'. Incidently, it may be mentioned that according to the respondent-company, a rehabilitation scheme has been sanctioned by the B.I.F.R. for the respondent - company on January 21, 1992 but the inter-corporate
H depositors are said to have been kept out of the scheme as framed by

I.C.I.C.I. Ltd., the operating agency. A

The result of the above discussion is that the Gujarat Legislature is not competent to regulate, modify or extinguish the obligations and liabilities incurred by a 'relief undertaking' (declared as such under Section 3 of the Bombay Act) outside the State of Gujarat nor can it suspend or stay the suit or other proceedings relating to such obligations and liabilities. B Section 4(1)(a)(iv) is not effective to suspend the plaintiff-appellant's right to money nor can it operate to stay the proceedings in the present suit in the Bombay Court. If and when any execution is levied within the State of Gujarat and/or against the properties of the relief undertaking situated within the State of Gujarat, they can be interdicted by the said notification C read with Section 4(i)(a)(iv) of the Act, as held by this Court in *Binod Mills*.

In the result we allow this appeal, set aside the Judgment of the Division Bench of the High Court dated 24.10.1991 and restore the judgment and decree passed by the Learned Single Judge dated 24.6.1988. In D the facts and circumstances of the case we make no order as to costs.

G.N. Appeal allowed.