A

M. P. MITTAL

B

v.

STATE OF HARYANA AND ORS.

October 10, 1984

C

[R. S. PATHAK AND M. P. THAKKAR, JJ.]

Constitution of India, Articles 32 and 226—Whether Court can decline relief if its grant would defeat the interests of justice.

D

Dividend due and payable—Whether can be recovered as an arrear of land revenue including the mode of detention where such right is founded in private agreement.

The Haryana State Industrial Development Corporation Limited (for short, the Corporation) underwrote some preference shares of M/s. Depro Foods Limited. The appellant Managing Director of M/s. Depro Foods Ltd. guaranteed by an agreement in his personal capacity the payment of the dividend income due in respect of the aforesaid shares to the Corporation. One of the provisions in the guarantee agreement declared "that the dues on account of this guarantee will be recoverable in the manner in which land revenue is collected by the Government." The Corporation applied to the Assistand Collector for instituting recover proceedings, against the appellant because M/s. Depro Foods Ltd. failed to pay Rs, 1,96,961 representing the dividend payable by it. The Assistant Collector issued a warrant for the arrest of the appellant since he made no effort to pay up the amount due from him. The appellant filed a writ petition in the High Court against the recovery proceedings which was dismissed *in limine*. Hence this appeal by special leave.

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F

Dismissing the appeal,

G

HELD : (1) This Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantages or perpetuate an unjust gain. Under Art. 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discreationary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice, The High Court was fully justified in refusing relief to the petitoner. [943C]; B]

H

(2) In the instant case the appellant knowingly and deliberately entered into the Guarantee Agreement, and is liable as Guarantor to make payment of the dividend due from Messrs Depro Foods Limited. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that the appellant made no attempt to discharge the liability. When that is so he is not entitled to relief in these proceedings. [942H ; 943A-B]

(3) It is desirable that the High Court, when dismissing a writ petition *in limine* should set forth a brief statement of the reasons for its order instead of disposing of the proceedings by the single word 'dismissed' especially in those cases where the matter in controversy in the subject of judicial examination for the first time and has not been processed earlier by an inferior judicial or quasi-judicial authority. [943E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1936 of 1978.

Appeal by Special leave from the Judgment and Order dated the 2nd August, 1978 of the Punjab & Haryana High Court in Civil Writ Petition No. 3272 of 1978.

K.K. Jain, S.K. Gupta, P. Dayal and *Arun D. Sauger* for the Appellant.

Harbans Lal, Ms. Kailash Mehta and *R.N. Poddar* or the Respondent.

The Judgment of the Court was delivered by

PATHAK, J This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana dismissing a writ petition *in limine*.

Messrs. Depro Foods Limited entered into a contract with the Haryana State Industrial Development Corporation Limited, whereby the said Corporation underwrote preference shares of Messrs. Depro Foods Limited of Rs. 100 each for a total value of Rs. 3.6 lacs on which a dividend of 9.5% per annum was payable. The appellant who was apparently, at the relevant time, the Managing Director of Messrs. Depro Foods Limited, executed an agreement under which he guaranteed in his personal capacity the payment of the dividend income due in respect of the aforesaid shares to the said Corporation. It is not disputed that Messrs. Depro Foods Limited did not pay Rs. 1,96,961 representing the dividend payable to the said Corporation, and therefore the appellant became personally liable as Guarantor to pay that amount. It seems that on the failure of the appellant to make payment, the said Corporation invoked a provision in the Guarantee agreement which declares :

A "5. That the dues on account of this guarantee will be recoverable in the manner in which land revenue is collected by the Government".

Consequently it applied to the Assistant Collector, Sonepat, for instituting recovery proceedings. The Assistant Collector commenced coercive measures, which included the issue of a warrant for the arrest of the appellant. The appellant filed a writ petition in the High Court but a Division Bench of the High Court passed an order on August 2, 1978 summarily dismissing the writ petition.

At one stage during the hearing of this appeal it appeared possible that the dispute could be resolved if even now after a lapse of six years the appellant was prepared to discharge his liability as Guarantor by making payment to the Corporation of the amount sought to be recovered, if necessary in accordance with a convenient time schedule of instalments, but Shri K.K. Jain, learned counsel for the appellant, stated frankly that in spite of repeated communications to his client he had not received any reply from him.

The questions have been raised by learned counsel for the appellant. Both questions arise on the assumption that the appellant is liable to pay the amount due from him. The first question is : Whether the amount can be recovered as an arrear of land revenue, including the mode by detention, where such right is founded in private agreement ? The other questios is : If the recovery is made by reference to clause (bb) of s. 98 of the Punjab Land Revenue Act, 1887 which speaks of :—

"(bb) Dividend payable to the Government on Cumulative Redeemable Preference Shares subscribed by or on behalf of the Government".

Can that clause be employed for recovering dividend payable to Haryana State Industrial Development Corporation Limited ?

Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Mcssrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at 2,02,166 in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient per-

sonal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him, and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.

Before parting with this case, we think it appropriate to point out that it would be beneficial to the general administration of justice if in certain cases where the High Court disposes of a writ petition *in limine* it does so by an order incorporating the reasons for such order. Where a case is admitted to final hearing, the judgment of the High Court disposing of the appeal almost invariably sets forth the reasons for its decision. We think it desirable that even when a writ petition is dismissed *in limine* the High Court should set out its reasons, however briefly, for doing so, especially in those cases where the matter in controversy is the subject of judicial examination for the first time and has not been processed earlier by an inferior judicial or quasi-judicial authortty. It is of some importance that party should know from the court of first instance the reasons for an adverse decision received by it, for that promotes acceptance of the judgment and thereby ensures credibility and public confidence in the judicial institution. It must be remembered that the High Court exercises original jurisdiction under Article 226 of the Constitution, and it is only appropriate that a petitioner whose writ petition is dismissed *in limine* should know what are the precise reasons for the adverse order, whether the writ petition has been rejected on the ground of laches or other preliminary ground or on the merits of the controversy, and what are the reasons of the High Court therefor. We may add that a brief statement of reasons rendered by the High Court, when dismissing the writ

A petition *in limine*, is of great assistance also to this Court when the judgment and order of the High Court are sought to be brought here by a petition for special leave to appeal. To sum up, we think
B it desirable that the High Court, when dismissing *in limine*, should set forth a brief statement of the reasons for its order instead of disposing of the proceeding by the single word "dismissed".

Upon the considerations set forth earlier, we dismiss the
C appeal but without any order as to costs.

M.L.A. *Appeal dismissed.*