CASE NO.:
Appeal (civil) 1317 of 2003

PETITIONER:
Kailash Nath Agarwal & Ors.

RESPONDENT:
Pradeshiya Industrial & & Investment Corporation of U.P. Ltd. & Anr.

DATE OF JUDGMENT: 14/02/2003

BENCH:
Ruma Pal & B.N. Srikrishna

JUDGMENT:

J U D G M E N T

(Arising out of SLP (C) No.21369 of 2002)

With
C.A. Nos.1318 & 1319 of 2003
(Arising out of SLP(C) Nos.21370 & 21371 of 2002)

RUMA PAL, J.

Leave granted.

The scope of the protection afforded to guarantors under Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (referred to as SICA) is in issue in these appeals. The Pradeshiya Industrial and Investment Corporation of U.P. Ltd., respondent No. 1 herein (referred to as 'PICUP' hereafter) had given loans to a company, M/s Shefali Papers Ltd., the respondent No. 2 before us (hereinafter referred to as the company). By way of security the company mortgaged its immovable properties and hypothecated its assets to PICUP . In addition the appellants executed bonds of guarantee in consideration for the grant of loans to the company.

On 1st December 1997, the Company was declared sick by the Board for Industrial and Financial Reconstruction (BIFR) in terms of Section 3(1)(o) of the SICA. The BIFR appointed IFCI as the operating agency under Section 17(3) of the Act "to examine the viability and submit its report for revival of the company". While the proceedings before the BIFR were pending, on 6th February 2002 three separate notices of demand were served on the appellants as personal guarantors in respect of the loans granted to the company by PICUP. The total amount claimed was Rs.8,90,84.259.06p. Each of the appellants was called upon to pay the demand within 30 days along with the interest at the rates specified in the notice failing which PICUP said that it would take legal measures to recover its outstanding dues from each guarantor. The appellants replied to the notice stating that because of the decisions of this Court on the scope of Section 22(1) of the Act, PICUP could not enforce its demand against the appellants. PICUP rejected the stand of the appellants and called upon the appellants to liquidate its dues failing which recovery certificates would be issued against the appellants.

The appellants did not pay. Instead they filed a writ petition which was ultimately dismissed on 23rd May 2002. The decision of the High Court is the subject matter of the present appeals. Recovery certificates which have been issued against the appellants have been stayed by this Court pending disposal of the special leave petitions.

The submission of the appellants is that Section 22(1) of SICA specifically prohibited the filing of a suit for the recovery of the money for the enforcement of any guarantee in respect of any loan or advance granted to an industrial company. Reliance has been placed on Maharashtra Tubes Ltd. V. S.I.I. Corpn. of Maharashtra 1993(2) SCC 144, Kanhaiyalal Vishindas Gidwani V. Arun Dattatray Mehta 2001 (1) SCC 78, LIC V. Escorts Ltd. 1986 (1) SCC 264, P.L. Kantha Rao v. State of A.P. 1995 (2) SCC 471, Ghantesher Ghosh V. Madan Mohan Ghose 1996 (11) SCC 446, Pandurang R. Mandlik v. Shantibair Ghatge 1989 Supp.(2) SCC 627 to submit that the word 'suit' in Section 22 (1) should be understood as including any proceeding including certificate proceedings for the enforcement of such a guarantee.

It is submitted that this Court in Patheja Bros. Forgings & Stampings V. ICICI Ltd. 2000(6) SCC 545 had clearly held that the legislative intent was to protect the guarantors since the guarantee given in respect of an industrial company which was being revived under the Act is a fundamental part of its restructuring process. It is further submitted that no rational distinction should be made between a creditor who would have to file a suit to enforce a guarantee and creditors like PICUP which could recover its dues without approaching the Court by summary proceedings as an arrear of land revenue. It is claimed that if a proceeding for recovery through a court of law were prohibited under Section 22(1), there was no reason why such protection should be refused when action was sought to be taken without recourse to Court.

Learned counsel appearing on behalf of PICUP has submitted that the word 'suit' in Section 22(1) must be understood as a judicial or at least an adjudicatory process. It is pointed out that PICUP was entitled to enforce its claim under the U.P Public Money (Recovery of Dues ) Act, 1972. Under the U.P Act a distinction is drawn between a 'proceeding' and a 'suit'. Section 3 specifically states that no suit for the recovery of any sum shall lie in the Civil Court against any such person to whom a certificate was issuable under Section 3(1). It is submitted that since a suit was already barred by the U.P. Act, the question it being further barred under Section 22(1) did not arise. It is also pointed out that in Section 22(1) of SICA, Parliament has drawn a distinction between the word 'proceeding' and 'suit'. It is pointed out that this Court in its decision in Maharahstra Tubes (supra) had construed the word 'proceeding' to include proceedings under the State Financial Corporation Act. The section was subsequently amended by the introduction of the prohibition relating to the filing of a suit inter alia to enforce a guarantee in respect of loans advanced to a sick industrial company. It is argued that had the Parliament intended to include proceeding like those under the U.P Act within the word 'suit', it would have used the word 'proceeding' and not consciously used the word 'suit'. The respondents have relied upon the decision of this Court in Assistant Collector of Central Excise V. Ramdev Tobacco Company 1991 (2) SCC 119 to contend that the word 'suit' did not cover any proceeding which was not in a Court. It is then contended that the proceedings under the U.P. Act were really in the nature of recovery proceedings under S.22(1) of the Act. Recovery proceedings were prohibited only against the industrial company itself and not against the guarantor. It is further submitted that the High Court had given liberty to the appellants to approach the BIFR under Section 22(3) of the Act but the appellants had not availed of that remedy.

Section 128 of the Indian Contract Act, 1872 provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

The clauses of the guarantees executed by the appellant in favour of PICUP clearly show that the liability of the guarantors was to remain unaffected by either the failure of PICUP to enforce its mortgage and hypothecation against the assets of the company. Clauses 6, 7, 15, 16 and 17 are relevant in this context and they specifically provide:

6. The guarantee herein contained shall be enforceable against the Guarantors notwithstanding that the securities specified in the mortgage or any of them shall at the time when proceedings are taken against the Guarantors hereunder be outstanding or unrealised.

7. The guarantee herein contained shall be enforceable against the Guarantors notwithstanding that no action of any kind has been taken by the Corporation against the Company/ Borrower and an intimation in writing sent to the Company by the Corporation that a default or breach has occurred shall be treated as final and conclusive proof as to the facts stated therein.

15. The Guarantors herein agree that it shall not be necessary for the Corporation to sue the said Company/Borrower before suing Guarantors for the amount due hereunder.

16. The Guarantors also hereby agree that the liability to repay the amount due to the Corporation shall arise on demand being made by the Guarantors by a registered notice addressed to the Guarantors on their addresses hereinafter contained.

17. The guarantors hereby agree that any amount due from them hereunder to the Corporation shall be recoverable under the U.P. Public Money (Recovery of Dues) Act, 1972 (as amended from time to time) as arrears of land revenue and further that it shall not be necessary for the Corporation to take recovery proceedings against the said Company/Borrower before taking recovery proceedings under the said Act against the Guarantors. The Guarantors further agree for the applicability of relevant provisions of the State Financial Corporation Act, 1951."

There is therefore nothing in the contracts which can in any way be construed as contrary to the joint and severally liability created under Section 128.

Under the guarantees PICUP could raise and enforce a demand against the appellants under the U.P Public Demands (Recovery of Dues) Act, 1972 (referred to as the UP Act). Section 3 of the U.P Act provides for the issuance of a certificate to the Collector by a financial corporation like PICUP in respect of sums from persons specified in sub-section (1) of Section 3 requesting that such sums together with the costs of the proceedings should be recovered as if it were an arrear of land revenue. Sub-section 2 of Section 3 of the U.P. Act provides that the Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue. Therefore, the procedure prescribed under the U.P. Act does not necessitate that PICUP must enforce its rights through any legal forum nor indeed after any adjudicatory process. This is clear also from the proviso to sub-Section 4 to Section 3 of the U.P. Act which provides:

"4. In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or the Corporation, no arbitration proceedings shall lie at the instance of either party either for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim:

Provided that whenever proceedings are taken against any person for the recovery of any such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under or otherwise enforce an arbitration agreement in in respect of the amount so paid, and the provisions of Section 183 of the Uttar Pradesh Land Revenue Act, 1901, or Section 287-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as the case may be, shall mutatis mutandis apply in relation to such reference or endorsement as they apply in relation to any suit in the civil court."

In other words payment pursuant to the certificate must be made before the dispute can be referred to arbitration. The U.P. Act has, as rightly contended by counsel for PICUP also drawn a distinction between certificate proceedings, suits and arbitrations and the demand and its enforcement are not required to be determined or realised through Court or after any adjudicatory process.

That the guarantees are enforceable by PICUP against the appellants under the U.P. Act is in fact not in issue before us. The limited question is whether PICUP is prohibited by Section 22(1) of the Act from doing so.

Prior to 1994, Section 22(1) of the SICA read as follows:

"22. Suspension of legal proceedings, contracts, etc. (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under

section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

In Maharashtra Tubes Ltd. V. S.I.I. Corporation of Maharashtra Ltd. (supra), when a question arose whether a State Financial Corporation could take action against an industrial concern under Section 29 and/or Section 31 of the State Financial Corporation Act, 1951, notwithstanding the bar of Section 22 of SICA, this Court held that the expression 'proceeding' in Section 22(1) should not be limited to 'legal proceedings' as understood in the narrow sense but would include proceedings under Sections 29 and 31 of the State Financial Corporation Act. It was said:

"The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words 'or the like' which follow the words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the subject-matter of coercive action of similar quality and characteristics till the BIFR finally disposes of the reference made under Section 15 of the said enactment. The legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking. The action contemplated by Section 29 of the 1951 Act is undoubtedly a coercive measure directed at the take over of the management and property of the industrial concern and confers a further right on the Financial Corporation to transfer by way of lease or sale the properties of the said concern and any such transfer effected by the Financial Corporation would vest in the transferee all rights in or to the transferred property as if the transfer was made by the owner of the company. So also under the said provision the Financial Corporation will have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods. It is, therefore, obvious on a plain reading of Section 29 of the 1951 Act that it permits coercive action against the defaulting industrial concern of the type which would be taken in execution or distress proceedings; the only difference being that in the latter case the concerned party would have to use the forum

prescribed by law for the purpose of securing attachment and sale of property of the defaulting industrial concern whereas in the case of a Financial Corporation that right is conferred on the creditor corporation itself which is permitted to take over the management and possession of the properties and deal with them as if it were the owner of the properties. If the Corporation is permitted to resort to the provisions of Section 29 of the 1951 Act while proceedings under Sections 15 to 19 of the 1985 Act are pending it will render the entire process nugatory. In such a situation the law merely expects the corporation and for that matter any other creditor to obtain the consent of the BIFR or, as the case may be, the appellate authority to proceed against the industrial concern. The law has not left them without a remedy. We are, therefore, of the opinion that the word 'proceedings' in Section 22(1) cannot be given a narrow or restricted meaning to limit the same to legal proceedings. Such a narrow meaning would run counter to the scheme of the law and frustrate the very object and purpose of Section 22(1) of the 1985 Act."

It appears that there were three reasons why this Court construed that the word 'proceeding' as including action which may be taken under Section 29 of the State Financial Corporation Act:

1. The recovery proceedings were against an industrial company, the revival of which was one of the objects of the Act;
2. The use of the omnibus expression "or the like" after the word "proceeding";
3. The fact that the entire Scheme as contained in Sections 16 to 19 of SICA would be rendered nugatory and the process short-circuited of State Financial Corporations were allowed to recover their dues from the assets of the company.

After this decision was rendered, Section 22(1) was amended by the Sick Industrial Companies (Special Provisions) Amendment Act (12 of 1994). The following words were inserted in Section 22(1):

"and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company"

There is an apparent distinction between the expressions 'proceeding' and 'suit' used in Section 22(1). While it is true that two different words may be used in the same statute to convey the same meaning, that is the exception rather than the rule. The general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings. In Kanhaiyalal Vishnidas Gidwani (supra) this Court found that words 'subscribed' and 'signed' had been used in the Representation of People Act, 1951 interchangeably and, therefore, in that context the Court came to the conclusion that when the Legislature used the word 'subscribed' it did not intend anything more than 'signing'. The words 'suit' and 'proceeding' have not been used

interchangeably in SICA. Therefore, the reasons which persuaded this Court to give the same meaning to two different words in a statute cannot be applied here.

In none of the decisions cited before us, has the word 'suit' been defined in a context similar to that of SICA. The decisions cited by the appellants do not relate to the same or similar statutes nor do they seek to define the word 'suit' in contradistinction to the word 'proceeding'. The decision in Ghantesher Ghose V. Madan Mohan Ghose (supra) was given in the context of the Partition Act where a distinction between 'filing a suit for partition' and 'suing for partition' has been drawn. It was held that 'suing for partition' was a wider phrase than the phrase 'suit for partition' without defining what a suit meant.

The decision in Assistant Collector of Central Excise V. Ramdev Tobacco Company (supra) related to the construction of the bar of suit section in the Central Excise and Salt Act, 1944. The section as it stood at the relevant time provided that "no suit, prosecution or other legal proceedings shall be instituted for anything done or ordered to be done under the Act." . The Court held

"There can be no doubt that 'suit' or 'prosecution' are those judicial or legal proceedings which are lodged in a court of law and not before any executive authority, even if a statutory one.

A definition of the word 'suit' has been given in Pandurang R. Mandlik V. Shantibai R. Ghatge (supra) but in the context of Section 11 of the Code of Civil Procedure. This is what the Court said:

"In its comprehensive sense the word 'suit' is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between parties in a court of justice the proceeding by which the decision of the court is sought may be a suit".

According to these decisions, a suit is an action taken in a Court of law.

Having regard to the judicial interpretation of the word 'suit', it is difficult to accede to the submission of the appellants that the word 'suit' in Section 22 (1) of the Act means anything other than some form of curial process.

Apart from the semantic difference between the words 'suit' and 'proceeding' there is the absence of expansive words 'or the like' which appear after the expression 'proceedings, after the word 'suit'. The exclusion of such 'omnibus expression' after the word 'suit' must be given some weight in interpreting the word. As held by this Court in LIC V. Escorts Ltd. (supra):

"The distinction made by Parliament in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its

non-use in another provision may not be disregarded".

Since the Legislature has expressly chosen to make a distinction between the suits for recovery of the money and enforcement of guarantees and proceedings for the recovery of money, that must be given effect to.
Furthermore, the Parliament must be taken to be aware of the decision in Maharashtra Tubes and the fact that the word 'proceeding' used in Section 22 (1) had been widely construed to include proceedings for recovery of dues by State Financial Corporation as arrears of land revenue. The deliberate choice of the word 'suit' in the circumstances would indicate that Parliament intended to limit the ambit of the amendment introduced to particular modes for the recovery of money or enforcement of guarantees.
One of the reasons for the word 'proceeding' in Section 22(1) being construed widely by this Court in Maharashtra Tubes was that the proceedings were against the company itself. Having regard to the object of the Act viz., if possible to revive the company, as also the operation of the various sections towards this end, the Court held that it would be unreasonable to give such meaning to the word 'proceeding' as would result in dealing a death blow to the Company so that the entire procedure envisaged under the SICA would be set at naught.
We have been unable to find a corresponding reason for widening the scope of the word 'suit' so as to cover proceedings against the guarantor of an industrial company. The object for enacting the SICA and for introducing the 1994 amendment was to facilitate the rehabilitation or the winding up of sick industrial companies. It is not the stated object of the Act to protect any other person or body. If the creditor enforces the guarantee in respect of the loan granted to the industrial company, we do not see how the provisions of the Act would be rendered nugatory or in any way affected. All that could happen would be that the guarantor would step into the shoes of the creditor vis--vis the company to the extent of the liability met.
It is true that this Court in Patheja Bros. Forgings & Stampings V. ICICI Ltd. (supra) construed the 1994 amendment to section 22(1) to hold:

"For our purpose, therefore, the relevant words are: "no suit . for the enforcement . of any guarantee in respect of any loans or advance granted to the industrial company" shall lie without the consent of the Board or the appellate authority. The words are crystal clear. There is no ambiguity therein. It must, therefore, be held that no suit for the enforcement of a guarantee in respect of a loan or advance granted to the industrial company concerned will lie or can be proceeded with, without the sanction of the Board or the appellate authority under the said Act."

This is in keeping with the well established principle of statutory interpretation that where the language of the provision is explicit the language of the statute must prevail.
The appellants have, however, sought to draw sustenance from the following passage in the judgment:
"The argument on behalf of the first

respondent is that while this provision provides for the continuation of proceedings against the industrial company, there is no provision in the said Act which provides for the continuation of any held-up proceeding against the guarantor of a loan or advance to such company and that, therefore, Section 22 should be read as applying only to a suit against the industrial company and not a guarantor. Apart from the fact that, as indicated above, the language of Section 22 is explicit, the scheme would provide for the repayment of the loan or advance, and, therefore, would take within its ambit the claim on the guarantee; the question of proceeding with the suit against the guarantor would not arise. On the other hand, if the industrial company cannot be revived by a scheme, the embargo under Section 22 would cease to operate." (Emphasis ours)

These observations do not mean that when the words used are unambiguous, other extrinsic interpretative aids such as the objects of the statute, or the difficulties that would be faced by creditors will be relevant in interpreting the expression. The Court in Patheja's case merely observed that the creditor could recover its sum from the principal debtor under the scheme and, therefore, the claim on the guarantee would not arise if the amount is so recovered under the scheme. We do not read the observations quoted as holding that protection of guarantors of loans to a sick company is an object of the 1994 amendment which object must colour our interpretation of the amendment. Till 1994 no protection was afforded to the guarantors under the Act at all. A limited protection has been given in 1994. The expression used being clear and unambiguous, it is not for us to question the wisdom of the legislature in giving the limited protection it did or why such protection was necessary at all. Finally, the phrase introduced by the 1994 amendment relates to the pre-decretal stage because recovery proceedings by way of execution is already covered under the first half of sub-section (1) of Section 22. If the procedure under the U.P. Act is covered under the word 'proceeding' in the first limb of Section 22(1) of SICA, which it is according to Maharashtra Tubes, it is not a 'suit' for recovery under the second limb of that Section. As rightly contended by learned counsel appearing for PICUP, the proceedings under the U.P. Act are really recovery proceedings within the meaning of the word 'proceeding' as defined in Maharashtra Tubes. Since Section 22(1) only prohibits recovery against the industrial company, there is no protection afforded to guarantors against recovery proceedings under the U.P. Act.

The appeals are dismissed with costs.