Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4942 OF 2007

Om Aggarwal Appellant(s)

VERSUS

Haryana Financial Corporation
and Others
Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This civil appeal is filed by the appellant/plaintiff (hereinafter referred to as "the plaintiff) against the judgment/order dated

03.03.2005 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 3127 of 2004 which arises out of order dated 26.03.2004 passed by the Additional District Judge, Hisar in Civil Appeal No. 87/2003/2004.

2. In order to appreciate the issue involved in the appeal, few relevant facts need to be mentioned in brief.

3. The plaintiff is one of the promoters of a limited company known as **"*M/s Indo Britain Agro Farms Limited Hisar***" which is engaged in the manufacture of ordinary white buttons “Mushroom” at Hisar (Haryana).

4. Respondent No.1/defendant No.1-***Haryana Financial Corporation*** (hereinafter referred to as “defendant No.1”), established under the State Financial Corporation Act, 1951 is a "Corporation" under Section 2 (b) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 (for short "the Act").

5. The plaintiff had taken various kinds of financial assistance from defendant No.1 for running his business.

6. In May 1995, defendant No.1 with a view to extend financial assistance to the plaintiff's Company purchased 3 lacs equity shares of the said company at the rate of Rs.10/- per share and, accordingly, invested a sum of Rs.30 Lacs. This investment led the parties to enter into further business transactions. After several rounds of negotiations and correspondence between the parties, the plaintiff entered into an agreement styled as "Buy Back Agreement" with defendant No.1 on 16.07.1996 (Annexure P-6).

7. In terms of the aforesaid agreement, the plaintiff's company was to enhance its equity share capital by issuing further shares to the extent of Rs.485.59 lacs whereas defendant No.1 was to subscribe Rs. 30 lacs towards the share capital of the

plaintiff's Company by way of financial assistance for augmenting the business. The agreement, *inter-alia,* provided the terms specifying therein, the manner in which the plaintiff was to secure the investment made by defendant No.1, right of the plaintiff to purchase/buy-back the shares of defendant No.1 Corporation at the specified rates, right of defendant No.1 to nominate its nominee directors in the Board of Directors of the plaintiff's Company to monitor its affairs, right of defendant No.1 to recover their investment including a right to claim damages sustained in the transaction as arrears of land revenue from the plaintiff by taking recourse to the provisions of the Act for making recovery in the event of any default committed by the plaintiff of any term of the aforesaid agreement etc.

8. Defendant No.1, however, found that the plaintiff has failed to ensure compliance of the terms of the aforesaid agreement. They were, therefore,

constrained to invoke the terms of the agreement and got the notice issued through Tahsildar against the plaintiff for recovery of Rs.18.03 Lacs under the Act as arrears of land revenue on 28.02.2002 (Annexure P-14).

9. It is with the aforesaid facts of the case, which were pleaded in the plaint, the plaintiff filed a suit for declaration being Civil Case No. 328-C of 2002 in the Court of Civil Judge at Hisar (Annexure P-15) against the defendants for a declaration that the Buy-back agreement dated 16.07.1996 be declared null and void and in alternative the recovery sought to be made by defendant No.1 by issuance of notice of demand for recovery of Rs.18.03 lacs (Annexure P-14) pursuant to the said agreement is also bad in law and be set aside.

10. The reliefs claimed in the plaint reads as under:

> **"It is, therefore, prayed that a decree for declaration to the effect that the Buy-back Agreement dated 16.7.1996 executed by the plaintiff at Hisar with defendant No. 1 is null and void *ab initio***

and is liable to be set-aside and in the alternative for declaration to the effect that the recovery of defendant No. 1 on the basis of this agreement has become time barred and that the Recovery Certificate issued by the Managing Director of the defendant No. 1 on the basis of this Agreement is null and void *ab initio* and is liable to be set-aside with the consequential relief of permanent injunction (prohibitory) restraining the defendants from implementing the Recovery Certificate against the plaintiff in any manner including his arrest may kindly be passed in favour of the plaintiff(s) and against the defendant(s) with costs.

Any other relief to which the plaintiff(s) is/are found entitled may also be granted."

11. The aforesaid reliefs were founded essentially on the allegation that the agreement in question was executed by the plaintiff on account of undue pressure, coercion and duress exercised by defendant No.1 on him. The plaintiff, in para 21 of the plaint, also averred that he is aware of the fact that the civil suit is barred by virtue of the provisions of the Act. Para 21 of the said plaint reads as under:

"That the plaintiff is aware of the fact that the jurisdiction of the civil court is barred under Haryana Public Moneys

(Recovery of Dues) Act, 1979. But he is also aware of the law laid down by the Hon'ble 5 Judges of the Apex Court of India reported in AIR 1969 SC 78 that in case the Statutory Authorities do not act in accordance with the procedure prescribed in the Statues, then the Civil Court alone has the jurisdiction to entertain and try every suit. The present suit is no exception to the law laid down by the Hon'ble Supreme Court of India."

12. On receipt of the notice of the suit, the defendants entered appearance and filed an application under Order VII Rules 10 & 11 read with Section 21 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). Defendant No.1 contended that the suit of this nature for claiming the aforementioned reliefs was not maintainable by virtue of express bar contained in Section 3(4) of the Act, which in clear terms provided that no Civil Court shall have jurisdiction to entertain or adjudicate upon any case relating to the recovery of any sum due from the defaulter and if any such suit is pending at the commencement of the Act in

any Civil Court then it shall abate. Defendant No.1, therefore, contended that since the plaintiff has challenged the agreement as also the recovery notice issued by the Tahsildar under Section 3 of the Act in the Civil Suit, the same was not maintainable being barred by Section 3(4) of the Act. It was, therefore, liable to be dismissed under Order VII Rule 11(d) of the Code read with Section (3)4 of the Act.

13. The plaintiff opposed the aforesaid application. According to him, the provisions of the Act were not applicable to the case in hand notwithstanding the bar contained in Section 3(4) of the Act for filing a civil suit in the civil court and, therefore, the civil suit was maintainable.

14. The trial Court, by order dated 16.8.2003, allowed the application filed by defendant No.1 and, in consequence, dismissed the suit. It was held that having regard to the averments made in the plaint and the nature of the reliefs claimed in the suit, the

bar contained in Section 3(4) of the Act was attracted and hence, the suit was liable to be dismissed as not maintainable.

15. Felt aggrieved, the plaintiff filed an appeal before the Additional District Judge, Hisar being Civil Appeal No. 87/2003/2004. By order dated 26.03.2004, the Additional District Judge dismissed the appeal.

16. Against the said order, the plaintiff filed Civil Revision in the High Court. The High Court, by impugned judgment, dismissed the revision *in limine* and upheld the order of the trial court. It is against this judgment/order the plaintiff has filed this appeal by way of special leave.

17. The short question, which arises for consideration in this appeal, is whether the courts below were justified in dismissing the plaintiff's civil suit as being barred by law.

18. Mr. Suresh Singh, learned counsel

appearing for the appellant/plaintiff, while assailing the legality and correctness of the impugned order, contended that the courts below committed an error in dismissing the plaintiff's suit as barred by law. Placing reliance on the decision of this Court in ***Unique Butyle Tube Industries (P) Ltd. vs. U.P. Financial Corporation And Others*** (2003) 2 SCC 455, learned counsel contended that the suit should have been held maintainable for adjudication of reliefs claimed therein in the light of the law laid down in ***Unique Butyle*** case (supra) wherein this Court has held that a demand for recovery of the amount cannot be raised by taking recourse to the provisions of the U.P. Public Moneys (Recovery of Dues) Act, 1972.

19. In contra, learned counsel for the defendants, while supporting the impugned order, contended that it does not call for any interference.

20. Having heard the learned counsel for the

parties and on perusal of the record of the case, we find no merit in this appeal.

21. It is apposite to take note of the provisions of Order VII Rule 11 of the Code and some of the provisions of the Act, which have a bearing over the issue involved in the present appeal.

"**Order VII, Rule 11(d) CPC**

11. Rejection of plaint-The plaint shall be rejected in the following cases:-

(a).....
(b).....
(c).....
(d) where the suit appears from the statement in the plaint to be barred by any law;

Section 2(b)(c)(d) and 3 of the Act, 1979:

Section 2(b)

"Corporation" means the Haryana Financial Corporation established under the State Financial Corporations Act, 1951, and includes any other Corporation owned or controlled by the Central Government or the State Government which the State Government may, by notification, specify;

Section 2(c)

"Defaulter" means a person who, either as principal or as surety is a party-

(i) to any agreement relating to a loan, advance or grant given under that agreement or relating to credit in respect of, or relating to hire purchase of goods sold by the State Government or the Corporation, by way of financial assistance, or

(ii) to any agreement relating to a loan, advance or grant given under that agreement or relating to credit in respect of, or relating to hire-purchase of goods sold by a Government company under the State-sponsored scheme; or

(iii) to any agreement relating to a guarantee given by the State Government or a Corporation in respect of a loan raised by an industrial concern; or

(iv) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue, and such person makes any default in re-payment of the loan or advance or any instalment thereof or, having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or portion or any instalment thereof or otherwise fails to comply with the terms of the agreement;

<u>Section 2(d)</u>

"financial assistance" means any financial assistance:-

(i) for establishing, expanding, modernizing, renovating or running any industrial undertaking; or
(ii) for the purposes of vocational training; or
(iii) for the development of agriculture, horticulture, animal husbandry or agro-industry; or
(iv) for the purposes of any other kind of planned development; or
(v) for relief against distress;

Section 3

3. Recovery of certain dues as arrears of land revenue - (1) Where any sum is recoverable from a defaulter:-

(a) by the State Government, such officer as it may, by notification appoint in this behalf;

(b) by a Corporation or a Government company, the Managing Director thereof;
Shall determine the sum due from the defaulter.

(2) The officer or the Managing Director, as the case may be, referred to in sub-section (1), shall send a certificate to Collector mentioning the sum due from the defaulter and requesting that such sum together with the cost of proceedings be recovered as if it were an arrear of land revenue.

(3) A certificate sent under sub-section (2) shall be conclusive proof of the matters stated therein and the Collector, on receipt of such certificate, shall proceed to recover the amount stated therein as an

arrear of land revenue.

(4) No Civil Court shall have jurisdiction:-

> **(a) to entertain or adjudicate upon any case; or**
> **(b) to adjudicate upon or proceed with any pending case, relating to the recovery of any sum due as aforesaid from the defaulter. The proceedings relating to the recovery of the sums due from the defaulters, pending at the commencement of this Act in any Civil Court, shall abate."**

22. An application for rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show the suit to be barred by any law. The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the Civil Court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of

Order VII Rule 11 of the Code. Indeed, this principle of law is well settled.

23. So far as the provisions of the Act are concerned, Section 3 of the Act empowers the Corporation to make recovery of its outstanding dues from the defaulter as arrears of land revenue by getting the certificate of recovery of the amount issued from the competent authority whereas sub-section (4) of Section 3 in clear terms takes away the jurisdiction of the Civil Court to entertain or/and adjudicate "***any case***" relating to the recovery of any sum due from the defaulter. It also takes away the jurisdiction of Civil Court to proceed with any pending case involving such issue. If any such case is pending on the date of commencement of the Act, such case shall stand abate.

24. The provisions of the Act and especially Section 3 thereof came to be interpreted by this Court in ***S.K. Bhargava vs. Collector, Chandigarh***

and others (1998)5SCC 170 and hence its interpretation is no more *res integra.* Justice B.N Kirpal, speaking for the Court, held in para 8 as under:

> **"8. It is clear from the perusal of the above-quoted section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the "sum due" from the defaulter as enjoined upon him by Section 3(1)(b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the question as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3(1)(b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue."**
> **(Emphasis supplied)**

25. Applying the aforesaid principle of law to

the facts of the case in hand, it is clear by mere reading of the plaint that firstly, the plaintiff was a "defaulter" as defined under Section 2(c) of the Act; secondly, the investment made by defendant No.1-Corporation pursuant to an agreement dated 16.07.1996 was in the nature of the "financial assistance" as defined under Section 2 (d) of the Act; thirdly, the demand raised by the respondent was in relation to the amount given by way of financial assistance under Section 3 of the Act and lastly, the subject matter of the suit viz., challenge to the legality of the agreement and the demand fell under Section 3(4)(a) and (b) of the Act.

26. In the light of the four aforementioned facts, which are clearly discernable from the averments made in the plaint, we are of the considered opinion that the provisions of the Act get attracted to the case in hand which, in turn, attract the bar contained in sub-section (4) of Section 3 in

filing the civil suit by the defaulter. The suit is, therefore, apparently barred by virtue of bar contained in Section 3(4) of the Act. It was thus rightly dismissed by the courts below by taking recourse to Order VII Rule 11 (d) of the Code.

27. We do not find any force in the submission urged by the learned counsel for the plaintiff that on the basis of law laid down in ***Unique Butyle*** case (supra), the suit should be held as maintainable for adjudication of the reliefs claimed therein on merits.

28. On perusal of the decision rendered in ***Unique Butyle*** case (supra), it is clear that the said decision was rendered in a writ petition filed by the defaulter against the Corporation wherein the question involved was whether the proceedings for recovery initiated by the U.P. Financial Corporation under the U. P. Public Moneys (Recovery of Dues) Act, 1972 are maintainable in view of Section 34(2) of the Recovery of Debts Due to Banks and Financial

Institutions Act 1993.

29. This Court examined the aforesaid question in the light of the provisions of the aforementioned two Acts and held that the proceedings initiated under the U. P. Public Moneys (Recovery of Dues) Act, 1972, are not maintainable in view of overriding effect given to the Central Act by virtue of Section 34(2) of the Central Act over the State Act.

30. It is pertinent to mention that while deciding the question, their Lordships took note of the law laid down in ***S.K. Bhargava*** case (supra) and held that the provisions of U.P. Act and that of the Haryana Act are not similar. This is what was held in para 15:

> **"We may notice here that to strengthen his arguments, learned counsel for the appellant referred to the decision of this Court in S.K. Bhargava vs. Collector, Chandigarh. The said case related to the Haryana Public Moneys (Recovery of Dues) Act, 1979 (in short "the Haryana Act"). With reference to certain observations in para 8 of the said**

judgment, it was submitted that a process of adjudication is inbuilt, even when the Managing Director of the Corporation takes action. We notice that Section 3 of the Haryana Act is couched differently from Section 3 of the U.P. Act. Reference was made in the said case to Director of Industries Case, (1980) 2 SCC 332 and held that while upholding the validity of Section 3 of the U.P. Act, the Court was not called upon to deal with the question as to whether the principles of natural justice were implicit in the said Section. We also do not think it necessary to go into that question."

31. In the light of several distinguishing features noticed in the case in hand and the facts of ***Unique Butyle*** case (supra) such as the question as to whether the suit filed in the Civil Court was barred or not, which is the subject matter of this case, was not decided in ***Unique Butyle*** case. Secondly, the case in hand arose out of Haryana Act whereas the ***Unique Butyle*** case (supra) arose out of U.P Act and thirdly, both Haryana Act and U.P. Act were held not identical in their wordings.

32. In the light of these distinguished features, no reliance can be placed on the law laid

down in ***Unique Butyle*** case (supra) for deciding the issue involved in the present case. It has, in our considered opinion, no application to the case in hand.

33. Before parting with the case, we consider it apposite to clarify that we have not examined the legality and correctness of the demand on its merits once it is held that Civil Court has no jurisdiction to entertain the civil suit. In other words, once it is held that the Civil Court has no jurisdiction to try the suit on merits, the question as to whether the demand impugned in the suit is legal or not cannot be gone into nor it was gone into.

34. In view of foregoing discussion, we find no merit in the appeal, which thus fails and is hereby dismissed.

.....J.
[RANJAN GOGOI]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
February 23, 2015.