

HIGH COURT OF MADRAS**Bench: The Honourable Mrs. Justice S. Srimathy****Date of Decision: 16th February 2024**

W.P.(MD)Nos.16714, 17225, 20679, 20681, and 21320 of 2014

Indian Overseas Bank.PETITIONER**VERSUS****M/s. Thiruchendur Murugan Spinning Mills & Ors. ...RESPONDENTS****Legislation:**

Payment of Gratuity Act

Section 13 of the SARFAESI Act

Section 529A of the Companies Act

Subject: Dispute over gratuity payments to employees of a defunct company
by a bank that took possession of the company's assets for loan recovery.

Headnotes:

Gratuity Payment Dispute - In a case involving the recovery of dues by Indian Overseas Bank from M/s. Thiruchendur Murugan Spinning Mills, the issue of gratuity payments to the employees of the defunct company arose - Bank

claimed no liability as it was a mere secured creditor, not the employer [Para 2, 3].

Legal Position of Bank and Employees - The Court examined the position of the bank as a secured creditor under SARFAESI Act and the rights of employees under the Payment of Gratuity Act - Bank had the first charge over the company's assets [Para 7, 10, 12].

Gratuity Payment Obligation - The Court held that the bank, while not being the direct employer, owed gratuity payments due to its control over the company's assets - Recognized that the bank and employees have equal charge over assets (Pari passu) [Para 4, 10, 11].

Determination of Gratuity Amount - After assessing the decreed amount due to the bank and amounts already paid towards salaries, the Court fixed the gratuity payable to employees at Rs. 42,00,000, with the balance amount refundable to the bank [Para 13, 14].

Final Decision - The writ petitions were disposed of with instructions to disburse the determined gratuity amount to the employees, and the remaining balance to be refunded to the bank [Para 15].

Referred Cases: Not specified.

Representing Advocates:

For Petitioner: Mr. M. Senthil Kumar

For Respondents 2 to 67: Mr. S. Sarvagan Prabhu

For Respondents 68 and 69: Mr. N. Muthuvijayan (Special Government Pleader)

COMMON ORDER

All these writ petitions are filed by Indian Overseas Bank and the issue in all these writ petitions are one and same, hence all the writ petitions are taken up and a common order is passed.

2. The brief facts as stated in W.P.(MD)No.20679 of 2014 are that the petitioner bank granted financial assistance to the first respondent namely M/s. Thiruchendur Murugan Spinning Mills to the tune of Rs.2,20,00,000/- as early as 1994 for which the mill had mortgaged the immovable properties and also movable properties like machineries in favour of the Bank. The Bank has first charge over the movable and immovable properties. The first respondent mill became sick and closed from 04.12.1995. Since the loan amount was not repaid, the first respondent Mill loan account was declared as non performing asset. Thereafter, the Bank filed claim application in the Debts Recovery Tribunal, Madurai to recover a sum of Rs.2,79,88,741.10 paise in T.A.No.459 of 2007. The said the petition was pending and the Bank also initiated recovery proceedings by invoking the provisions under SARFAESI Act. Since

the mill was not running, the Bank took physical possession of the movable and the immovable properties.

3. It was seen that before the Bank took possession, the employees of the first respondent were made jobless and they did not take steps to recover the terminal benefits from the first respondent. But the contention of the petitioner is that the Bank has not taken over the business of the first respondent but has taken possession of assets which was hypothecated and mortgaged to the bank to recover the dues. In the meanwhile, the bank has recovered a sum of Rs. 1,40,53,000/- after auctioning the properties of the first respondent. Even after adjusting realizable value of all securities of the 1st respondent, the petitioner has to receive a sum of Rs.81,62,283/- from the first respondent. As such the bank is not liable to pay the alleged dues payable to the employees the 1st respondent. The respondents 2 to 67 have not initiated any action against the 1st respondent for recovery of the alleged terminal benefits. The respondents 2 to 67 along with other workmen had filed 273 Gratuity Applications claiming Gratuity from the respondent Mill and the petitioner. Since there is no employer employee relationship between the petitioner and the respondents 2 to 67, the petitioner bank is not liable to pay the same. The respondents 2 to 67 in order to harass the petitioner bank have created lot of obstacles while bringing the property for auction sale. In the Gratuity Application, the petitioner Bank had filed a counter affidavit. The 68th respondent who is the original authority under the Payment of Gratuity Act, without considering the legal and factual objection raised by the Bank has allowed the Gratuity Application, vide order, dated 28.10.2012. In the said order, the 68th respondent has given a finding that there is no direct employer employee relationship between the petitioner Bank and the Workmen but had held that there is a deemed employer employee relationship between the Bank and the

Workmen, since the Bank is in control of the assets of the first respondent company. The contention of the bank is that the said finding is erroneous.

4. The first respondent had closed down the Mill as early as 04.12.1995 and the respondents 2 to 67 have obtained employment elsewhere and had left the mill long back. The bank being a secured creditor is having first charge over the properties. Moreover, the Payment of Gratuity Act does not recognise a deemed employment. Aggrieved over the order, the petitioner bank preferred an appeal to the Appellate Authority, i.e. 69th respondent. The 69th respondent had passed an order, dated on 03.01.2014, confirming the original authority's order and dismissed the appeals. The Appellate Authority has held that the Bank and the Workmen are having equal charge over the assets of the first respondent Mill (Pari passu) and that as per the peculiar circumstances of the case, the respondents 2 to 67 are entitled to get Gratuity amount only from the petitioner Bank according to the SARFEASI Act and section 529A(1)(a) of the Companies Act. The appellate authority has not applied its mind, without analysing the case on factual and legal basis has simply confirmed the order passed by the 68th respondent stating the order passed is just and correct. The finding of the 69th respondent that the Payment of Gratuity Act overrides the provisions of SARFAESI Act is false and legally incorrect and also against law and equity. The Appellate Authority had not considered the fact that the workmen are entitled to claim the wages and other benefits only from the employer company or from its liquidator at the time of winding up of the company. The respondents 68 and 69 have virtually not considered the Section 13 (9) of SARFEASI Act and the Section 529 A(1)(a) of the Indian Companies Act. The bank is liable to pay the alleged dues of the workmen only in the event of liquidation, since there is no winding up proceedings against the first respondent, the petitioner bank

is not liable to pay the same. Hence, aggrieved over the same, the petitioner bank has filed this writ petition.

5. The respondents relied on the contents of the petition filed before the Payment of Gratuity authority. The workmen had filed the petitions as well as counter affidavit in the appeal before the appellate authority. The contention of the respondents 2 to 67 is that the first respondent Mill without any prior intimation had closed the Mill suddenly on 04.12.1995. The employees were under the impression that the Mill will start running shortly. Moreover, the management would provide all the monetary benefits applicable to the workers. The Bank had issued notice stating that for the recovery of debt, the properties would be sold through auction on 04.01.2008. On issuance of such notice, the workers had filed petition before the Assistant Commissioner of Labour. Before the Assistant Commissioner, the terms of settlement was issued on 10.03.2008, which is marked as Exhibit A 5 in which the Bank was directed to pay Rs.1000/- for each workmen. On such payment, the workers will not interfere in the auction of land and machineries and other moveable. It was also agreed that as far as the gratuity and statutory benefits are concerned, the workmen should approach the appropriate authority and initiate proceedings against the Mill Management and Bank. In order to obtain the appropriate orders, this was agreed between the parties and the Bank has accepted. As per the said agreement, the Bank has paid Rs.1000/- to each workmen and thereafter, initiated proceedings to sell the properties of the Mill. Thereafter, the Workmen demanded the arrears of salary and filed petition before the High Court. Based on the orders of the High Court and also based on the orders of the District Collector at the time of selling the Mill, the bank has deposited Rs.8,90,115/- for 7 workmen who were declared as first debtor and the petitioner bank has agreed and deposited the said amount to the Assistant Commissioner of Labour and on deposition, the Assistant

Commissioner of Labour has disbursed the same and the payment has been marked as one of the exhibits. It was agreed between the parties that on receiving such payment, the workmen should not interfere in the process of selling the Mill properties and that agreement was marked as exhibit A7. Since the workmen has continuously worked in the first respondent Mill, when the Bank has initiated proceedings to sell the properties of the first respondent, the workmen have only demanded to pay the gratuity that is applicable to them. The Bank has agreed to pay the same at the time of negotiation. Now, the bank cannot turn around and say that the bank is not liable to pay the amount. After hearing the rival submissions of the 273 workers, a common order was passed by the Assistant Commissioner of Labour. Hence, the respondents 2 to 67 prayed to dismiss the writ petition.

6. Heard Mr.M.Senthil Kumar the Learned Counsel appearing for the petitioner Bank, Mr.S.Sarvagan Prabhu the Learned Counsel appearing for the respondents 2 to 67 and Mr.N.Muthuvijayan appearing for the respondents 68 and 69 and perused the records.

7. The contention of the petitioner Bank is that the workers had filed petitions against the Bank whenever the Bank took steps to sell the properties which were mortgaged by the company for a debt of Rs.2,20,00,000/-. The workers stalled the proceedings initiated under SARFAESI Act. Further when the Bank carried out necessary formalities for bringing the property for auction sale the workers again stalled the auction sale and had approached the Assistant Commissioner of Labour in order to stall the selling of the properties. Thereafter, the Assistant Commissioner of Labour directed the Bank and the workmen for negotiation and it was agreed between the parties that the Bank has to pay Rs. 1000/- to all the workmen

and on such payment the workmen shall not interfere in the SARFAESI proceedings and selling of properties. The parties have agreed before the Authority and the Bank has also paid Rs.1,000/- to all the workmen. The further contention of the Bank is that after such payment as agreed before the Assistant Commissioner of Labour, the workers had approached the Labour Court, Trichy. In one such order, in the Claim Petition No.18 of 2009 filed by one A. Selvaraj, the Labour Court has passed an order directing the Mill as well as the Bank to pay Rs.5,28,493/- as arrears of salary. Likewise, several workmen obtained orders to pay the arrears of salary to them. The Bank has deposited Rs. 8,90,115/- for 7 such employees. Now, the workmen have started demanding the gratuity payment. Since the claim of the workers were continuing and it is never ending claims, the petitioner Bank resisted the claims of the workers and submitted that the Bank is not liable to pay, since workmen are entitled to claim the arrears of salary, gratuity and other statutory benefits from the Mill in which they were employed and not against the Bank. The worker may be entitled to claim from the proceeds of the sale of properties from the Bank, if the Mill was order for winding up before the appropriate authority. In the present case, there is no winding up proceedings at all. The workers have not approached the appropriate authorities for winding up the company. When the winding up proceedings was not initiated by employees or any other creditors, then the workers are not entitled to claim salaries, gratuity and other statutory benefits from the Bank. If the company is under the winding up proceedings, then the claim of the workmen is absolutely right and whatever assets available in the defunct company will be distributed on the principle of pari passu. In the present case, there is no winding up proceedings initiated, hence the claim of the workmen under the principles of "pari passu" cannot be entertained.

8. In order to consider the claim of the petitioner Bank the provisions under Section 13 (9) of SARFEASI Act and the Section 529A(1)(a) of the Indian

Companies Act are relevant and the same is extracted hereunder:

Section 13 (9) of SARFEASI Act:

13(9) 1[Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than 2 [sixty per cent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors: Provided that in the case of a company in liquidation, the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realize his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act: Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator: Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator: Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any. Explanation.—For the purposes of this sub-section,— (a) “record date” means the date agreed upon by the secured creditors representing not less than 2 [sixty per cent.] in value of the amount outstanding on such

date; (b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

Section 529A(1) of Companies Act:

Section 529A. OVERRIDING PREFERENTIAL PAYMENTS (1)

Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company - (a) workmen's dues; and (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts. (2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

9. The provisions under section 13(9) of SARFEASI Act states that **the company in liquidation** shall distribute the sale of secured assets in accordance to Section 529A of the Companies Act. The provisions under section 529A states that the worker due's and the secured amount shall be divided pari passu as stated in Section 529(1)(c). Under section 529(1)(c) it states as under:

"(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of –

(i) the amount of workmen's dues; and

*(ii) the amounts of the debts due to the secured creditors."*All the provisions states if the company is under liquidation then the principle of pari passu would be applicable for the secured creditor and workmen's due. Admittedly in the present case the workmen had not filed any winding up petition and any other creditor / secured creditor of the Mill has not filed any winding up petition. But non filing of winding up petition cannot be a ground to decline the workmen's due. The workmen's due is a statutory liability. Even both the SARFEASI Act and the Indian Companies Act grant ample protection to the workmen's due. Also both the Acts places workmen's due and the secured creditor on par. Therefore the claim of the petitioner bank cannot be entertained.

10. The next contention of the petitioner bank is that under Section 529 of the Companies Act, the workmen portion in relation to security of the secured creditor of the company means the amount which appears to the value of the security, the same proportion as the amount of workmen due bears to the aggregate of the amount of the workmen's due and the amount of debts due to the secured creditor. Hence, the amount of the debt to the secured creditors ought to be added along with the workmen's due. Thereafter, based on the pari passu principle, the amount ought to be distributed. But this proportion cannot be taken into account, since there is an overriding provision under Section 529A. This contention of the petitioner bank cannot be accepted because even in the Section 529A the workmen's due is included and the workmen due is duly protected.

11. The next contention of the petitioner is that under the SARFAESI Act, the provisions of said Act will have overriding effect than other legislation. Since the SARFAESI Act is subsequent to the Payment of Gratuity Act, the SARFAESI Act will have overriding effect than the Payment of Gratuity Act, hence, the first charge should be granted to the bank alone. This contention of the bank is refuted by the respondents since the Payment of Gratuity Act is having overriding effect than any other debts of the management and the wellness of the workmen should be prioritised than any other debt. This Court is of the considered opinion that the bank is dealing with the public money. On the other side the workmen are entitled to the gratuity which is a statutory payment. In the present case, the workmen without initiating any recovery proceedings from the management of the mill is making the entire claim against the Bank alone which is incorrect. As seen from the records, the bank has given the loan in the year 1994 and the mill was closed in the year 1995, from 1995 to 2008 the workmen have not initiated any action against the management. The workmen have only stalled the proceedings of the Bank whenever the Bank has initiated proceedings

under SARFAESI Act for taking physical possession and for selling the property, etc. It is also to be noted that the Bank has already paid Rs.1000/- for each employee and has also deposited a sum of Rs.8,90,000/- for the arrears of salary applicable to the employees. In the present petition the employees are claiming the gratuity amount. As rightly pointed out by the Learned Counsel appearing for the Bank, the Bank has not taken the management of the company and the Bank is not running the company to claim salary and other benefits from the Bank. In order to recovery the loan the Bank had initiated proceedings to sell the properties to recovery the debts. In such circumstances, the bank has not stepped into the shoes of the management. Further the employees have not initiated winding up proceedings, the Bank is a secured creditor and the workmen claim cannot be neglected. In the present case, it is not known whether the mill has no other means to pay the workmen and also it is not known whether the private properties of the Directors of Mill was attached in any proceedings to pay the workmen and the workmen have not whispered any details regarding this. Therefore, since the workmen have not taken any steps to recovery from the Directors of the Mill from 1995 onwards this Court is of the considered opinion that for the said lapses the amount granted to the workmen ought to be reduced.

12. It is seen the bank is having a decree in its favour to the tune of Rs.2,79,88,741.10/-. Based on the auction of the properties, the bank has recovered Rs.1,40,53,000/-. After adjusting to the loan, the balance payable to the bank is Rs.81,62,283/-. As per the official order, an amount of Rs.10,65,24,593/- with the future interest of 15.25% from 01.03.2015 is due to the bank. On the other side, 281 gratuity applications were filed before the Assistant Commissioner of Labour. Based on the order of the Assistant Commissioner of Labour, the Bank has deposited Rs.43,85,474/-. Thereafter, filed a statutory appeal before the Appellate Authority. The bank has also

deposited to the tune of Rs.75,45,461/- in some other proceedings for salary. Since the employers have already received Rs.1000/- and some of the employees have received the arrears of salary, the bank cannot be burdened further. Therefore, in order to give quietus to the entire issue, the workmen are entitled to Rs.42,00,000/- as gratuity, the Bank is entitled to the balance amount of Rs.1,85,474/- from Rs.43,85,474/-.

14. Therefore, this Court is fixing the amount as Rs.42,00,000/- to the workmen and the balance amount from the deposit of gratuity amount of Rs. 1,85,474/- shall be paid back to the bank. From the Rs.42,00,000/- that was deposited to the Assistant Commissioner of Labour, the said the authority shall disburse the same. Since the said amount is carrying interest based on interest, the workmen would be getting the same amount as claimed in their original application. Therefore, the workmen would not be at loss.

15. With the above said observation, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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