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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 17th OF NOVEMBER, 2022

MISCELLANEOUS APPEAL No. 1097 of 2001

BETWEEN:-

**M.P.STATE INDUSTRIAL DEVELOPMENT
CORPORATION LTD. A COMPANY REGISTERED
UNDER THE COMPANIES ACT, 1956, HAVING ITS
REGISTERED OFFICE AVN TOWERS, PLOT
NO.192, ZONE-1 MAHARANA PRATAP NAGAR,
BHOPAL (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI SANJAY K. AGRAWAL - ADVOCATE)

AND

- 1. RAJEEV KUMAR AGRAWAL S/O LATE R.K.
AGRAWAL, R/O 14/61-A (NEW NO.14/103, CIVIL
LINES, KANPUR (UTTAR PRADESH)**
- 2. RAGHAVENDRA KUMAR AGRAWAL S/O SHRI
R.A. AGRAWAL, R/O JAITWARA, POST
JAITWARA, DISTRICT SATNA (MADHYA
PRADESH)**

.....RESPONDENTS

.....
*This miscellaneous appeal coming on for hearing this day, the court
passed the following:*

ORDER

None appears for the respondents.

- 2.** Appellant's contention is that appellant is aggrieved of order dated 07/05/2001 passed by learned District Judge, Bhopal rejecting an application for guarantee furnished by respondents at Bhopal on the ground that Section 31(aa) of the State Financial Corporation Act, 1951 (hereinafter referred to as "Act of

1951") is a special Act and it provides for enforcement of claim by the Financial Corporation. It is held that claim in suit under Section 31(aa) is not separable from the provisions contained in Section 31 which specially create jurisdiction on the respective District Judge within whom jurisdiction the industry is situated.

3. Shri Agrawal, learned counsel, reading provisions of Section 46-B of the State Financial Corporation Act points out that provisions of the Act of 1951 are in addition to and not in derogation of any other law for the time being applicable to an industrial concern. He submits that therefore general law will be applicable and since guarantee was given at Bhopal, jurisdiction of Court at Bhopal can be invoked. Reliance is placed on the judgment of Division Bench of Karnataka High Court in the case of **Karnataka State Industrial Investment and Development Corporation Ltd., Vs. M/s R.M.P. Cements Ltd. And others, 2008(1) KLO 901 (DB)** wherein it is held that provisions of Section 46-B of the Act of 1951 makes it clear that the provisions are not in derogation of any other law but in addition to any other law. The contract of guarantee was entered at Bangalore, therefore, a part of cause of action arises at Bangalore. Hence, it is within the valid realm of contract between the parties to choose the Court at Bangalore to have the exclusive jurisdiction. Such a contract cannot be assailed as illegal and contrary to the provisions of Section 31 of the Act.

4. After hearing learned counsel for the appellant and going through the record, the basic question which emerges for interpretation of this Court is that as to whether the provisions contained in Section 31 of the Act of 1951 are to be read harmoniously or in isolation as suggested by Shri Sanjay K. Agrawal that since clause (aa) was included subsequently [vide Act 43 of 1985 (w.e.f.

21.08.1985)], it is to be read in isolation, with the provisions contained in the Civil Procedure Code, dealing with aspect of territorial jurisdiction.

5. A perusal of Section 31 of the Act of 1951 reveals that it provides for special provisions for enforcement of claims by Financial Corporation, which reads as under:-

"31. Special provisions for enforcement of claims by Financial Corporation.-

(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 (4 of 1882) any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:-

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(aa) for enforcing the liability of any surety; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such

other particulars as may be prescribed."

6. Thus, it is evident that aforesaid Section 31(1) of the Act of 1951 provides that any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, as have been mentioned above.

7. Thus, it is evident that when petitioner wishes to enforce the liability of a surety by invoking the guarantee given by such surety then, as provided in Section 31(1) of the Act of 1951, application is to be made to the District Judge within the limits of whose jurisdiction, the industrial concern carried on the whole or a substantial part of its business. In the present case, admittedly no business is carried out at Bhopal.

8. Principles of Statutory Interpretation (12th Edition) by Hon'ble Justice Shri G.P. Singh, Former Chief Justice of Madhya Pradesh High Court, Lexis Nexis, quoting the judgment of the Supreme Court in **Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon, AIR 1960 SC 122**, it is held in para 9 as under:-

"It is an elementary rule that construction of a section is to be made of all the parts together and not of one part only by itself, and that phrases are to be construed according to the rules of grammar. So construed the meaning of the clause is fairly clear. The genus is the "revenue officer", and the "including" and "excluding" clauses connected by the conjunction "but" show that the village accountants are included in the group of revenue officers."

9. Similarly, Supreme Court in **Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd. and others**, AIR 1962 SC 1543, held that the words used in the section must be given their plain grammatical meaning. Where the Court is dealing with two sub-Sections of a Section (For eg., Section 76, Companies Act, 1956), it is necessary that the two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest". The two sub-sections must be read as parts of an integral whole and as being inter-dependent; an attempt should be made in construing them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided. It is further held that provisos often inserted "to allay fears" or to remove misapprehensions.

10. It is not legitimate for the Courts to re-write the sub-sections, particularly when on the alternative construction it is found that there is no repugnance between the two sub-sections. That clearly is the function of the Legislature which enacts laws and not of the Court which interprets them.

11. In **Balasinor Nagrik Cooperative Bank Ltd. Vs. Babuhai Shankerlal Pandya and others**, AIR 1987 SC 849, Supreme Court has held that :-

"It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section."

12. In **Tahsildar Singh and Another Vs. The State Of Uttar Pradesh**, AIR 1959 SC 849, Supreme Court held that:-

"The cardinal rule of construction of the, provisions of a section with a proviso is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest."

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.

Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two."

13. In Phillips India Ltd. Vs. Labour Court, Madras and others, (1985) 3 SCC 103, it is held that it is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an "Elementary Rule" by Viscount Simonds, a "Compelling Rule" by Lord Somervell of Harrow and "Settled Rule" by B.K. Mukherjee, J, in Poppatlal Shah, Partner of Messrs Indomalayan Trading Company Vs. State of Madras, Represented by the Deputy Commercial Tax Officer, Sowcarpet, Madras, AIR 1953 SC 274.

14. In Canada Sugar Refining Co. Vs. R, 1898 AC 735, p.742; referred to in M. Pentiah and others Vs. Muddala Veeramallappa and others, AIR 1961 SC 1107, Lord Davey said "Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

15. This brings us to the second limb of argument put forth by Shri Sanjay K. Agrawal that since Section 46-B of the Act of 1951 provides that provisions of this Act shall be in addition to and not in derogation of, any other law that the

time being applicable to a industrial concern, in view of the above stated principles of statutory interpretation provisions of the Civil Procedure Code are not required to be referred to while examining the scope of territorial jurisdiction, when examined in the light of the principles of law.

16. In case of **Paradip Port Trust Vs. Their Workmen, AIR 1977 SC 36**, it is held that the special law is not readily held to be impliedly repealed by later general enactment. The particular or special law deals only with a particular phase of the subject covered by the general law and, therefore, reconciliation is normally possible between a prior particular Act and a later General Act and so the particular Act is construed as an exception or qualification of the General Act.

17. In **Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey, AIR 1966 SC 1931**, Supreme Court quoting from Maxwell on Interpretation of Statutes, held as under:-

"A general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act".

18. Conversely it is also true that a prior general Act may be effected by a subsequent particular or special Act as held by the Supreme Court in **Damji Valji Shah and another Vs. Life Insurance Corporation of India and**

others, AIR 1966 SC 135, where it is held that Life Insurance Corporation Act, being a Special Act, will prevail over Section 446 of the Companies Act, 1956. The principle laid down is that "Generalibus Specialia Derogant" will be applicable.

19. Similarly, in case of **Municipal Board, Bareilly Vs. Bharat Oil Company and others, AIR 1990 SC 548**, it is held that in a case the operation of the particular Act may have the effect of partially repealing the general Act.

20. In **Punjab State Electricity Board Vs. Bassi Cold Storage, Kharar and another, AIR 1994 SC 2544**, it is held that later Act prevails over earlier Act, special Act overrides general Act.

21. In fact in case of **Ratan Lal Adukia Vs. Union of India, AIR 1990 SC 104**, it is held that Section 80 of the Railways Act, 1890, substituted in 1961, provides for the forum where a suit for compensation for the loss of life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods against a railway administration may be brought. It was held that the said section was a special provision and a self contained code and that it impliedly repealed in respect of suits covered by it the general provisions of Section 20 of the Code of Civil Procedure, 1908.

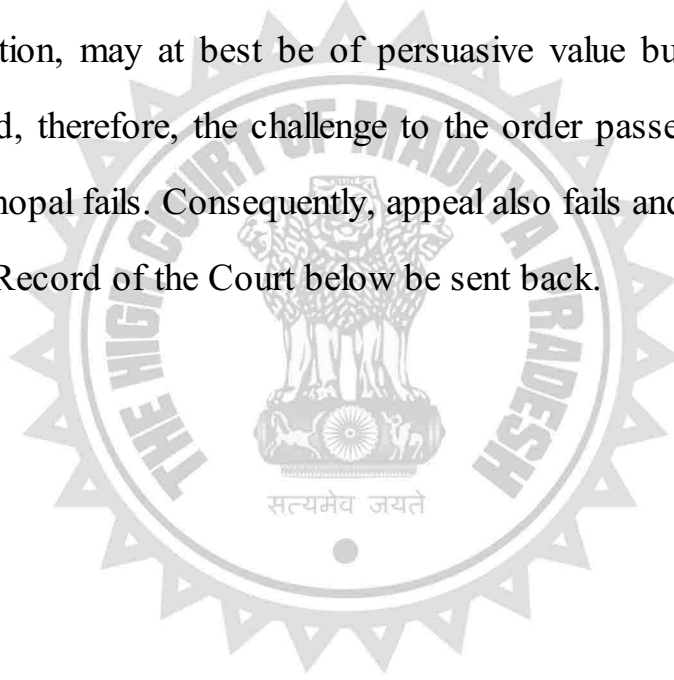
22. In **Shriram Mandir Sansthan Vs. Vatsalabai and others, AIR 1999 SC 520**, it is held that principle applied is that "a special subsequent legislation which is a code in itself excludes the general law on the subject."

23. Taking into consideration the aforesaid legal position, this Court has no hesitation to hold that the State Financial Corporation Act, 1951, being a special Act and a self contained code to enforce liabilities, will impliedly repeal the

provisions of general law contained in Code of Civil Procedure, 1908 and, therefore, the second argument advanced in the light of provisions in Section 47-B of the Act of 1951 is not made out. When examined in the light of the aforesaid principles laid down in **Maharaja Pratap Singh** (supra), therefore, in my opinion Karnataka High Court having failed to take into consideration, a fact that State Financial Corporation Act, 1951, is a special law and Civil Procedure Code, 1908 is a general law and special law will not be superseded by a general law, in the opinion of this Court, judgment of the Karnataka High Court when tested in the light of the aforesaid principles of statutory interpretation, may at best be of persuasive value but, is not binding on this Court and, therefore, the challenge to the order passed by the learned District Judge, Bhopal fails. Consequently, appeal also fails and is dismissed.

24. Record of the Court below be sent back.

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(VIVEK AGARWAL)
JUDGE