

Case No. 86

2005 (1) CTC 758

IN THE HIGH COURT OF MADRAS

Markandey Katju, C.J. and D. Murugesan, J.

C.R.P. (NPD) No.2056 of 2004

7.1.2005

ICICI Bank Ltd. (formerly Bank of Madura Ltd.)

No.7, Bazulla Street, T. Nagar Branch, Chennai-17

Petitioner

Vs.

The Official Liquidator, High Court, Madras,

Liquidator of Vibrant Investments & Properties Ltd.

(in liquidation), First Floor, Kuralagam, Esplanade,

Chennai

Respondent

Companies Act, 1956, Section 529-A - Constitution of India, Article 227 - Claim of secured creditor will prevail over crown debts - Income Tax department cannot claim priority over debts due to secured creditor - Ratio laid down in Dena Bank v. Bhikabai Prabherdas Parckh, 2000 (5) SCC 694 followed. (Paras 3 & 4)

CASES REFERRED

Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., 2000 (4) CTC 170 : 2000 (5) SCC 694...(Para 3).

Mr. A. L. Somayaji, Senior Counsel for Mr. T. Poornam for Petitioner.

Mr. B. Ramesh for Official Liquidator; Mr. V. Raghupathi, Government Pleader for C.T.

Mrs. Pushya Sitaraman for Income Tax.

Revision Petition Disposed of Accordingly

ORDER

Markandey Katju, C.J.

1. This Civil Revision Petition has been filed against the order of the Debts Recovery Appellate Tribunal dated 27.8.2004. We have heard counsel for the parties and have perused the records.

2. The revision petitioner is a secured creditor. M/s. Vibrant Investments & Properties Ltd. was a company which went into liquidation and the question is whether the claim of the petitioner will prevail over the claim of the Income-tax Department and the Karnataka Sales Tax Department.

3. This issue is no longer *res integra* in view of the decision of the Supreme Court in *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.*, 2000 (4) CTC 170 : 2000 (5) SCC 694 vide para 10 where it has been held that the claim of a secured creditor will prevail over crown debts.

4. In view of the above, we modify the impugned judgment of the Debts Recovery Appellate Tribunal dated 27.8.2004 and direct that the claim of the petitioner will prevail over that of the Income-tax Department and the Karnataka Sales Tax Department, but this will be subject to the provisions of Section 529-A of the Companies Act. This revision petition is disposed of accordingly. No costs. Consequently CMP Nos.15322 and 19436 of 2004 are closed.