

a Thimmegowda, he was executing the deed with an intention to maintain the settlee for his life. There is no recital in the deed which may be read or be capable of being construed as a demise *in praesenti* vesting absolute title of the property in Narayani in present or in future. Whatever was given to Narayani and his natural father by the deed was capable of being cancelled or revoked under the power of revocation expressly reserved by Thimmegowda to himself.

b 8. The deed dated 1-8-1969 does not amount to transferring the scheduled property to Narayani. It was only an arrangement, called “settlement” with the power of revocation expressly reserved to the author, subject to which reservation the arrangement was intended to come in effect. It has not been the case of the appellant before us, nor could it have been, that the scheduled property was gifted by Thimmegowda to Narayani. Had it been so, the question of testing the validity of gift by reference to Section 126 or c holding it to be onerous gift within the meaning of Section 127 of the Transfer of Property Act, 1882 could have arisen. We need not dwell further on this aspect of the issue.

d 9. A conditional transfer or a settlement accompanied by conditions is not unknown to the law of real property. It is permissible in law to annex or encumber any grant or alienation with condition or limitation which will operate and the court will give effect to it unless there is some provision of law which annuls or invalidates such condition, restraint or limitation. None has been brought to our notice.

e 10. The High Court has rightly formed an opinion that the deed could be revoked. Nothing has been brought to our notice to take a view to the contrary and hold that such a power of revocation could not have been reserved by Thimmegowda to himself.

11. The appeal is dismissed. The judgment and decree passed by the High Court is maintained. No order as to the costs.

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(BEFORE S. RAJENDRA BABU, DR AR. LAKSHMANAN  
AND G.P. MATHUR, JJ.)

f TEXTILE LABOUR ASSOCIATION AND ANOTHER . . . Petitioners;

*Versus*

g OFFICIAL LIQUIDATOR AND ANOTHER . . . Respondents.

Review Petitions Nos. 1193-1203 of 2001 in IAs Nos. 168-78 of 1997 in  
CAs Nos. 8530-40 of 1983<sup>†</sup>, decided on April 12, 2004

**A. Companies Act, 1956 — Ss. 529-A and 529 — Effect of — Workmen and secured creditors — Dues of and debts due to respectively — Priority inter se and with respect to other dues of company — Held, effect of Ss. 529**

h <sup>†</sup> From the Judgment and Order dated 30-7-1983 of the Gujarat High Court in SCAs Nos. 883, 913 of 1979, 1897 of 1981, 2316, 2384, 2445, 2470, 2977, 4194, 4520 and 2542 of 1982

and 529-A is that workmen become secured creditors by operation of law to extent of their dues, provided there exists a secured creditor by contract — If there is no secured creditor then workmen become unsecured preferential creditors to the extent of their dues — Dues of workmen and debts due to secured creditors are to be treated *pari passu inter se*, and prior to all other dues, and assets of company would remain charged for payment therefor

B. Companies Act, 1956 — S. 529-A — Object of — Held, is that workmen are not deprived of their legitimate claims in the event of liquidation of company

C. Companies Act, 1956 — S. 529-A — Overriding nature of payments under — Held, overrides claims of secured creditors and those under S. 530 — Moreover, S. 529-A overrides all other claims of other creditors even where a decree has been passed by a court

A was a company which was under liquidation. In certain other proceedings, the Supreme Court, by order dated 17-10-1997, had ordered that the claims of one O had to be met in priority over any other claims. The petitioners were labour unions/associations of A and other companies and they sought a review of the order dated 17-10-1997 on the grounds that none of the unions of the workmen or other workmen had been impleaded as respondents therein; nor did the Official Liquidator in the course of his application raise any pleading regarding the priority of disbursement of sale proceeds or application of Sections 529 and 529-A of the Companies Act, 1956.

The respondent submitted that

(a) There was inordinate delay on the part of the review petitioners in approaching the Supreme Court and the review petitioners were aware of the proceedings pending before the Supreme Court in the company proceedings in which they sought for their participation and the High Court had directed them to take appropriate steps in the Supreme Court and they did not do so till October 1999 and they filed a review application only in August 2001; that, therefore, these review petitions were not filed with due diligence.

(b) Inasmuch as *mandamus* had been issued by the Supreme Court as to priority of claims in the matter of payment; that *mandamus* will prevail over any law.

Allowing the review petitions, the Supreme Court

*Held* :

The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists a secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529-A to the extent of the workmen's dues. (Para 8)

Under Section 529-A the dues of the workers and debts due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues. The purpose of Section 529-A is to ensure that the workmen are not deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. (Para 8)

There is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential claims under

Section 530 also. Moreover, Section 529-A will override all other claims of other creditors even where a decree has been passed by a court. (Paras 8 and 9)

- a *UCO Bank v. Official Liquidator, High Court, Bombay*, (1994) 5 SCC 1, *relied on*  
*Assn. of Natural Gas Consuming Industries of Gujarat v. ONGC*, (1983) 2 Guj LR 1437;  
*Industrial Credit and Investment Corpn. of India Ltd. v. Srinivas Agencies*, (1996) 4 SCC 165; *Allahabad Bank v. Canara Bank*, (2000) 4 SCC 406; *A.P. State Financial Corpn. v. Official Liquidator*, (2000) 7 SCC 291, *cited*

- D. Constitution of India — Art. 142 — Nature and scope of power under — Substantive statutory provision dealing with the subject — Primacy of — Held, following SCBA case, (1998) 4 SCC 409, Supreme Court under S. 142 cannot ignore any substantive statutory provision dealing with the subject at hand and it is only a residuary power, supplementary and complementary to powers specifically conferred on Supreme Court by statutes — Therefore mandamus issued by Supreme Court under S. 142 directing certain priority of claims in winding up of company, in which case neither workmen implied nor Official Liquidator raised any pleas relating to S. 529-A, on review, held, to be read subject to S. 529-A, Companies Act, 1956 — Companies Act, 1956 — S. 529-A — Whether overrides order/mandamus passed under Art. 142**
- c

- E. Constitution of India — Arts. 137 and 142 — Review — Grounds for — Affected parties with overriding statutory rights neither implied in the matter nor plea under overriding statutory provision raised by statutory officer concerned before Supreme Court in matter disposed of under Art. 142 — Held, on review, such order made under Art. 142 to be read subject to said overriding statutory provision — Civil Procedure Code, 1908 — Or. 1 R. 9**
- d

- Though the order of the Supreme Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court in *Supreme Court Bar Assn. case*, (1998) 4 SCC 409, that is, the Supreme Court in exercise of its power under Article 142 cannot ignore any substantive statutory provision dealing with the subject and it is only a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties wherever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice. (Para 7)
- e

- Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409, *followed*
- Therefore, claims, if any, of *O* (in whose favour mandamus under Art. 142 had been issued giving priority to its claims) will have to be worked out in accordance with Sections 529 and 529-A of the Companies Act, 1956 as well. The contention advanced on behalf of *O* that if a *mandamus* had been issued, it will prevail over any law is not tenable and is rejected. (Paras 10 and 11)
- f

- F. Constitution of India — Art. 137 — Delay in seeking review — Delay condoned — Reconsideration of — Held, no negligence on part of review petitioners — Hence reconsideration of condonation of delay not warranted**
- (Para 6)

D-M/29940/S

h

Advocates who appeared in this case :

Raju Ramachandran, Additional Solicitor General, Mahendra Anand, A.K. Ganguli, R.F. Nariman, P. Krishnamurthy and Colin Gonsalves, Senior Advocates (Rajan Narain, Ms Puja Sharma, Siddharth Datta, Ms Louleen Bhullar, K.R. Sasiprabhu, Shahid Rizvi, Manish Garg, Ms G. Indira, M.K.S. Menon, Rakesh K. Sharma, Ms Manik Karanjawala, Arun K. Sharma, Ms Vandana Sharma, V. Pal Singh, Ms Pratibha Jain, Sushil Kr. Jain, Vinay Garg, Shri Narain, Sandeep Narain, Ms Anjali Jha, Ms B. Vijayalakshmi Menon, A. Deb Kumar, Sudarsh Menon, B.S. Sharma, K.V. Mohan, P.H. Parekh, Ms Ranjeeta Rohatgi, Promod B. Agarwala, Ms Aparna Bhat and Ms P. Ramesh Kumar, Advocates, with them) for the appearing parties.

**Chronological list of cases cited**

	<i>on page(s)</i>
1. (2000) 7 SCC 291, <i>A.P. State Financial Corpn. v. Official Liquidator</i>	745g
2. (2000) 4 SCC 406, <i>Allahabad Bank v. Canara Bank</i>	745g
3. (1998) 4 SCC 409, <i>Supreme Court Bar Assn. v. Union of India</i>	746e, 746g
4. (1996) 4 SCC 165, <i>Industrial Credit and Investment Corpn. of India Ltd. v. Srinivas Agencies</i>	745f-g, 744e
5. (1994) 5 SCC 1, <i>UCO Bank v. Official Liquidator, High Court, Bombay</i>	745f-g, 747b
6. (1983) 2 Guj LR 1437, <i>Assn. of Natural Gas Consuming Industries of Gujarat v. ONGC</i>	744d

The Judgment of the Court was delivered by

**S. RAJENDRA BABU, J.**— This Court in a set of appeals arising out of certain orders made in a batch of writ petitions by a Division Bench of the High Court of Gujarat in *Assn. of Natural Gas Consuming Industries of Gujarat v. ONGC*<sup>1</sup> examined various aspects of the matter in relation to price fixation and upheld the prices fixed by the appellant and allowed the appeals. However, during the pendency of the appeals in this Court, the interim orders granted by the High Court continued to be in operation and the respondents received gas at Rs 1000 per 1000 m<sup>3</sup>.

2. In IAs Nos. 168-78 of 1997 filed by the Official Liquidator appointed in respect of Ambica Mills Ltd. in Civil Appeals Nos. 8530-40 of 1983, this Court on 17-10-1997 held as under:

“All that is necessary to be said is that out of the assets of the Company under liquidation, the dues of ONGC Ltd., are required to be paid off first and the question of making any payment to any other creditor can arise only out of the surplus, if any, remaining after the full dues of ONGC Ltd. have been paid off. The High Court is, therefore, to proceed with the matter in this manner. IAs stand disposed of.”

3. The petitioners in these review petitions contend that an application had been made before the High Court of Gujarat in Company Application No. 143 of 1997 in Company Petition No. 121 in which the High Court directed that the Official Liquidator should make an application before this Court after impleading the Company concerned; that pursuant thereto, he filed Applications Nos. 168-78 seeking for permission to sell the immovable properties of the Company and to disburse the sale proceeds in accordance with law; that to this application none of the unions of the workmen or other workmen were impleaded as respondents nor did the Official Liquidator in

1 (1983) 2 Guj LR 1437

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- a course of his application raise any pleading regarding the priority of disbursement of sale proceeds or application of Sections 529 and 529-A of the Companies Act; that Petitioner 1 before us is a labour association representing the workmen of Shri Ambica Mills Ltd. and Petitioner 2 is labour union representing the workmen of Ambica Tubes, a division of Shri Ambica Mills Ltd.; that the workmen of these two establishments have not received wages and employment benefits amounting to more than Rs 40 crores by their employer Shri Ambica Mills Ltd.; that on 15-4-1987 this
- b Court had directed ONGC to supply gas to its consumers subject to the undertaking that they would not charge, encumber or alienate any of their immovable assets without the leave of this Court; that Company Petition No. 66 of 1988 was filed for winding up of Shri Ambica Mills Ltd.; that, however, during the pendency of this petition, a reference under the Sick Industrial Companies (Special Provisions) Act, 1985 was filed before the Board for
- c Industrial and Financial Reconstruction (“BIFR” for short); that BIFR forwarded its opinion to this Court under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 to the effect that it was just and equitable that the Company should be wound up; that the opinion of BIFR was registered as Company Petition No. 121 of 1995 and winding-up order came to be passed on 17-1-1997 on Company Petition No. 66 of 1998 with
- d Petition No. 121 of 1995 and others. The petitioners made claim of the outstanding dues of the workmen of Shri Ambica Mills and the Official Liquidator in this regard communicated to the petitioners that he does not have any funds at his disposal and even if the amounts are realised out of sale of the assets he would not be in a position to make any payment to anybody including the workmen, except ONGC in view of the order made by this Court in IAs Nos. 168-78 in CAs Nos. 8530-40 of 1983. Similar letter was
- e also sent to Vatva Industries Mazdoor Sabha on 12-8-1989. The Textile Labour Association received that letter on 6-9-1999. It is only on coming to know from the Official Liquidator that the workmen who are members of the petitioners’ Association would not be able to get their dues, they sought for intervention in the matter.
- f **4.** The basic submission made before us is that the review petitioners were not parties to the proceedings before this Court and on the passing of the winding-up order on 17-1-1997 the provisions of the Companies Act will come into force and will be effective in the light of the decisions of this Court in *UCO Bank v. Official Liquidator, High Court, Bombay*<sup>2</sup>, *Industrial Credit and Investment Corpn. of India Ltd. v. Srinivas Agencies*<sup>3</sup>, *Allahabad Bank v. Canara Bank*<sup>4</sup> and *A.P. State Financial Corpn. v. Official Liquidator*<sup>5</sup>.
- g **5.** Shri Raju Ramachandran, learned Additional Solicitor General appearing for ONGC in these review petitions, submitted that there is inordinate delay on the part of the review petitioners in approaching this

h 2 (1994) 5 SCC 1  
3 (1996) 4 SCC 165  
4 (2000) 4 SCC 406  
5 (2000) 7 SCC 291



Court and, therefore, this Court should recall its order condoning the delay in filing the review petitions. In this context, it is contended that the review petitioners were aware of the proceedings pending before this Court in the company proceedings in which they sought for their participation and the High Court had directed them to take appropriate steps in this Court and they did not do so till October 1999 and they filed review application only in August 2001; that, therefore, these review petitions are not filed with due diligence.

6. It is clear from the records that the order made by the High Court of Gujarat in Company Application No. 193 of 1995 had been filed by Vatva Industries Mazdoor Sabha. The Textile Association were not made a party in these proceedings. No notice was given to them. The Textile Association is a separate union of workmen and had no knowledge of the proceedings with the High Court of Gujarat in relation to Shri Ambica Mills filed by Vatva Industries Mazdoor Sabha. The participation of Vatva Industries Mazdoor Sabha in the High Court of Gujarat was only for the purpose of disbursement of amounts realised from the sale of the finished products and for payment of wages since September 1994 and bonus for 1994-95. It is in these circumstances, it is stated that a direction had been issued by the High Court of Gujarat to the Official Liquidator to make an application for impleading necessary parties and to furnish copies to them and the Official Liquidator did not implead any of these parties. Therefore, no negligence can be attributed to the review petitioners in these cases and, therefore, the order made condoning the delay does not require any reconsideration.

7. It is next contended that inasmuch as *mandamus* had been issued by this Court as to priority of claims in the matter of payment that *mandamus* will prevail over any law. This Court examined the plenary powers of this Court arising under Article 142 of the Constitution of India in *Supreme Court Bar Assn. v. Union of India*<sup>6</sup> and held that: (SCC para 47)

This Court in exercise of its power under Article 142 cannot ignore any substantive statutory provision dealing with the subject and it is only a residuary power, supplementary and complementary to the powers specifically conferred on this Court by statutes, exercisable to do complete justice between the parties wherever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice.

Though the order of this Court in respect of which review is sought for may be read as having been made pursuant to exercise of powers under Article 142 of the Constitution, still the same will have to be read in the light of the decision of this Court in *Supreme Court Bar Assn. v. Union of India*<sup>6</sup>.

8. The effect of Sections 529 and 529-A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under Section 529-A to the extent of the workmen's dues. The purpose of Section 529-A is to ensure that the workmen should not

ICICI LTD. v. AHMEDABAD MANUFACTURING & CALICO PRINTING CO. LTD. 747

- a be deprived of their legitimate claims in the event of the liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except Section 529-A. This section overrides preferential claims under Section 530 also. Under Section 529-A the dues of the workers and debts due to the secured creditors are to be treated *pari passu* and have to be treated as prior to all other dues.
- b **9.** Therefore, the law is clear on the matter as held in *UCO Bank case*<sup>2</sup> that Section 529-A will override all other claims of other creditors even where a decree has been passed by a court.
- c **10.** Therefore, claims, if any, of ONGC will have to be worked out in accordance with Sections 529 and 529-A of the Companies Act as well. The contention advanced on behalf of ONGC by Shri Raju Ramachandran that if a *mandamus* had been issued, it will prevail over any law is not tenable and is rejected.
- d **11.** In the result, we make it clear that order made by this Court on 17-10-1997 in IAs Nos. 168-78 of 1997 in Civil Appeals Nos. 8530-40 of 1983 will have to be read subject to provisions of Sections 529 and 529-A of the Companies Act.
- 12.** The review petitions stand allowed in the manner stated above.

(2004) 9 Supreme Court Cases 747

(BEFORE RUMA PAL AND P. VENKATARAMA REDDI, JJ.)

- e ICICI LTD. . . Appellant;
- Versus*
- AHMEDABAD MANUFACTURING &  
CALICO PRINTING CO. LTD. AND  
ANOTHER . . Respondents.
- f Civil Appeal No. 4410 of 1997, decided on April 15, 2004
- A. Companies Act, 1956 — S. 536(2) — Leave under, when to be granted — Held, to be granted for the benefit of company in liquidation or creditors of company in general — Securing of old debts of one creditor of company in liquidation by creating mortgage ex post facto held, does not in any way enure towards preservation of company's assets or its business or enure to benefit of its other creditors (Para 4)**
- g **B. Companies Act, 1956 — S. 536(2) — Disposition of properties of company to discharge debts of secured creditor — Permission for — Delay in seeking — Single Judge of High Court permitting such disposition for loans advanced after winding-up order, but not those advanced before winding-up order — Division Bench of High Court on appeal not only disallowing appeal but also setting aside part of order in favour of appellant**
- h **secured creditor — During pendency of proceedings company wound up and sale proceeds of its assets coming to be held by Official Liquidator —**