
(1992) 02 BOM CK 0025
In the Bombay High Court
Case No : First Appeal No. 122 of 1982

Abdul Mobin Ansari and others	Vs	APPELLANT
The Maharashtra State Financial Corporation		RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54
State Financial Corporations Act, 1951 — Section 29, 31, 32

Citation : AIR 1993 Bom 48 : (1992) 3 BomCR 338 : (1994) 79 CompCas 236

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : Sri Mehadia, for the Appellant; Sri Nagle, for the Respondent

Judgement

1. This appeal is directed against the order below Exh. 1 dated 4-10-1982 in M.J.C. No. 126/81 decided by Shri R. D. Deshpande, Joint Civil Judge, Akola.

2. The facts giving rise to the instant appeal are as under :

The respondent is the statutory corporation established for the State of Maharashtra, under the State Financial Corporation Act, LX-III of 1951. The appellant No. 1 is the proprietor of the Proprietary concern of M/s. New Maharashtra Iron Industries, situated in M.I.D.C. Area at shed No. W-9, Akola having its office at A. S. Ansari building, Azad Park Road, Old City, Akola.

On 9th December, 1976 the appellants/non-applicants hypothecated to the respondent/ applicant all the plant, machinery, electric and other installations, impliments, equipments, tools, appliances, accessories, move-able assets described in General terms which were incorporated in the Schedule and to that effect entered into the hypothecated agreement for consideration of Rs. 81,000/- and all the terms and conditions were, made known to the non-applicants for which there is no dispute. On 9th December, 1976, Rs. 66,100/- were advanced to the appellants and the receipt was passed in acknowledging the receipt of the amount. On 4th February 1977, a sum of Rs. 2200/- was paid

by the respondent and the same was duly acknowledged. Again on 8th March 1977, an amount of Rs. 9100/- was paid and it was duly acknowledged by issuing receipt. Thus, the total amount of Rs.77,400/- was advanced by the applicant to the non-applicants. The balance loan of Rs. 3600/- was cancelled by the Regional Manager on 21st October 1978.

The non-applicants inter alia agreed and covenanted to pay the principal amount within a period of 10 years by 17 half yearly instalments. The first 16 half yearly instalments of Rs. 4800/- each and 17th instalment being last of Rs. 4200/-. The first instalment was payable on 20th December 1975 and the subsequent instalments were on 20th June and 20th December of each succeeding year and the last 17th instalment was payable on 9th December 1986 with interest " 14 1/2% was to be charged and calculated at the end of every month on the loan outstanding and shall be payable half yearly on the 15th June and December of every year.

That, the appellants/non-applicants have committed default in respect of or in payment of instalments of principal sum and also interest. By 31st August, 1979 the respondent/applicant had to recover the principal sum of Rs. 9600/- and also the interest amounting to Rs. 30,954.66 plus expenses of Rs. 488/-. Consequently, the Regional Manager of the respondent by an order dtd. 7th August, 1979 under the authority confirmed on him by the Board of Directors of the petitioner corporation by its resolution dtd. 28th February 1977 decided to recall the entire loan together with interest and expenses, initiated the proceedings u/s 31 of the State Financial Act of 1951. A recall notice dtd. 26th September 1979 was issued under the registered cover to the non-applicants directing to pay the entire outstanding amount within a week from the receipt of that notice i.e. the principal amount of Rs. 77,400/- plus interest amounting to Rs. 30,954.66 plus expenses of Rs. 488, total outstanding being Rs. 1,08,842.66. The non-applicants not only committed the defaults in payment of instalments due but also not submitted the annual accounts, not commenced production regularly, stopped functioning and also committed serious breaches of terms and conditions and not obtained prior written permission of the respondent for shifting the part of the machinery. The non-applicants did not comply with the notice dtd. 26th September 1977. Therefore, according to the respondent/applicant in the circumstances, the Corporation became entitled to the payments of the hypothecated debt and also entitled to call back the entire loan due under the hypothecation also u/s 31 of the State Financial Act. Similarly, according to the respondent/applicant it being entitled to ad interim injunction restraining the non-applicants/appellants from transferring or removing the plant machinery, equipments and accessories from the hypothecated premises, the respondent/applicant has filed the proceedings under Sections 31 and 32 of the State Financial Corporations Act, 1951. The appellants/non-applicants filed written statements dtd. 7-4-82 vide Exh. 11. It is admitted by the appellants/non-applicants that they received Rs. 77,400/- from the respondent. However, denied the instalment and the interest as alleged in the application. The appellants also

admitted the receipt of notice dtd. 26-9-1979 but denied that they have committed any default as alleged by the respondent. The appellants submitted that the respondent/applicant has no cause of action to file the suit against the non-applicants and prayed for dismissal of the suit.

3. Shri Mehadia, the learned counsel for the appellants has challenged the order of the learned Joint Judge, Akola and contended that the learned Joint Judge, Akola has committed an error in holding the application Exh. 1 in the nature of execution proceedings. As it is held by the learned lower court that the provisions of the CPC are applicable, the learned lower court should have passed the decree. Without passing the decree the whole proceedings are vitiated and has no legal effect and, therefore, the warrant of attachment under Order 21, Rule 54 of C.P.C. is illegal. It is further contended that the learned lower court has not given an opportunity to the appellants to defend their case properly and passed the order only on the basis of the affidavits filed by the parties without recording any evidence. It is also contended that as the appellants denied the claim in reply and affidavit, the learned lower court ought to have investigated and probed into the allegations. Instead of any investigation means probe into the allegations, the learned lower court passed the order. The order apparently is not on merit because there is no discussion of the pleadings, documents and evidence and the findings about the liabilities even disputed. Therefore, the provisions of Section 32(c) of the State Financial Corporations Act will be as illusory. To determine the liability of the appellants is the duty cast upon the trial court and, therefore, there being no discussion on merit, the learned lower court failed to perform his duty. Therefore, the order under challenge is ipso facto illegal and deserves to be set aside.

4. The learned counsel for the parties took me through the plaint, written statement, affidavits of the parties, the order of the learned trial court as well as the relevant provisions of the State Financial Corporations Act and Civil Procedure Code. Section 31 of the State Financial Corporations Act is a special provision for enforcement of claims by the Finance Corporation. The Section 31 of the Act reads as under:

"Special provision for enforcement of claims by Financial Corporations:-- 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 the 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 u/s 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 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."

In short, this section gives power to the Financial Corporation to enforce its claims by simply moving the District Judge by means of the petition and the law would act promptly in the manner laid down in the next section which has been enacted by way of speedy remedy.

Section 32 lays down the procedure to be followed by the District Judge in respect of application u/s 31. Sub-sections (1) and (2) of Section 32 pertain to passing of interlocutory orders. Sub-section (3) provides that if the District Judge so thinks fit he may even examine the officer who makes the application before the issue of an interlocutory order. Sub-section (4) of Section 32 and the rest of its sub-sections provide for the procedure for final determination. Sub-sections (4), (5) and (6) of Section 32 are as under:

Sub-section (4) of Section 32:

At the same time as he passes an order under sub-section (1) the District Judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(4A) If no cause is shown on or before the date specified in the notice under sub-section (1-A), the District Judge shall forthwith order the enforcement of the liability of the surety.

Sub-section (5) of Section 32;

If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the District Judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

Sub-section (6) of the Section 32:

If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

Sub-section (4) of Section 32 of the State Financial Corporation Act provides that a notice shall be issued to the industrial concern to show cause why the order passed should not be made absolute and along with this notice a copy of the order will also be sent.

Sub-section (5) of Section 32 provides that if no cause is shown the District Judge shall forthwith make the interim order absolute.

Sub-section (6), provides for the procedure in case cause is shown the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure.

It is on the basis of sub-section (6) of Section 32, it is contended that the District Judge was bound to investigate the defence set up by the petitioner because in absence of any investigation about it, it could not be said that the claim of the Corporation has been investigated. However, according to the learned counsel for the appellants there being no investigation whatsoever by the learned lower court, the order is illegal and deserves to be set aside. A reliance has been placed on the case of Durlabh Kumar Vs. The District Judge, Indore and Another, . In this case, it is observed:

"the question of default and the justification sought by the petitioner would also fall within the ambit of investigation into the claim. This sub-section also brings in the CPC and also provided that the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the C.P.C."

5. However, Shri Nagle, the learned counsel for the respondent submitted that the proceedings under Sections 31 and 32 of the State Financial Corporations Act, looking at the whole conspectus of provisions in S. 32 coupled with the nature of relief sought u/s 31(1), it becomes clear that special provisions are made for certain types of Reliefs that can be obtained by a Corporation by an application u/s 31(1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property. Nor can it be said to be the proceedings to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. It is further submitted that the form of the application, the nature of the relief, the compulsion to make interim order, the limited enquiry contemplated by sub-section (6) of section 32 and the nature of the relief that can be granted and the manner of execution clearly show that the application u/s 31(1) is neither a plaint as contemplated by Art. I of Schedule 1 nor an application in the nature of a plaint as contemplated by Art 7 of Schedule I of Bombay Court-fees Act. Therefore, it is clear that the

Section 32 of the S.F.C. Act is nothing but an execution proceedings. A reliance has been placed on the case of the Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, . In para 13, their Lordships observed:

"The substantive relief in an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. We are unable to appreciate the view taken by the High Court that the proceeding is not in the nature of execution of a decree because the question of enforcement of the order of attachment or sale would only arise after the same is made absolute under sub-section (7)".

In the same para their Lordships further observed;

"It was said that if cause is shown by the industrial concern it is obligatory upon the Distt. Judge to investigate the claim of the Financial Corporation in accordance with the provision contained in the Civil Procedure Code, 1908, in so far as such provision may be applied thereto. Sub-section (6) of Section 32 of the Act has to be read in the context in which it is placed. The claim of the Corporation is not monetary claim to be investigated though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or instalment thereof and, therefore, the mortgaged property should be sold Sub-sections (6), (7) and (8) of Section 32 read together would give an opportunity to the industrial concern to appear and satisfy the District Judge that the situation envisaged by Section 31(1) has not arisen and the relief should not be granted. In the absence of a provision giving such an opportunity to the industrial concern to whose detriment the order is required to be made a serious question may arise about the constitutional validity of the procedure pre-scribed u/s 31(1) inasmuch as it would be violative of principles of natural justice and that too in a proceeding in a Court of law. The provision contained in subsection (6) does not expand the contest in the application made u/s 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property."

6. In view of the above proposition laid down by their Lordships of the Supreme Court, I do not find any substance in the submissions of Shri Mehadia the learned counsel for the appellants.

6A. Shri Nagle, the learned counsel for the respondent contended that the respondent/Corporation had advanced the loan by 8-3-1977 which is not disputed but in spite of the specific agreement and repeated demands, no instalment was paid till 1982. Hence, the respondent was constrained to institute the proceedings. The plaintiff Corporation is a Corporation and not a Bank. The only object of it to extend assistance to the industrialist after obtaining the loan

from the Reserve Bank of India and that too on interest. Thus, the Corporation is answerable to the Industrial Development Bank of India (IDBR) and Reserve Bank of India. The existence of the Corporation is, thus, depends on the loans from the Reserve Bank and naturally the recovery from the parties to whom the loan has been given by the respondent/Corporation. It is further submitted that the appellants have not shown their bona fide at any time. The appellants never paid any amount either principal or interest, so also not came forward to pay any amount. Though, in the written statement the appellants claimed that they may be granted instalments, considering their past, the instalments were not considered. Similarly they made a vague statement in reply and affidavits. The learned Joint Judge, decided the case on merits giving opportunity to the appellants to file reply and to lead the evidence. It is further submitted by the learned counsel for the respondent that though it is not contemplated u/ Section 32 of the State Financial Corporations Act, 1951, to supply the better particulars to the appellants the details were supplied to him in view of their application filed on 12-1-82 for better particulars. The learned counsel took me through the order sheets. Some important dates of the proceedings are necessary to be reproduced.

- (i) The application u/Ss. 32 and 32 of the Act was presented on 3-9-1981.
- (ii) On 23-10-81 the Non-applicant in person for N.A. 1 and 2 and application was filed vide Exh. 6 for grant of time to file the say, and the same was granted till 15-12-81.
- (iii) On 15-12-81, Advocate Sau Sushma Sharma appeared and filed power for non-applicant Nos. 1 and 2, so also an application for grant of time to file W.S. vide Exh. 9 and the same was granted. The case was posted on 12-1-82.
- (iv) On 12-1-82, the non-applicants filed an application for better particulars and the respondent-Corporation requested for time to file reply and the same was granted till 27-1-82.
- v) 27-1-82, particulars were supplied vide Exh. 10 and the case was posted for hearing on 19-2-82.
- vi) On 9-3-82 the learned Counsel were heard on Exh. 10 and the application for better particulars being belated, it was rejected and the appellants were directed to file W.S. by the next date i.e. 25-3-82.
- vii) On 25-3-82 no written statement was filed. P.O. being on Casual leave the case was adjourned to 7-4-82 for W.S.
- viii) On 7-4-82 the written statement was filed vide Exh. 11 and the case was posted for filing the documents if any.
- ix) The order sheet of 8-6-82 shows that the parties do not want to file the documents.
- x) On 3-7-82 the case was posted for final hearing. On the request of the parties though the case was adjourned to 3-7-82 it was again adjourned to 9-8-82 at

the request of the learned Counsel for the appellants.

xi) On 9-8-82 again the application was filed for adjournment though the case was posted for hearing. The Presiding Officer granted adjournment as a last chance and the case was adjourned to 30-8-82.

xii) On 30-8-82 the case was called out but the learned Counsel for the non-applicants was absent. An application for adjournment was filed to produce the witnesses and the same was granted as the last chance.

xiii) On 1-10-82, an affidavit was filed by the Corporation vide Exh. 19 in lieu of oral evidence, so also the affidavit in lieu of oral evidence was filed by the non-applicants vide Exh. 20 and the case was posted for orders on 4-10-82.

xiv) On 4-10-82 the impugned order was passed on Exh. 1.

7. To provide medium and long-term credit to medium and small scale industries or undertakings, which fall outside the normal activities of the Commercial Banks, a Central Industrial Finance Corporation was set up under the Industrial Financial Corporations Act, 1948. The State Government set up the -similar Corporation in States to supplement the work of the Industrial Financial Corporation. The intention is that the State Corporations will confine their activities to financing the Medium and Small Scale Industries and as far as possible consider only such cases as are outside the scope of Industrial Financial Corporation. Keeping in view the pious object, the respondent-Corporation advanced the loan to the appellants on 8-3-1977 to the tune of Rs. 77,400/- and it was agreed upon with the appellants and respondent that the appellants would satisfy the loan amount with interest on easy instalments. But, in spite of the repeated demands, the appellants failed to pay any instalment and not came forward showing the bona fides of repayment of the loan amount. If the loan amount is not recovered at the earliest possible, then it will be difficult for the Corporation to provide such loans to other Small Scale Industries and other small units. Therefore, as a speedy remedy the special provisions have been enacted in form of Sections 31 and 32 of the State Financial Corporations Act.

8. Shri Mehadia, the learned Counsel for the appellants strenuously submitted that there is no investigation as contemplated under sub-section (6) of Section 32 of the State Financial Corporations Act, 1951 and the appellants were denied the opportunity to substantiate their claim. As pointed out earlier and the order sheets speak that the appellants were given opportunity even to lead evidence and to file the documents to prove that they have committed no default in making repayments, as also committed no breaches of the terms and conditions of the agreement and thereby not to attract the provisions of Sections 31 and 32. But, no documents have been filed. So also except the filing of an affidavit, no evidence is led. It is, thus, crystal clear that though the proceedings are in the nature of the execution proceedings; full scope was given to the appellants to rebut the allegations of the respondent-Corporation but the appellants failed to rebut the allegations and substantiate their defence. Thus, there is no scope to

make any grievance.

9. In view of the above discussions, there is no substance in the appeal and, therefore, it is dismissed with costs.

10. Appeal dismissed.