(1986) 06 KL CK 0025

In the High Court Of Kerala

Case No : C. R. P. No. 91 of 1984

A.K. Kochumoideen and Others — APPELLANT

Vs

The K. F. C. and Another — RESPONDENT

Date of Decision : 20-06-1986

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30, 31, 31(1), 32
Transfer of Property Act, 1882 — Section 69

Citation : (1986) 23 KLJ 771

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : P.K. Balasubramanyan, S.V. Balakrishnan Iyer and K Jayakumar, for the Appellant; K.S. Rajamony, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath J.

1. Respondents in a proceeding initiated before the District Judge by the Kerala Financial Corporation u/s 31 of the State Financial Corporations Act, 1951 are the revision petitioners before me. In the proceedings before the learned District Judge the revision petitioners filed an application requesting the court to grant leave of the court to issue notice to third parties under order VIIIA of the Code of Civil Procedure. The revision petitioners said that third parties are liable to contribute to liquidate the loan. The court below considered the question whether it has got jurisdiction to grant leave to the revision petitioners to issue notice to third parties under order VIIIA of the Civil Procedure Code.

2. After considering very ably the relevant aspects of the matter the court below held that the proceedings contemplated under order VIIIA of the CPC are inapplicable to a proceeding initiated u/s 31 of the State Financial Corporations Act, 1951. The application filed by the revision petitioners was rejected.

3. They are aggrieved and they file this Civil Revision Petition. The only question

that I should consider in this Civil Revision Petition is whether the District Judge, who is enjoined to make an investigation as per the provisions of Sections 31 and 32 of State Financial Corporations Act is empowered with the jurisdiction to allow the debtor to initiate proceedings under order VIIIA of the Code of Civil Procedure. Certainly I have to examine first the relevant provisions of the State Financial Corporations Act. Provisions apposite arc Ss 31 and 32. Relevant parts of Sections 31 and 32 of the Act read thus:

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 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 authorized 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 property pledged, mortgaged, hypothecated or assigned to the (Financial Corporation) as security for the loan or advance;

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.

32. Procedure of District Judge in respect of applications u/s 31.-

(1) x xx

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) 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.

(7) After making an investigation under sub section (6), the District Judge may-

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(2) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

4. In a different context these sections came up for interpretation by the Supreme Court in The Gujarat State Financial Corporation v. M/s Natson Manufacturing Co. Pvt Ltd, and others (MR 1978 SC 1765). The question before the Supreme Court was whether in a proceeding u/s 31 (1) of the State Financial Corporations Act the industrial concern is bound to pay ad valorem court fee. The Supreme Court came to the conclusion that the proceedings before the District Judge u/s 31(1) is a special proceeding and is not a suit between a mortgagee and the mortgagor for sale of mortgaged property. Further the court observed that the scheme of the special provision made in the State Financial Corporations Act could not be styled as a substantive remedy for the relief of payment of mortgage money by sale of mortgaged property. It was also held that the proceedings cannot be treated as one to obtain a substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. The Supreme Court considered the form of the application, the nature of the relief, the compulsion to make interim order and the limited scope of the enquiry contemplated under subsection (6) of S 32 and the manner in which and the nature of the relief that can be granted by the court and came to the conclusion that all those factors indicated that the proceedings u/s 31(1) is "neither a plaint as contemplated by Article 1 of Schedule I nor an application in the nature of a plaint as contemplated by Article 7 of Schedule T of Bombay Court-fees Act."

5. The counsel points out that sub-clause (6) of Section 32 enjoins the District Judge with the obligation 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 Certainly the counsel for the petitioners relied very much on this sub section and submitted that the District Judge has to direct his investigation in accordance with the provisions of the CPC and the mandate in this provision will clothe the District Judge with all the power he can exercise under the CPC including the power to grant leave of the court to issue notice under order VIIIA of the Code of Civil Procedure. When stated in this fashion the counsel''s submission has ostensive persuasiveness. But a closer examination of this provision with the other provisions in the Act would demonstrate the superficiality of this submission. Sub section (7) of Section 32 makes it clear that the District Judge has got only the power "to confirm the

order of attachment and direct the sale of the attached property". Of course, the District Judge has got power to vary the order of attachment and direct the sale of the attached property. And the other powers granted to the District Judge under clauses c, d and e of sub section (7) also refer only to the attachment of the property and the injunction granted by this District Judge. A further power that is given to the District Judge is to order the transfer of the management of industrial concern to the Financial Corporation or reject the claim made in this behalf. The question is whether the District Judge has got the power when he is exercising his jurisdiction u/s 32 of the State Financial Corporations Act to direct a third party to contribute or indemnify the respondents in an application u/s 31 of State Financial Corporations Act exercising power under order VIIIA of the Code of Civil Procedure.

6. Order VIIIA of the CPC is really a special provision whereby a defendant has given the power to point out when a claim is made against him that he is not really liable to pay the amount claimed by the plaintiff saying that there is a third party who has got the liability to pay all the debts or to contribute towards the liquidation of the debt. He can also claim an indemnity against a person who is not a party to the litigation. The policy behind this rule is that the defendant who has got a claim against the 3rd party need not be driven to a fresh suit against the third party to put the indemnity in his favour into operation or to establish his entitlement to contribution from the third party. The claims and rights inter se of the defendant and the third party have to be decided in a third party proceedings This decision which has got the force of a decree can necessarily be after resorting to the entire procedure prescribed for a trial of a suit. A determination of the rights and claims of the debtor against a third party is not at all contemplated by the legislature in prescribing a summary procedure for the realisation of a debt due to a Corporation coming within the State Financial Corporation Act. Certainly District Judge is not exercising his normal powers He is exercising a special power under a special statute in a somewhat summary manner. My investigation as to the width of that power of the District Judge should be confined within the confines of the provisions of the Act. I should see the power explicit or implicit to grant leave to issue notice under VIIIA of the CPC in the provisions of the Act itself. His power is delineated in sub section (7) of Section 32 of State Financial Corporations Act. It is only a limited power that has been granted by this section to the District Judge. Really speaking it is an ad hoc power since the creditor Corporation is retaining all the powers under the CPC and under the general law to realise the debt. Plainly speaking the creditor can file a suit for the realisation of the amount notwithstanding the provisions contained in the State Financial Corporations Act. In view of these limitations [feel that the District Judge has no power to grant leave under order VIIIA of the Code of Civil Procedure.

In these circumstances I feel the learned District Judge rightly placed reliance on the decision reported in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, and rejected the application properly. I see no merit in the Civil Revision Petition and it is accordingly dismissed.