

(2002) 06 GAU CK 0048
In the Gauhati High Court
Case No : Second Appeal No. 76 of 1996

Baba Siva Ice Factory

APPELLANT

Vs

State Financial Corporation and Another

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 2, 11
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2004) GLT 603 Supp

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S.K. Saha, for the Appellant; B.K. Goswami and T. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This appeal is devoid of any merit and shall stand dismissed. This appeal has been filed against the judgment and decree dated 12/12/95 passed by the learned Assistant District Judge, Dhubri in Title Appeal No. 64/93. By the impugned judgment, the learned Judge dismissed the appeal and affirmed the judgment and decree dated 26.7.93 passed by the learned Munsiff No. 1, Dhubri in Title Suit No. 361/1989.

2. The brief facts are as follows: The Plaintiff is a small scale Industry and with a view to produce ice an amount of Rs. 94,000/- (Rupees ninetyfour thousand) was obtained by the Plaintiff as loan from Defendants No. 1 and 2. Ultimately the Plaintiff suffered huge loss and as such the Plaintiff could not repay the amount of loan to the Defendants except an amount of Rs. 6803/- (Rupees six thousand eight hundred three). In that view of the matter the Assam Financial Corporation on 20.6.87 in exercise of the power u/s 29 of the State Financial Corporation Act locked the Factory. At that stage a suit was filed being Title Suit No. 37/88 for injunction. But as in the mean time the possession was taken by the Corporation

that suit was withdrawn with liberty to file it afresh. On 20.1.89 the Defendant No. 2 in violation of the earlier order of injunction seized the machineries from the factory and threatened the Plaintiff to demolish the house of the factory. The present suit was filed for a declaration that the action of the Corporation is illegal and they are entitled to get back the possession of the factory. The other prayer was that the house on the land should not be demolished or the land should not be sold.

3. The suit was contested by the Defendants. Their contention was that the Corporation has the right to seize, attach and sell the properties mortgaged and hypothecated by the Plaintiff. The learned Munsiff on consideration of the materials on record dismissed the suit. As indicated above there was an appeal and the appeal was also dismissed.

4. Only two questions are urged as the substantial questions of law and they are as follows:

(i) That in exercise of the power u/s 29 of the State Financial Corporation Act without having an order from the learned District Judge as required u/s 31 of the Act, the Corporation had no power to lock and seize the goods etc.

(ii) That the finding of the Court below that the suit is barred under Order 23, Rule 2 of the CPC and Section 11 of the CPC is not correct finding. Further finding of being barred by res-judicata is not correct finding.

5. The first question is no longer res-integra in view of the decision of the Apex Court reported in AIR 1993 S.C. 1435 (U.P. Financial Corporation, Appellant v. M/s. Gem Cap (India) Pvt. Ltd. and Ors. Respondents) wherein the Supreme Court in Paragraph-10, inter-alia, pointed out as follows:

10. It is true that the Appellant Corporation is an instrumentality of the State created under the State Financial Corporation Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances repayable within a period not exceeding 20 years from the date of loan. We agree that the Corporation is not like an ordinary money lender or a Bank which lends money. It is a lender with a purpose-the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor can not be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialization at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation can not be carried to the extent

of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone can not be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of facts shows that the Respondents have no intention of repaying any part of the debt. They are merely putting forward one or other play to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These Corporations are not sitting on king Solomon's mines. They too borrow monies from Government or other financial corporations. They, too have to pay interest thereon. The fauness required of it must be tempered-nay, determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ Court has no say except in two situations (1) There is a statutory violation on the part of the Corporation or (2) Where the Corporation acts unfairly i.e. unreasonably. While the former does not present any difficulty, the later needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate authority over the acts and deeds of the Corporation and seek to correct them? Surely it can not be. That is not the function of the High Court imder Article 226. Doctrine of fairness, evolved an administrative law was not supposed to convert the writ Courts into appellate authorities over administrative authorities. The constraints-self imposed undoubtedly of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

6. U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, wherein the Supreme Court pointed out that the Corporation's action u/s 29 can not be questioned by the Court unless malafide is shown.

7. In that view of the matter the Corporation has the power to take action, as was done in the case u/s 29 of the Assam State Financial Corporation Act. In that view of the matter once this finding is arrived, there is no need to decide the Question No. 2. Accordingly this apeal shall stand dismissed.

8. I have heard Shri S.K. Saha, learned Counsel for the Petitioner and Shri B.K. Goswami, learned Senior Advocate assisted by Mrs. T. Goswami, leamed counsel for the Respondents.