(1987) 08 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 711 of 1983

Beegee Corporation Private Ltd. APPELLANT

Vs

Punjab Financial Corporation RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 11, Order 34 Rule 6, 34
State Financial Corporations Act, 1951 — Section 31 , 32

Citation : AIR 1988 P&H 231 : (1988) 1 ILR (P&H) 506

Hon'ble Judges : H.N. Seth, C.J;M.S. Liberhan, J

Bench : Division Bench

Judgement

H.N. Seth, C.J.—This appeal under Clause X of the Letters Patent applicable to this Court, is directed against the judgment of a learned single Judge of the Court dt. May 13, 1983.

2. Briefly stated, the facts giving rise to this appeal are that on Dec. 16, 1966, M/s. Beegee Corporation (P.) Ltd. (appellant) obtained a loan of Rs. ten lacs from Punjab Financial Corporation after mortgaging its assets. On Feb. 6, 1971, the Corporation moved an application under Ss. 31 and 32 of the State Financial Corporations Act, 1951, for determination of the loan and for the sale of the mortgaged property. On Aug: 21, 1972, it was agreed between the parties that Rs. 11,00,875/- was payable by the Company to the Corporation. The parties further agreed to the mode of payment of the same by installments as also the payment of 9 per cent interest and in default for payment an additional interest of 1/2 per cent. However, the appellant having committed default in the payment of installments, the Corporation moved the District Court on Feb. 5, 1974, for taking further steps for recovery of Rs. 5,50,470/- which was due to it from the Company. The Company filed objections which did not find favour with the District Judge. Ultimately when the mortgaged property was going to be put to auction, one of the shareholders of the Company sought. permission to negotiate a private sale vide his statement dated July 24, 1980 and four months time was allowed to complete the sale. M/s. Pushap Industrial Corporation, Patiala, came

forward to purchase the property of the Company for ten lac rupees. However, the sale did not materialise because objections were filed by the shareholders of the Company that the value of the assets of the Company was much higher. At that time, it was stressed on behalf of the Company that Rs. 10,24,000 was due from it to the Corporation on Feb. l, 1980. Ultimately, by order dated Dec. 1, 1980, learned Additional District Judge determined that Rs. 10,25,000.95 was due to the Corporation from the Company. After this determination, the Additional District Judge proceeded to put the assets of the Company to auction, but before it could be done, the Company came to this Court in F.A.O. No. 261 of 1981 and obtained an order staying auction on the condition that it deposited Rs. 1,83,000/- with the Corporation on or before June 2, 1981.

3. As the appeal came up for hearing, learned counsel for the Company questioned the validity of the order passed by the Additional District Judge determining the amount for which the auction was to take place as Rs. 10,25,020.95 on following three grounds :--

(1) That under Ss. 31 and 32 of the State Financial Corporation Act, the Court had to determine the liability of the loanee only up to the date of the application under S. 31 of the Act and to thereafter proceed to sell so much of the property of the loanee as would be sufficient to satisfy such liability.

(2) The subsequent application filed by the Corporation on Feb. 5, 1974, was in continuation of the original application. dt. Feb. 6, 1971, and, as such, the properties of the loanees could not be sold for recovery of any sum in excess of Rs. 5,30,417.00; and

(3) According to compromise entered into by the parties on Aug. 21, 1972. the loanee could not be made liable to pay compound interest.

4. The learned single Judge repelled all the three submissions made on behalf of the appellant Company. So far as the first two submissions were concerned, the learned Judge held that in proceedings under Ss. 31 and 32 of the Act, the liability which the loanee had incurred up to the date, and not merely the liability, which it had incurred up to the date of the application, had to be taken into account. In this regard the loanee had accepted that a sum of Rs. 10,24,000 was due from it on Feb. 1, 1980, and that it had incurred some further liability thereafter with the result that the total amount recoverable from it became Rs. 10,25,020.95 He also considered the terms of the compromise dt. Aug. 21, 1972, in which reference had been made of the original mortgage deed as well, and held that the Corporation was justified in charging compound interest. In the result, he dismissed the appeal.

5. Being dissatisfied, the appellant has preferred the present appeal under Clause X of the Letters Patent and this is how the matter has come up before us.

6. The only submission made by learned counsel for the appellant before us is that the learned single Judge has erred in holding that for purposes of

proceedings under Ss. 31 and 32 of the State Financial Corporations Act, the Additional District Judge could not take into account the up to date liability of the loanee. According to him, for this purpose, the Additional District Judge was concerned with the liability of the loanee as on the date of the application under S. 31 of the Act.

7. In the case of Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, , the Supreme Court while considering the question whether the provisions of S. 34 of the Civil P. C. or that of O. 34, R. 6 of the Code, would apply to proceedings under S. 31 of the Act, observed thus :--

"If as held by this Court the proceeding instituted under S. 31(1) of the Act 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 no question of passing any order under S. 34 of the Code would arise since S. 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. It may also be mentioned here that even under the Code the question of interest payable in mortgage suits filed in civil courts is governed by order 34, rule 11 of the Code and not by section 34 of the Code which may be applicable only to cases of personal decrees passed under O. 34, R. 6 of the Code. The High Court was right in holding that interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed under S. 32 of the Act. We hold that the decision of the Karnataka High Court, referred to above; which has applied section 34 of the Code to a proceeding instituted under S. 31(1) of the Act is not correctly decided."

8. In view of this clear pronouncement made by the Supreme Court, it is not possible to accept the appellant''s submission that the learned single Judge had erred in holding that for purposes of proceedings under Ss: 31 and 32 of the State Financial Corporation Act, the District Judge was concerned with loanee''s up to date liability and not his liability as on the date of application under S. 31 of the Act. The learned Judge, in our opinion correctly held that the amount for which property had to be sold had to be computed by taking into consideration loanee''s up to date liability in accordance with the terms of agreement entered into by him.

9. Learned counsel for the appellant did not make any submission questioning the finding of the learned single Judge that the agreement entered into between the parties on Aug. 21, 1972, in which reference had also been made of the original agreement, clearly stipulated that loanee was liable to pay compound interest.

10. As we do not find any merit in the only argument advanced on behalf of the appellant, the present appeal fails and is dismissed with costs.

11. Appeal dismissed.