

(1998) 02 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2662 of 1996

Chopra Industrial Complex	Vs	APPELLANT
Punjab Financial Corporation and Another		RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (1998) 119 PLR 477 : (1998) 2 RCR(Civil) 245

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Suvir Sehgal, for the Appellant; Arun Nehra, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—This petition has been directed against the order dated 23.1.1996 passed by the learned additional District Judge, Jalandhar. By this order the learned Additional District Judge dismissed the appeal of the petitioner-plaintiff and confirmed the order dated 14.12.1994 passed by the learned trial Court refusing the stay against public auction of the disputed properties.

2. Briefly stated the facts of the case are that the petitioner-plaintiff filed a suit for redemption by way of release of the properties mentioned in the plaint which were held by the respondent mortgagee corporation vide mortgage deeds dated 30.3.1979 and 11.10.1984 and for a direction to the defendant corporation to give the peaceful and physical possession of the properties. Alongwith the plaint, the plaintiff-petitioner filed an application under Order 39, Rules 1 and 2 read with Section 151 C.P.C. for interim injunction to the effect that the defendant corporation be restrained from alienating, selling, leasing or mortgaging in any manner whatsoever the properties and machineries of the plaintiff. The said application was dismissed by the learned Sub Judge, Jalandhar vide order dated 14.12.1994. The aforesaid order dated 14.12.1994 was challenged by the petitioner-plaintiff before Additional District Judge, Jalandhar, who vide his order

dated 23.1.1996, dismissed the appeal filed by the petitioner. The said order dated 23.1.1996 passed by the learned Additional District Judge, Jalandhar has been challenged in the present petition.

3. This petition came up for hearing on 8.11.1996 and notice of motion was issued to the respondent and it was directed that the auction proceedings would continue but the sale would not be confirmed till further orders. On 3.9.1997 the learned counsel of the petitioner stated in the Court that if the property which was taken in possession by the respondent corporation, was returned to the petitioner, he would pay the entire amount to the corporation. In view of this statement, the learned counsel of the respondents was directed to produce the inventory prepared at the time of taking over the possession and to find out whether all the articles shown therein were lying at the site. In compliance of this order affidavit dated 13.1.1998 of Sh. Rameshwar Mehta, Assistant General Manager (Legal), Punjab Financial Corporation, Chandigarh was filed. In this affidavit, it has been stated that the industrial unit of the petitioner was taken over by the Corporation u/s 29 of the State Financial Corporation Act, 1951, and the possession of the industrial unit was taken over on 20.7.1994 by the team comprising of three officers. It is further stated that at the time of take over, none on behalf of the petitioner was present and no item of machinery was found at the site when the possession was taken over. Copy of the inventory prepared by the team was attached alongwith this affidavit.

4. Mr. Sehgal, the learned counsel appearing on behalf of the petitioner submitted that the respondent corporation had earlier filed a suit u/s 31 of the Act on 16.7.1988 and the said suit was dismissed as withdrawn on 20.7.1994. He, therefore, contended that once the respondent corporation had taken action u/s 31 of the Act, the Corporation was estopped from taking action u/s 29 of the Act. The learned counsel further submitted that in any case the respondent Corporation was required to afford an opportunity of hearing to the petitioner before passing any order u/s 29 of the Act. In support of his submission, the learned counsel placed reliance on a Division Bench Judgment of this Court in Subhari Papers (P.) Ltd. Vs. Haryana Financial Corporation and Others, . The learned counsel further submitted that in case the auction of the suit properly was not stayed, the suit filed by the petitioner for redemption of the property would become infructuous. In support of this submission, the learned counsel placed reliance on a judgment of the Supreme Court in New Kenilworth Hotels (P) Ltd. Vs. Ashoka Industries Ltd. and Others, . Lastly, the learned counsel submitted that the petition filed by the respondent corporation u/s 31 of the Act was withdrawn on 20.7.1994 and on the same day Section 29 of the Act was invoked against the petitioner and this clearly showed arbitrariness on the part of respondent corporation.

5. Mr. Nehra, the learned counsel appearing on behalf of the respondent corporation submitted that in terms of law laid down by a Full Bench of this Court in Haryana Financial Corporation Ltd., Chandigarh Vs. Bags and Cartons and

another, , there was no bar to invoke action u/s 29 of the Act to take over the management and possession of the property after the proceedings u/s 31 of the Act have been abandoned by the corporation. He further submitted that the point that no opportunity of hearing was granted before invoking Section 29 of the Act, has not been raised by the petitioner in the plaint. As regards the case of New Kenilworth Hotels (P) Ltd. (supra) the learned counsel submitted that the judgment in this case is not applicable as the petitioner has failed to deposit the entire sale money including the sale expenses so far.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the records. It is not disputed that the action u/s 29 of the Act was taken by the corporation only after the petition filed by the corporation u/s 31 of the Act had been dismissed as withdrawn. Since, the petition u/s 31 of the Act had already been dismissed as withdrawn, the action of the respondent corporation invoking Section 29 of the Act to take over the management and possession of the property of the petitioner was legal and valid in view of the law laid down by the Full Bench of this Court in the case of M/s. Bags and Cartons (supra). As regards the contention of the learned counsel for the petitioner that the petitioner was not afforded opportunity of hearing before invoking Section 29 of the Act, I do not find any merit in this contention as this plea has not been taken in the suit filed by the petitioner-plaintiff. This point was not taken even before the learned lower appellate Court.

7. I also do not find any merit in the contention raised by the learned counsel of the petitioner that the suit of the petitioner -plaintiff would become infructuous in case the auction of the suit property was not stayed. As held by the full Bench in the case of M/s Bags and Cartons (supra) after initiating proceedings u/s 29 of the Act, the financial Corporation can take over the management and possession of the property and it can carry out the sale or transfer as provided u/s 29 of the Act. The judgment of the Supreme Court in New Kanilworth Hotels (P) Ltd. (supra), is of no assistance to the petitioner as in that case it was held that so long as the sale is not confirmed, the debtor has a right to deposit the entire sale money including the sale expenses, and poundage fee and the court is under the statutory duty to accept the payment and direct redemption of the mortgage. In the present case the petitioner was given an opportunity to make the payment of the entire amount but on 3.2.1998 the learned counsel of the petitioner made a statement that the petitioner was not prepared to make the payment of the entire amount.

8. In view of the above discussion, I do not find any merit in this petition. Accordingly, the petition is dismissed.