
(2008) 11 AP CK 0024
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5343 of 2002

D. Lakshmi

APPELLANT

Vs

A.P. State Financial Corporation and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2009) 1 ALD 834 : (2009) 1 ALT 143

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : G. Rama Gopal, for the Appellant; Y. Neela Lohitha Sastry and O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The second respondent, by name, Hima Bindu Cements Private Limited, Visakhapatnam, borrowed a sum of Rs. 19,22,431/- from the first respondent-Corporation. The primary assets of the second respondent-Company were offered, as security for repayment of the loan. In addition to that, the petitioner figured, as a surety and an extent of 0.33 cents of land was mortgaged. On the ground that the second respondent committed default in repayment of the loan, the first respondent brought the property mortgaged by the petitioner, to sale, on 6-12-2001. The third respondent is said to have emerged as the highest bidder. The petitioner complains that she was totally kept outside the proceedings of the sale, so much so, she was not informed of the amount that is fetched in the auction, much less the particulars of the highest bidder. She also states that she was never given an opportunity to foreclose the mortgage and that the first respondent did not follow the procedure to be followed before a mortgaged item is brought to sale.

2. The first respondent filed a counter-affidavit stating that the property of the petitioner was brought under sale by invoking its powers u/s 29 of the State Finance Corporations Act, (for short "the Act"). It is stated that the prescribed

procedure was followed and it was only after the principal borrower and the petitioner committed default that the property was sold.

3. The third respondent also filed a counter-affidavit stating, inter alia, that he purchased the property by emerging as highest bidder. It is stated that the petitioner did not take any steps to clear the amount due at the relevant point of time and that valuable rights have accrued to him, on account of payment of the entire consideration and execution of sale deed in his favour.

4. Sri G. Rama Gopal, learned Counsel for the petitioner, submits that the sale of property of the petitioner is illegal and untenable, for more reasons than one. He contends that Section 29 of the Act cannot be invoked vis-a-vis the properties of a surety and that neither a reserve bid, nor valuation of the property was undertaken before the property was sold. He further contends that the first respondent denied to the petitioner, the right of redemption of a mortgage.

5. Learned Counsel for the first respondent submits that Section 29 of the Act is very wide in its scope and since the property of the petitioner was mortgaged for redemption of the loan, no illegality can be said to have taken place. He submits that the value of the property was properly assessed before it was sold. It is also his case that the petitioner was given ample opportunity to redeem the mortgage.

6. Sri O. Manohar Reddy, learned Counsel for the third respondent, submits that his client is a bonafide purchaser for valuable consideration and even if there is any illegality in the sale conducted by the first respondent, the petitioner has to work out his remedies by claiming damages or other relief and the sale cannot be set aside.

7. It is not in dispute that the second respondent borrowed the amount from the first respondent and committed default in repayment of the same, the petitioner figured as a surety. An extent of Ac.0.33 cents of land owned by her was mortgaged. The same was brought to sale by the first respondent and the third respondent purchased it.

8. The first ground urged by the petitioner is that Section 29 of the Act cannot be invoked vis-a-vis the properties of a surety or guarantor. Reliance is placed upon the judgment of the Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, Learned Counsel for the respondents, on the other hand, relied upon the judgments of the Jasbir Kaur and Another Vs. Punjab State Industrial Development Corporation Ltd., Chandigarh and Another, and A.N. Ponnappan Vs. Kerala Financial Corporation and The Branch Manager, .

9. In Karnataka State Financial Corporation's case (1 supra), the Hon'ble Supreme Court analyzed various provisions of the Act, in detail. It was categorically observed that the extraordinary procedure prescribed u/s 29 of the Act is available to a State Financial Corporation, only against the properties of the "industrial concern" and not that of the sureties or guarantors. It was observed in para 37 as under:

The legislative intent, in our opinion, is manifest. The intention of Parliament in enacting Sections 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern, Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. Parliament intended to provide an additional remedy for recovery of the amount in favour of the corporation by proceeding against a surety only in terms of Section 31 of the Act and not u/s 29 thereof.

10. Therefore, hardly any doubt exists that a State Financial Corporation cannot invoke its power u/s 29 of the Act vis-a-vis the properties of a guarantor or surety. It is no doubt true that a Division Bench of Punjab and Haryana High Court and a Full Bench of Kerala High Court, in the judgments referred to above, have taken the view that Section 29 of the Act is wide in its scope and would cover the properties of sureties also.

11. In view of the judgment of the Supreme Court in Karnataka State Financial Corporation's case (1 supra), the said judgments cannot be treated as laying good law. Admittedly, the property of the petitioner was proceeded against by the first respondent invoking its power u/s 29 of the Act. The same is contrary to the judgment of the Supreme Court, and thereby, the sale is liable to be set aside.

12. The second ground urged by the petitioner is that the first respondent did not undertake proper evaluation of the property, nor did it stipulate any reserve bid. In *Gajraj Jain Vs. State of Bihar and Others*, , the Hon''ble Supreme Court held that the State Financial Corporations have to exercise their power u/s 29 of the Act in a reasonable manner and that the effort must be to secure the highest value of the assets. Stipulation of a reserve bid, and proper evaluation of the property were held to be conditions precedent, before a property can be brought into sale u/s 29 of the Act. Such a procedure, admittedly, was not followed in the instant case.

Even if the property could have been proceeded u/s 29 of the Act, the first respondent was under obligation to enable the petitioner to redeem the mortgage, at any stage, still (sic. till) the sale deed was executed in favour of the highest bidder. The conduct of the first respondent, in this regard, is not at all satisfactory. The respondents did not even accede to the request of the petitioner to furnish the particulars of the bid as well as bidder. The letter addressed by them on 19-3-2002, vouches for their conduct. The result is that the right of the petitioner to redeem the mortgage was denied. The cumulative effect is that the sale of the property of the petitioner, by the first respondent, in favour of the third respondent, cannot be sustained in law.

13. The Writ Petition is accordingly allowed as prayed for. The first (sic. third) respondent shall be entitled to be refunded the amount deposited. Since the first respondent had the benefit of that amount, it shall be under obligation to pay

interest at 9% per annum on the said amount. There shall be no order as to costs.