(2002) 03 DEL CK 0056

In the Delhi High Court

Case No : CM (M) No. 225 of 1996

Delhi Financial Corporation APPELLANT

Vs

Shri Harish Chander Gulati RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Citation : (2002) 5 AD 256 : (2004) 120 CompCas 223 : (2002) 97 DLT 577 : (2002) 62 DRJ 705 : (2004) 55 SCL 11

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : Gautam Awasthi and Poonam Sharma, for the Appellant; Rani Chhabra, for the Respondent

Final Decision : Allowed

Judgement

Mahmood Ali Khan, J.—The Short question that arises for adjudication in this civil main petition filed under Article 227 of the Constitution of India is whether the petitioner Delhi Financial Corporation can resort to both of the remedies available u/s 31 and Section 32(G) of the State Financial Corporation Act, 1956 (the Act in short) for recovery of any loan or advance outstanding against the industrial concern.

2. The factual metric of the case as disclosed by the pleadings of the parties are as follows. The petitioner Delhi Financial Corporation (the Corporation) sanctioned a loan of Rs. 6,50,000/- to M/s. Durgesh Copper & Brass Rolling Mills, Delhi, of which Mr. Durgeshwar Parshad Bhatnagar was the sole proprietor, against hypothecation of its property. Mrs. Renu Bhatnagar, w/o Mr. H.P. Bhatnagar and Mr. Harish Chander Gulati, (who is respondent herein) stood sureties for due repayment of the loan advanced. Out of the sanctioned amount of Rs. 6,50,000/- the borrower availed of a sum of Rs. 1,42,000/-. He committed default in payment of the Installments of the loan amount in terms of the agreement which led to the filing of the proceeding u/s 31(1) of the Act before the District Judge for recovery of a sum of Rs. 1,98,824.41/- with interest at the

stipulate rate in accordance with mortgage deed dated 9.4.1979 calculated from 1.10.1982 till the date of the realisation beside incidental and miscellaneous charges and the cost by putting on sale the property and assets mortgaged by the respondents as security of the loan. The principal borrower M/s. Durgesh Copper and Brass Rolling Mills. Mr. Durgeshwar Prasad Bhatnagar were imp leaded as respondents No. 1 & 2 and sureties Mrs. Renu Bhatnagar and Mr. Harish Chander Gulati (Respondent herein) were arrayed as respondents No. 3 & 4 respectively. This application was disposed off by an Additional District Judge by an exparte order dated 16.2.1983. The relevant extract of the finding and the operative potion of the order is as under:-

"As far as respondents 3 and 4 are concerned they are alleged to be the guarantors. In these proceedings u/s 31 r/w. Section 32 of the Act no action can be taken against the guarantor/surety. In the circumstances of this case, respondents 3 and 4 have been wrongly imp leaded as party in this case and no relief can be granted against them ..... Considering the evidence on record and circumstances of this case, I hereby order that petitioner is entitled to recover Rs. 1,98,824.41/- with costs and with pendente lite and future interest @ 16.1/2% p.a. till realisation from respondent 1 and 2 only. The order of attachment is made absolute and the order of temporary injunction is confirmed. The petitioner will be entitled to recover this money from the sale of the mortgage hypothecated property as mentioned in Schedule ''A'' of the mortgage deed Ex. P.2. The mortgage deed Ex. P.2 shall form part of the decree. The petition against respondents 3 and 4 is dismissed. Decree is passed accordingly".

3. Instead of executing the order of the Additional District Judge dated 16.2.1983 it seems that the petitioner approached the authority appointed u/s 32 (G) of the Act for issue of a certificate of recovery of its outstanding dues against the principal debtor and the surety. Accordingly, Mr. R.D. Kapoor in exercise of the power vested in him u/s 32(G) of the Act issued a recovery certificate dated 12.3.1992 for recovery of a sum of Rs. 5,84,417.63/- as outstanding on 1.8.1991 against M/s. Durgesh Copper and Brass Rolling Mills. Mr. Durgeshwar Parshad Bhatnagar and Mrs. Renu Bhatnagar. "Another certificate was issued by Mr. Bansi Dhar specified authority on 29.4.1992 by virtue of the power vested in him u/s 32(G) of the Act for recovery of Rs. 5,84,417.63/- as due on 1.8.1991 fro Mr. Harish Chander Gulati, respondent in this petition.

4. The respondent was aggrieved by issue of a notice by the respondent No. 3 Assistant Collector pursuant to the recovery certificate against him and he filed a civil suit before a Civil Judge for restraining the petitioner Corporation from enforcing the certificate and recovering the amount by coercive process under the Land Revenue Act. The learned Civil Judge on 23.10.1993 dismissed the suit on a preliminary issue holding that the suit was not maintainable. He held that the provisions of Section 31 and 32(G) of the Act for recovery of the debt due against the industrial concern were independent of each other and not in the alternative Therefore, the petitioner had a right to get a certificate of recovery

issued u/s 32(G) of the Act for recovery of the amount. The respondent filed an appeal but the appellate court declined to grant interim in stay of the recovery proceedings.

5. Thereafter the respondent filed objections u/s 47 read with Order 21, Rule 68 of the CPC before the Additional District Judge. In the objection petition he alleged that the respondent No. 2 M/s. Durgesh Copper and Brass Rolling Mills through its proprietor Mr. Durgeshwar Parshad Bhatnagar had taken a loan of Rs. 1,45,000/- from Delhi Financial Corporation, arrayed as respondent No. 1 against hypothecation of the machinery lying in their factory. The objector was persuaded to sign certain documents executed in favor of the Corporation as an attesting witness. He then narrated other sequence of events like filing of the proceeding u/s 31(1) of the Act by the petitioner Corporation, impleading the principal debtors, him and the other surety, disposal of the proceeding by an Additional District Judge by an order dated 16.2.1983, his discharge from the liability and dismissal of the suit against him and Mrs. Renu Bhatnagar, the second surety. He alleged that both the sureties i.e. the respondent and Mrs. Renu Bhatnagar had been discharged from their liabilities and no order as envisaged u/s 31 was passed against them and that the suit was dismissed against them. Thereafter, the execution proceeding bearing execution case No. 48/1983 was compromised between the Corporation and the principal debtor consequently the execution proceedings were also dismissed as withdrawn on 21.5.1985 with liberty to file fresh one. The principal debtor paid some amount pursuant to this compromise but thereafter defaulted. Instead of filing fresh execution petition, the Corporation got a recovery certificate issued to the Collector for recovery of the outstanding dues. It was contended that the amount due against the principal debtor was not recoverable from the respondent in view of the dismissal of the suit filed by the petitioner against him u/s 31 of the Act. Subsequently, during the execution proceeding the petitioner decree holder agreed to recover the amount only from the principal debtor and for this reason also the respondent is not liable to make the payment. Section 32(G) was amended much later and the amended provision did not apply to the case of the debtor. The respondent Therefore, prayed that the petitioner Corporation and the Assistant Collector, who was arrayed as respondent No. 3 in the objection petition, be restrained from enforcing the recovery of the amount on the basis of the notice dated 18.12.1992 issued in pursuance to the recovery certificate.

6. The Corporation contested the objection of the respondent. In the reply it was stated that the application u/s 31 of the Act was not dismissed on merit against the respondent by the learned Additional District Judge and that it was dismissed on the ground that an order, envisaged under this provision, could not have been enforced against the sureties. Provision of Section 31 was amended in 1985 and Clause (aa) was added which enabled the order to be enforced against the sureties also. It was further submitted that the remedies provided by Section 31 and 32(G) of the Act were independent of each other and were available simultaneously or one after the other for the recovery of the loan amount due

from the borrower industrial concern. It was contended that the petitioner had a right to invoke the provision of Section 32(G) for getting a recovery certificate issued for the recovery of the outstanding dues as arrears of the land revenue from the respondent also. In the reply the Corporation also referred to the civil suit filed by the respondent which was dismissed by the Civil Judge and the dismissal of the appeal filed against that order. It was stated that the objections were not maintainable u/s 47 r/w Order 21 Rule 68 CPC.

7. The learned Additional District Judge by order dated 14.2.1996, however, allowed the objections holding that the recovery of the amount could not be made from the objector in pursuance to the recovery certificate. He further held that the judgment of the Additional District Judge dated 16.2.1983 was final and in accordance with this judgment the defendants 3 & 4 (defendant No. 4 being the respondent) were not liable to pay the outstanding loan amount and also that in accordance with the judgment the Corporation was entitled to recover the amount from the sale proceed of the mortgage/hypothecated property as mentioned in Schedule A of the mortgage deed which was part of the decree and that order has not been complied with by the petitioner decree holder.

8. The petitioner Corporation is aggrieved and has challenged this order in this petition.

9. Having regard to these facts I shall now address to the answering the question posed in the opening paragraphs of this judgment i.e. whether the provision of Section 31 and Section 32(G) are mutually exclusive.

10. Before adverting to these questions it will be necessary to examine certain relevant provisions of the Act.

11. The Act provides for the establishment of a State Financial Corporation for purposes amongst others of advancing loan to industrial concerns as defined by Section 2(c) of the Act. Section 25 defines the various kinds of businesses which the Financial Corporation may transact. Section 27 empowers the corporation to impose conditions for granting accommodation/arrangements. Section 28 on the other hand debars the corporation from transacting certain businesses which are mentioned in the provision. Section 29, 31, 32 and 32(G) being most crucial and relevant for resolving the controversy raised in this petition needs to be extracted in full:-

"Section 29:- 1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any Installment 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. The Financial Corporation shall have the right to take over the management or possession or both of the industrial concerns, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

2) Any transfer of property made by the Financial Corporation, in exercise of its powers under Sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charged and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern.

Section 31:- 1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any Installment 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 a 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 authorised 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 the property pleaded, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

aa) for enforcing the liability of any surety; 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.

2) An application under Sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

Section 32:- 1) When the application is for the reliefs mentioned in Clauses (a) and (c) of Sub-section (1) of Section 31, the District Judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

1A. When the applicant is for the relief mentioned in Clause (aa) of Sub-section (1) of Section 31, the District Judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.

2) When the application is for the relief mentioned in Clause (b) of Sub-section (1) of Section 31, the District Judge shall grant ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

3) Before passing any order under Sub-section (1) or Sub-section (2) or issuing a notice under Sub-section (1A), the District Judge may, if the thinks fit, examine the officer making the application.

4) At the same time as he passes an order under Sub-section (1), the District Judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any,n recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

4A) If no cause is shown on or before the date specified in the notice under Sub-section (1A) the District Judge shall forthwith order the enforcement of the liability of the surety.

5) If no cause is shown on or before the date specified in the notice under Sub-sections (2) and (4), the District Judge shall forthwith make the ad interim order absolute and direct the sale of the attached property, or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

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 the 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;

da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or

e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf.

Provided that when making an order under Clause (c) or making an order rejecting the claim to enforce the liability of the surety under Clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under Clause (e), the District Judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit.

Provided further that unless the Financial Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation, such order shall not be given effect to, until the expiry of the period fixed under Sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 for the possession of immovable property or the delivery of movable property in execution of a degree, as if the Financial Corporation were the decree-holder.

9) Any party aggrieved by an order under Sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under Sub-section (1) of Section 31,

nothing in this Section shall be construed as giving to the Financial Corporation any preference over the order creditors of the industrial concern not conferred on it by any other law.

11) The functions of a District Judge under this Section shall be exercisable:-

a) in a presidency town, where there is a city civil court having jurisdiction, by a Judge of that court and in the absence of such court, by the High Court; and b) elsewhere, also by an Additional District Judge or by any Judge of the principal court of civil jurisdiction.

12) For the removal of doubts, it is hereby declared that any court competent to grant an ad interim injunction under this Section shall also have the power to appoint a receiver and to exercise all the other powers incidental thereto.

Section 32G:- Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue".

12. It is clear from the above provision that Sections 29, 31, and 32(G) give three distinct remedies to the Corporation for recovery of its dues from a defaulting borrower. The question arises whether resorting to one mode of recovery debars the Corporation from invoking other remedy available under law. The provision of Section 29 shows that where an industrial concern makes any default in repayment of any loan or advance or any Installment thereof or makes default in meeting its obligation in relation to any guarantees given by the Corporation or otherwise fails to comply with the terms of the agreement with the Corporation, the later shall have the right 1) to take over the management or possession or both of the industrial concern; 2) as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Corporation. On the other hand Section 31 lays down that where an industrial concern makes any default in repayment of any loan or advance or any Installment thereof or in meeting its obligation in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of the Corporation or where the Financial corporation requires an industrial concern to make immediate repayment of loan or advance u/s 30 and the industrial concern fails to make such repayment then any officer of the Corporation may apply to the District Judge for an order for sale of the property pledged or for transferring the management of the industrial concern to the Corporation or 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.

13. The remedies available to the Corporation u/s 29 and 31 are not mutually exclusive. Resorting to one of such remedy would not always debar the Corporation from invoking the remedy available in the other provision (Haryana Financial Corporation Ltd., Chandigarh Vs. Bags and Cartons and another, . The Corporation can take recourse to the provision of Section 29 even after it had pursued its remedy available u/s 31 and obtained an order which remained unexecuted. The Corporation indeed cannot execute an order u/s 31 of the Act and simultaneously take recourse to the provision u/s 29 for the same relief vide Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, .

14. The Supreme Court analysed the provision of Section 31 and the nature of the proceedings contemplated under it in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, . The Supreme Court was considering the question in the said case whether an application u/s 31(1) was at par with the suit by a mortgagee to enforce the mortgage debt by sale of the mortgaged property and whether it could be treated to be a money suit falling within the purview of Article 1 of Schedule I of the Bombay Court Fee Act, 1959 and alternatively whether such an application falls within the purview of Article 7 of Schedule I because it was made for obtaining a substantive relief which is capable of being valued in terms of monetary gain or prevention of monetary loss by recovery of the outstanding claim of the Corporation. The Supreme Court held that Section 31(1) prescribed a special procedure for enforcement of the claim of the Corporation by moving an application before the District Judge seeking relief provided there under was certainly not a plaint nor a suit for recovery of mortgaged money by sale of mortgaged property. The Supreme Court proceeded to observe as under:-

"It would be inappropriate to say that on an analogy an application u/s 31(1) is something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property. At any rate, in an application u/s 31(1) the Corporation does not and cannot pray for a decree for its outstanding dues. The Supreme Court next considered the question as to what is the true nature of the proceeding contemplated by Section 3191) if it is not a suit by the mortgagee for recovery of the mortgage money by sale of the mortgaged property. Having considered the scheme of Sections 31 and 32 the Supreme Court proceeded to make the following observations:-

The claim of the Corporation is not the monetary claim to be investigated though it may become necessary to specify the figure for the purpose of the determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or Installment thereof and, Therefore, the mortgaged property should be sold. It is not a money claim. The contest can be that the jurisdictional fact which enables the Corporation to seek the relief of sale of property is not available to it or no case is made out for transfer of management of the industrial concern. Sub-sections (6), (7) and (8) of Section 32 read together would give an opportunity to the industrial concern to appear and satisfy the District Judge that the situation envisaged by Section 31(1) has not arisen and the relief should not be granted. The provision contained in Sub-section (6) does not expand the contest in the application made u/s 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property. It may be, as contended by Mr. Patel, that in the ultimate analysis the result would be that the property will be sold for repayment of the loan or advance taken by the industrial concern from the Corporation but it could not be said that it is a substantive relief claimed by the Corporation which can be valued in terms of monetary gain or prevention of monetary loss as envisaged by Article 7 of Schedule I of Court-fees Act. The substantive relief in an application u/s 31(1) is something akin to an application for attachment of property in executing of a decree at a stage posterior to the passing of the decree. We are unable to appreciate the view taken by the High Court that the proceeding is not in the nature of execution of a decree because the question of enforcement of the order of attachment or sale would only arise after the same is made absolute under Sub-section (7). One has to look at the whole conspectus of provisions in Section 32 coupled with the nature of relief sought u/s 31(1) and it becomes clear that special provision is made for certain types of reliefs that can be obtained by a Corporation by an application u/s 31(1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property. Nor can it be said to be a proceeding to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. The form of the application, the nature of the relief, the compulsion to make interim order, the limited enquiry contemplated by Sub-section (6) of Section 22 and the nature of relief that can be granted and the manner of execution clearly show that the application u/s 3191 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 I of Court-fees Act.

15. While concluding the judgment, the Supreme Court observed that it was "a clear lack of wisdom on the part of the Corporation in asking for a decree for certain amount which could not be granted u/s 31(1)".

16. These observations were quoted approvingly by the Supreme Court in A.P. State Financial Corporation (Supra). It was also held in the said case as under:-

"However, to hold that since the Corporation has initially taken action u/s 31 of the Act and obtained an order/decree from the Court, the Corporation is prohibited from invoking the provisions of Section 29 of the Act, notwithstanding the fact that the defaulting concern has not honoured the court''s order or decree made u/s 31 of the Act would amount to putting premium on the activities of the defaulting concern aimed at frustrating the order/decree of the court and depriving the Corporation of recovering its legitimate dues and thereby rendering the expression "without prejudice to....." occurring in Section 31 as otiose. Courts do not favor such a course".

17. The court further proceeded to hold as under:-

"The Corporation cannot, indeed, execute the order u/s 31 of the Act and yet simultaneously take recourse to proceedings u/s 29 of the Act for the same relief. The position may also be different if the claim of the Corporation is negatived on facts, by the Court in the proceedings u/s 31 of the Act. In that event depending upon the facts of each case, it may be permissible to hold that fair play and justice demand that the Corporation is not allowed to take recourse to the provisions of Section 29 of the Act".

18. The two judgments of the Supreme Court referred to above clearly and unambiguously lay down that the proceedings u/s 31 will not debar the Corporation from exercising its power vested by Section 29 though resort to both these powers will not be made simultaneously. There is no bar to the Corporation taking recourse to proceedings for recovery of its outstanding dues/claims from the industrial unit which makes default in payment of dues one after the other if the order obtained against the industrial concern u/s 31(1) remained unexecuted.

19. Before proceeding further it will be pertinent to note that the provision of Section 31 as reproduced above was amended in 1985 in order to insert Clause (aa) so as to empower the District Judge to enforce the liability of a surety also. But in this case when the proceedings u/s 31(1) were initiated by the Corporation against the borrower industrial concern and its guarantors/sureties this Clause (aa) was not there. Therefore, wherever this judgment refers to the provision of Section 31(1) it may be read san Clause (aa) as it existed prior to its amendment in 1985 unless the text specifically indicated otherwise.

20. Now I pass on to consider the provision of Section 32(G). The recovery certificate impugned in this petition was issued by the specified authority in exercise of the powers vested in the State Government by this section. This Section provided another mode for recovery of the dues of the Corporation from the industrial concern. The outstanding loan advanced/accommodation granted by the Corporation is recovered under this provision as arrears of land revenue on a certificate issued by the State Government or by an authority nominated by it. The word "accommodation" used in this provision is wide enough to take into its ambit the loan and advance and all other arrangements that the Corporation makes for an industrial concern in its ordinary business dealing as specified in Section 25. Whatever amount is found due from the industrial concern becomes recoverable as land revenue on a certificate being issued by the authority specified by the State Government. The Corporation 1) is required to submit an application to the State Government for the recovery of its dues from the industrial concern; (2) it has to satisfy the State Government or its specified

authority that the amount is due. Only thereafter the recovery certificate may be issued to the collector for Realizing the amount as land revenue. The State Government and specified authority while determining the liability has to follow such procedure as may be prescribed by rules. In the absence of such rules it has to determine as to how much amount is due and recoverable by following principles of natural justice. The Division Bench of this court in Rajeev Anand and Others Vs. Union of India and Others, considered the scope and import of this Section and observed as under:-

"Under the Act the procedure is to be prescribed by either State Government framing the rule or Board framing requisite regulations. The provisions of the Act do not show operation of Section 32(G) would depend upon the action of the State Government or the Board and on account of their in action, the legislative intent would remain in abeyance. In absence of the procedure being prescribed, the authority u/s 32(G) would be required to follow and apply such procedure which is just fair and reasonable and is in consonance with the principles of natural justice..... On the plain language of Section 32(G), we find it difficult to accept the contention that Section 32(G) can be invoked only for a predetermined amount and the same cannot be determined u/s 32(G). A reading of the section shows that on application being filed before the State Government by the Financial Corporation. The State Government or specified authority has to record its satisfaction about the amount due and it is only thereafter a certificate for the amount so due can be issued to the Collector for recovery of the amount as arrears of land revenue..... It has to be borne in mind that the object of the Act is the development of the industry and also that the money advanced to the industry must come back to the Corporation expeditiously so that it can be further advanced to the industrial concerns and Therefore, the purpose would be lost if the Corporation is to wait for years in Civil Court for recovery of the amount which it may advance to the industrial entrepreneurs. Keeping in view this object, the Act has provided for determination of the amount due to the Corporation in summary proceedings. In this view of the object and intention of the Act and the language of the Section we find it difficult to accept the contention that Section 32(G) can be invoked only when there is an earlier determination of the amount by any Court or authority..... Reverting now to the contention that Section 32(G) is not applicable to sureties it seems that the language of this provision is very wide and does not restrict its applicability to industrial concern only. What Section 32(G) says is where any amount is due to the Financial Corporation in respect of any accommodation granted by it to Financial concern. The Financial Corporation can make an application before the State Government for recovery of the amount due to it. It cannot beheld that the claim against the surety is not in respect of accommodation granted by the Financial Corporation to any industrial concern. The acceptance of the contention would amount to making the words ''in respect of accommodation granted'' in Section 32(G) redundant. If the intention of this Section was to restrict its applicability only to industrial concern, the opening words of Section 32 would have been something like "where amount is due to Financial Corporation from any industrial concern". In view of clear language of the provision, we are unable to accept the contention that applicability of Section 32(G) is restricted to only industrial concerns and it cannot be invoked against the sureties".

21. In accordance with this judgment the Corporation has the necessary power and authority to get a recovery certificate issued not only against the industrial concern, i.e. the principal borrower, but also against the guarantee and sureties to that accommodation. Another important question decided is that the State Government or the authority specified by it will first determine the amount due to the Corporation from the industrial concern/the sureties in a summary proceeding by following a procedure which allows reasonable opportunity of hearing to the affected parties by following the principle of natural justice.

22. Section 32(G) used the expression "without prejudice to any other mode of recovery" which has widen the scope of this section and has provided one more mode for the recovery of the outstanding dues of the Corporation from the defaulting party whether it is an industrial concern or a surety. This remedy is in addition to other remedies available to the Corporation under the provisions of the Act. Two other remedies available to the Corporation provided in Section 29 and 31 have already been taken note of. Section 29, as said above, inter alia, has provided that the Financial Corporation may take over the management or possession of the defaulting industrial concern and may transfer by way of lease or sale or release the property pledged, mortgaged or hypothecated or assigned to the Corporation. Section 31, on the other hand gives power to the Corporation to approach the District Judge for an order of the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation and certain other orders including transfer of the management and possession of the industrial concern. This Section before its amendment in 1985 did not empower the District Judge to enforce the liability of the surety. But under Clause (aa) this power is now also vested in the District Judge. It has already been noticed on the basis of the judgments of the Supreme Court cited above that the provision of Section 29 and 31 are not mutually exclusive though resort to these two provisions could not be had by the Corporation simultaneously. But in case the proceedings u/s 31 are abandoned on withdrawn or after the order is made by the District Judge it remained unexecuted the Corporation can exercise its power u/s 29 also. Section 32(G) is no doubt stringent and empowers the State Government to determine the liability of a industrial concern in default or a surety in a summary proceeding but like the power given by Section 29 and 31 such a power seems necessary in order to ensure speedy recovery of the dues of the Corporation. If the Corporation is bogged down in an ordinary civil litigation the very purpose of its establishment will get frustrated which is not in the interest of industrial development in the country. The State Government or the specified authority appointed by it should satisfy itself about the liabilities of the defaulting party before issuing a certificate. The expression "without prejudice to any other mode of recovery" used in the section cleared all ambiguities. A certificate issued u/s

32(G) would be without prejudice to any other mode of recovery of the outstanding dues of the Corporation. It is in addition to the other remedies available to the Corporation. It is not in the alternative. The observations of the Supreme Court in A.P. State Financial Corporation (Supra) though were on the consideration of the provisions of Section 29 & 31 are applicable with equal force to the provision of Section 32(G). Though the Act does not contemplate that the Corporation will resort to all the modes of recovery or remedies available to it under the Act simultaneously but there is no bar to the Corporation taking recourse to one mode of recovery after the other in case the claim of the Corporation as determined by the appropriate authority remained unsatisfied. Accordingly, it should be held that the provision of Section 32(G) on the one hand and the provisions of Section 29 & 31 on the other hand are not mutually exclusive.

23. In the instant case the Corporation filed an application before the District Judge for determining the liability of the industrial concern and the sureties/ guarantors including that of the respondent and also for sale of the property hypothecated and mortgaged by the defaulting industrial concern in order to recover the amount due. but the provision of Section 31, as it stood on the date of the filing of the application before the District Judge and the order passed thereon did not give power to the District Judge to enforce the liabilities of the surety under this provision. As a consequence the District Judge dismissed the application so far as it sought relief against the sureties/guarantors including the respondents herein. The District Judge did not determine the liability of the surety in that proceeding nor was it empowered to do that. There is no dispute about this fact.

24. The next question which is crucial is whether resort to the mode of recovery prescribed in Section 32(G) by the Corporation for recovery of its dues from the sureties, whose liability was not determined, in the proceeding u/s 31 will be barred. The answer to this question would lay in answering the question whether the Corporation could take recourse to the procedure prescribed by Section 31 and 32(G) one after the other for enforcing the liability of the surety. Even at the risk of repetition it may be stated that the provisions of the Act analysed in the light of the judgments of the Supreme Court and this court, as discussed above, do not debar the Corporation from approaching the State Government for issue of the recovery certificate after that liability as determined against the industrial concern u/s 31 remained unsatisfied. In the instant case the proceedings were wrongly instituted for determination and enforcing the liability of the sureties before the District Judge u/s 31. So the District Judge rightly declined to allow the application of the Corporation so far as it claimed relief against the sureties. The Corporation even otherwise could have abandoned the execution of the order obtained from the District Judge u/s 31 if the amount of the dues was not paid and was still recoverable and could have resorted to any other mode of recovery made available to it under the provisions of the Act or even civil law. One of the mode which the Corporation could adopt for recovery of the amount due was the

issuance of a recovery certificate by the State Government and recovery of the amount as land revenue in accordance with Section 32(G). The fact that this section was enacted subsequently will not make any difference since on the date of invocation of the mode of recovery u/s 32(G) the amount was due from the industrial concern and the sureties. Therefore, by no stretch of reasoning it could be said that the application of the Corporation to the State Government or the authority specified by the State Government, for determination of the liability of the surety and of recovery of the amount due from the sureties or even the industrial concern was not maintainable once the Corporation moved the District Judge for such determination of the liability and enforcing it for recovery of the dues from the sale of the hypothecated/mortgaged property or the liability of the surety. Indeed once the liability against the defaulting industrial concern and the surety was determined in accordance to the procedure prescribed by Section 32 in a proceeding u/s 31 it will be inappropriate for the specified authority u/s 32(G) to determine it afresh. But it will not preclude it to re-determine it as mandated by law. The order passed on the application u/s 31 may in a particular case satisfy the State Government/specified authority about the liability. The State Government or the specified authority may require more material or evidence to satisfy itself about the existing liability of the industrial concern/ surety at the time of the issue of the recovery certificate. Each case will depend upon this own peculiar facts. The material which will be required or procedure followed by the State Government or the specified authority to satisfy itself about the liability of borrower or surety cannot put in a straight jacket. It may vary from case to case. But the satisfaction of the State Government/the specified authority about the existence of the outstanding dues recoverable from the industrial concern/surety etc is essential for the issuance of the recovery certificate.

27. In this case firstly no application for determining and enforcing the liability of the surety lay against the respondents u/s 31. Secondly, the District Judge while disposing the application by order dated 16.2.1983 did into determine the liability of the respondent surety in its order and it dismissed the application not on merit but on the ground that it had no power to make an order for enforcing the liability against the surety. It did not make any order for enforcing the liability determined against the industrial concern, respondent No. 2 herein, against the respondent. Thirdly, the provision of Section 32(G) is in addition to other remedies available to the Corporation and its invocation by the Corporation for recovery of its money which remained due after other remedies were exhausted would not be barred.

28. It has not been argued on behalf of the respondent that no amount is due or recoverable in respect of the loan/advance made by the Corporation to the respondent No. 2 industrial concern in respect of which the respondent had stood surety. The respondent does not challenge the recovery certificate on the premise that no amount was due at all in respect of the loan transacted between the Corporation and the industrial concern, respondent No. 2. The challenge to

the recovery certificate is on the ground that the application filed by the Corporation before the District Judge was dismissed qua him by order dated 16.2.1983. This challenge is not tenable and has to be repelled on bare reading of the order of the Additional District Judge dated 16.2.1983 and the provision of Section 32(G). The Corporation can resort to the special and speedy remedy available in Section 32(G) which is not at all in conflict with the other remedies available to it u/s 29 & 31. The remedy given in provision of Section 31 was not available against the surety but was available only against the borrower industrial concern, before it was amended in 1985. The application filed by the Corporation before the District Judge was to be dealt with and has in fact been decided under the unamended provision of Section 31. The right to recover the dues u/s 32(G) is not taken away by Section 31 and 29 or by any other provision of the Act. It remained intact and is enforceable as a mode of recovery other than Section 29 and 31. For these reasons the contention of the respondent that once the procedure for recovery of the amount due was exhausted by the Corporation it could not abandon it and get a recovery certificate issued for recovery of the amount due as land revenue has no force at all.

29. The expression "without prejudice to any other mode of recovery" used in Section 32(G) clearly demonstrated that the legislature had not intended to restrict the Corporation to adopt only one of the several remedies against the defaulting concern/surety for recovery of the amount due to it. The Corporation had a wide choice which it has exercised in this case for recovery of the amount as land revenue on the basis of the certificate issued by the State Government. No fault could be found with the invocation of the provision of Section 32 by the Corporation. There is no challenge to the procedure adopted by the State Government or the specified authority for issue of the recovery certificate. The equity also does not lie in favor of the surety who has not paid the amount due under the agreement executed. The borrower industrial concern has also not discharged its liability under the agreement.

30. The learned Additional District Judge had allowed the objections filed by the respondent without appreciating that the order of the Additional District Judge dated 16.2.1983 was not directed against the respondent objector and that the order of the District Judge dated 16.2.1983 was not a decree passed in a civil suit but was in a proceeding for enforcing the liability of the execution proceeding for enforcing the liability of the industrial concern which is in default of payment of the dues under the agreement with the Corporation. It also failed to notice that the liability of the respondent surety was not determined by the Additional District Judge in that proceeding and there was no finding of the Additional District Judge in its order dated 16.2.1983 that the surety was not liable to make the payment of the dues outstanding against the industrial concern which was in default. It was also not considered by him that the Additional District Judge did not dismiss the application of the Corporation on the ground that the respondent was not the surety for due repayment of the loan taken by the borrowing industrial concern. As a result the view of the Additional District Judge that the

suit against the objector respondent and other guarantor was dismissed by the District Judge by order dated 16.2.1983 is patently erroneous and is not sustainable in law. The learned Additional District Judge also fell in error in holding that the Corporation by entering into a new settlement with the borrower industrial concern rescheduling the repayment of the loan had abandoned its claim against the surety. The Additional District Judge was clearly wrong in holding that withdrawal of the execution proceeding pursuant to a settlement between the Corporation and the borrower industrial concern amounted to abandonment of its claim against the surety. His view that the Corporation was executing the order of the Additional District Judge dated 16.2.1983 against the respondent objector is also erroneous. The application filed by the Corporation before the State Government/specified authority was independent of any proceedings which were initiated for recovery of the amount under any other provision of the statute including Section 31. The order of the learned Additional District Judge impugned in the petition Therefore, is not sustainable in law. It is appropriate for this court to exercise its supervisory jurisdiction under Article 227 of the Constitution of India in this case and set aside the order.

31. As a result of the above discussion the appeal is allowed and the order of the learned Additional District Judge dated 12.2.1996 is set aside but parties are left to bear their costs.

