(1986) 08 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 564 of 1979

Gulab Ram Subhash Chander and Others APPELLANT

Vs

Kharaitilal and Others RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

State Financial Corporations Act, 1951 — Section 20, 31, 48, 9

Citation : AIR 1988 P&H 45 : (1987) 91 PLR 346

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Judgement

1. The appellant firm concededly obtained a loan of Rs. 1,14,000/- in two installments of Rs. 49,000/- and Rs. 65,000/- on April 16, 1970 and July 21,1970, respectively, from the respondent Corporation for purposes of setting up a factory at Shahabad. Since it failed to repay this amount along with the stipulated interest as per the terms of the mortgage deed dt. April 16, 1970, the Corporation filed a petition under S. 31 of the State Financial Corporations Act, 1951(for short the Act) for the recovery of Rs. 1,44,322.20 by sale of the property belonging to the appellant and responded No. 1, namely, Kharaiti Lal. the guarantor. The Additional District Judge has allowed this petition and ordered that the Corporation is entitled to recover the sum of Rs. 1,44,322.20 along with future interest at the rate of 8 1/2 % with effect from Oct 1, 1973 from the sale of the mortgaged properties mentioned in Exhibit P-5 and in the application of the Corporation dated June 6, 1975. This application was filed by the Corporation for the reason that since the debtor had constructed the factory with the loan amount on a plot of land different from the one he had hypothecated with it, the said construction or the property purchased with the loan amount was to be taken to have been hypothecated with the Corporation in terms of CLAUSE 6(xiii), at page 27 of the mortgage deed, Exhibit P.5. It is in the light of this plea that the learned Judge has also entitled the Corporation to recover the amount by the sale of the property mentioned in this application. The appellant impugns this order of the Additional District Judge.

2. Against this very impugned order, two other appeals F.AO. Nos. 592 and 565 of 1979 have been preferred by the Corporation and the guarantor Kharaiti Lal, respectively. In the first appeal it is claimed by the Corporation that the learned lower Court has committed a mistake in specifying the recoverable amount as Rs 1,44,322.20 instead of Rs 1,58,177.05, i. e, the principal amount of loan and interest there upon up to Oct. 1, 1974. It is also the plea of the Corporation that as pet the mortgage deed Exhibit P.5, the interest is recoverable at the above rate on the amount due with half yearly rest. In a nutshell the case of the Corporation is that the relief granted by the lower Court be amended to the extent that the Corporation is entitled to recover Rs 1,58,177.05 with interest at the rate of 81/2% with half yearly rest with effect from Oct 1, 1974. So far as Kharaiti Lal''s appeal, i.e., No. 565 is concerned, his sole prayer is that the amount due from the debtor, i.e., the appellant firm should first be recovered from the assets of mortgagor and if anything still remains due after that, the same may be recovered from his mortgaged properties.

3. Since all the above noted three appeals are directed against the same order of the Additional District Judge, I proposed to dispose these of through this common order.

4. In this appeal the primary contention of Mr. Goel, learned counsel for the debtor is that the lower Court has gone wrong in deciding issue Nos. 1 and 3 pertaining to the maintainability of the application of the Corporation under S:31 of the Act before it. His stand is that the application had not been signed verified or-presented by a duly authorised person and therefore, it was not maintainable, It is, however, conceded by the learned counsel that this application has been duly signed by the Managing Director of the Corporation, Mr. R. L Sudhir and its Secretary, Mr. N. R. Soni yet it has been verified by the latter only. According to the learned counsel, in view of Ss. 9 and 20 of the Act, the Managing Director or the Secretary could file the impugned application only on a specific authorization by the Board of Director''s of the Corporation. He further maintains that as a matter of fact the Executive Committee of the Corporation realising the force of the objection taken by the appellant in reply to the above noted application passed a resolution Ex. P.20 on Dec. 12, 1977 rectifying the act of filing this application by the Managing Director and the Secretary but since this rectification was made after a period of three years from the date of cause of action, i. e., Aug. 15, 1973 the said. rectification had no meaning in law as by that time the claim of the Corporation had become barred by time.

5. Having heard the learned counsel for the parties at length, I however, find that the above noted argument of the learned counsel are the result of certain confusion which appears to have even prevailed with the lower Court. To my mind, Ss. 9 and 20 of the Act are totally irrelevant to the controversy in question. To me it appears clear that the only section relevant in this regard is S. 31 itself wherein it is laid down that:--

"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 property pledged, mortgaged hypothecated or assigned to the Financial Corporation as security for the loan a advance."

In the light of this provision, all that needs to be seen is as to whether the Managing Director or the Secretary who concededly have signed the application in question had been generally or specially authorised by the Board to initiate the proceedings which they did. To satisfy this requirement of the section, the learned counsel for the Corporation, Mr. Kapur, has invited my attention to S. 48 of the Act and Reg. 59 framed thereunder. This latter mentioned section lays down that the "Board may, after consultation with the Development Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act." Regulation 59, a reference to which has been made above, deals with the subject "Plaints, etc., by whom to be signed" and. reads as follows :--

"Plaints, written statements, vakalatnamas, affidavits and all other documents connected with legal proceedings may be signed and verified on behalf of the. Corporation by the Managing Director or. any other officer empowered by; or under, Regulation 58 to sign documents for, and; on behalf of, the Corporation."

Besides this my pointed attention has also been drawn to a notification No. HFC/1/BCB4-12/67 dt. Sept. 16, 1967, whereby in exercise of the powers under Regulation 58, the Board of Directors has authorised the Secretary to endorse or sign a number of documents on its behalf. In the light of these regulations read with ''the notification referred to above, it is patent that the Managing Director and the Secretary were fully competent to sign and verify the application presented before the lower Court u/s 31 of the Act. I, therefore, repeal the stand of the appellants learned counsel. At this stage Mr. Goelseeks to argue that as a matter of fact the Board of Directors never resolved to initiate these proceedings and, therefore; the entire process which has been gone through before the lower Court was unauthorized and unsustainable. I, however, find that no such plea has been taken on behalf of the appellant in the reply filed to the application of the Corporation.. The precise objections raised in this regard in the reply were to the effect:--

"(i) That the petition is neither signed, nor verified by duly authorised person, and so it merits dismissal forthwith.

(ii)That the petition has not been filed through duly authorised person, and so it cannot proceed in law."

These pleas of the appellant have already been negatived by me above. No material argument has been raised on behalf of the appellant to dislodge the other findings recorded by the lower Court.

6. So far a~ F.A.O. No. 592 is concerned the contention of Mr. Kapur, learned counsel for the Corporation is that the trial Court has, on the face of it, committed an error. when it ordered the recovery of Rs. 1,44, 322,20 along with future interest at the rate of 81/2% with effect from Oct. 1, 1973 after holding under issue No. 7(the issue was "To what amount the petitioner is entitled to and from whom" that a sum of Rs. 1,58,177.05 was due to the petitioner from respondent No. 1 inclusive of the original amount and the interest up to Oct. 1, 1974. According to the learned counsel the Court should have mentioned in the concluding paragraph or the order latter mentioned amount as the amount recoverable. The further claim of the Corporation is that the amount of interest at the rate of 81/2% should have been permitted to be calculated with half yearly rest as was stipulated in the mortgage deed itself (Annexure P. S). I find merit in these submission of the learned counsel. All that Mr. Goel, learned counsel for the firm has to submit is that the trial Court has granted to the Corporation what was prayed for in its application under S. 31 of the Ad and the Corporation cannot be allowed to enhance its claim. This argument on the face of it, is misconceived. While filing the application under S. 31 of the Act on Nov. 26, 1973, the counsel for the Corporation had worked out the amount due to-it up to Oct. 1, 1973 and not up to Oct. 1,1974, i.e. up to which date the Court has found Rs. 1,58,177.05 due under issue No. 7. I, therefore, repel this submission of Mr. Goel. It is not a matter of dispute between the parties that so far as calculation of interest at 81/2% with half-yearly rest is concerned, the same is so stipulated in the mortgagee deed. I, therefore, allow the appeal of the Corporation to the extent that it would been entitled to recover a sum of Rs. l,58,177.05 with interest up to Oct. 1, 1974 and would also be entitled to future interest on the basis of half yearly rest as stipulated in the mortgage deed Exhibit P.5.

7. So far as the appeal of Kharaiti Lal (F.A.O. 565) is concerned, the solitary relief claimed by him is that the amount due to the Corporation as adjudicated above should first be recovered from the properties of the firm being the principal mortgagor vide Exhibit P.5 and if any amount thereafter is left due to the Corporation, the same may be recovered from the properties hypothecated by him. The learned counsel for the parties do not dispute the fairness or the reasonableness of this demand of the appellant. I, therefore, allow his appeal to the limited extent that the respondent Corporation will recover the amount due to it first from the mortgaged properties of the firm and then in case any amount still remains due to it, from the properties of Kharaiti Lal as specified in Exhibit P.5 and the application of the Corporation dated June 6, 1975.

8. The net result of the above discussion is that F.A.O. No. 564 filed by the firm M/s. Gulab Ram Subhash Chander is dismissed and the other two, i.e. F.A.O. Nos. 565 and 592, are allowed to the extent indicated above. No costs.

9. Appeal partly allowed.

