(2010) 11 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition No. 1665 of 2010

G.V. Shabbir Ahmed	APPELLANT
Vs	
Karnataka State Industrial Investment and Development Corporation Ltd., Sri R. Venkatesh, Sri M.A. Manjunatha Jetty and Sri Venkateshwara Minerals	RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:
State Financial Corporations Act, 1951 — Section 31, 31 (1) (a) (aa), 31 (1) (c)

Citation : AIR 2011 Kar 43 : (2011) 2 KarLJ 503

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : P.N. Manmohan, for the Appellant; T.P. Vivekananda, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—M/s. Sri Venkateshwara Minerals, obtained loan from Karnataka State Industrial Investment & Development Corporation Limited (for short ''KSII & DC Ltd''), to which Respondents 2 & 3 are the Guarantors. The Petitioner is a Surety to the loan transaction. The Industrial Concern having become a defaulter, KSII & DC Ltd, filed an application u/s 31(1)(a)(aa) of The State Financial Corporations Act, 1951 (for short the Act) in the Court of District Judge at Mysore, for a direction to the Industrial Concern, the Guarantors and the Surety, to pay jointly and severally Rs. 72,61,788/- and to sell the mortgaged property belonging to the guarantors and the surety, for realization of the dues. The Petitioner being the 4th Respondent in the said application filed an objection statement.

2. KSII & DC Ltd., filed I.A No. 1 u/s 31(1)(a)(aa) of the Act, to pass an ad-interim order to restrain the Petitioner and others from alienating to the third parties, the property stated in the application schedule. The Petitioner filed statement of objections to LA No. 1. The learned District Judge has allowed LA

No. 1 in part and the Petitioner was restrained from alienating the property. The said order has been questioned this writ petition.

3. Sri P.N. Manmohan, learned Counsel appearing for the Petitioner contended that, Section 31(1)(a)(aa) of the Act, invoking which LA No. 1 was filed, does not provide for passing of an interim injunction against a surety or the property of the surety. Learned Counsel submits that, Section 31(1)(c) deals with the relief of ad-interim injunction as against Industrial Concern and therefore, the trial court had no jurisdiction to pass an order of temporary injunction restraining the Petitioner from alienating his property. Learned Counsel submits that, the impugned order is one without jurisdiction and is illegal.

4. Sri T.P. Vivekananda, learned Counsel appearing for the 1st Respondent, on the other hand contended that, Section 31 of the Act being a special provision for enforcement of claims by the Corporation, the impugned order is just and legal.

5. I have perused the writ petition papers.

6. The facts which are not in dispute are that, the 4th Respondent/Industrial Concern borrowed loan of Rs. 25,00,000/- from the 1st Respondent/KSII & DC Ltd. The Respondents 2 & 3 are the Guarantors to the said loan transaction the Petitioner has stood as a Surety and has undertaken to pay the 4th Respondent''s liability on its default and has executed a surety agreement dated 28.04.1999 in favour of KSII & DC Ltd. The Industrial Concern became a defaulter and hence the power u/s 29 of the Act was exercised. Alleging that, as on 15.04.2007, the Industrial Concern was due Rs. 72,61,788/-, which amount was not paid despite demands and issue of notices, application u/s 31(1)(a)(aa) of the Act was filed along with LA No. 1, for interim relief of temporary injunction.

7. Keeping in view the rival contentions and the record of the writ petition, which I have perused, the point for consideration is;

whether the District Judge has the jurisdiction u/s 31(1)(a)(aa) of the Act, to pass an order of temporary injunction against the property of a surety in favour of the Financial Corporation?

8. Section 31 of the Act, provides for special provision for enforcement of claims by financial corporation. It reads as under :

31. Special provisions for enforcement of claims by Financial Corporation -

(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any Joan or advance or any instalment 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 repayment, then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882 (4

of 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 pledged, 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.

9. Section 32 of the Act provides for the procedure in respect of the proceedings before the District Judge on the applications u/s 31; Sub-section (1-A) whereof reads as under :

32. (1-A) When the application 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.

10. For the purpose of enforcing a liability of an Industrial Concern, the Corporation can take recourse both under Sections 29 and 31 of the Act. That apart, the right of the Corporation to file a suit or take recourse to the provisions contained in Section 32G of the Act also exists.

11. Section 31 of the Act is a special provision. With regard to the scope of Section 31, in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, , it has been held as follows :

32. Section 31 of the Act provides for the reliefs which may be sought for by the corporation strictly in terms) thereof. Clause (aa) of Sub-section (1) of Section 33 of the Act provides for a final relief. It does not speak of any interlocutory order. Clause (aa), as noticed hereinbefore, has been inserted by Act 43 of 1985. Thus, prior thereto even Section 31 could not have been taken recourse to against a surety. Such a relief, if prayed for, would also lead to grant of a final relief and not an interlocutory one.

33. Similarly, Clause (b) of Sub-section (1) of Section 31 of the Act also provides for a final relief. Only Clause (c) of Sub-section (1) of Section 31 of the Act

empowers the District Judge in the event any application is filed by the corporation to pass an ad interim injunction.The very fact that Section 31 uses the terminology "without prejudice" to the provisions of Section 29 of the Act and/or Section 69 of the Transfer of Property Act. it clearly postulates an additional relief. What can be done by invoking Section 29 of the Act can inter alia be done by invoking Section 31 thereof also but therefore a different procedure has to be adopted. Section 31 also provides for a relief against a surety and not confined to the industrial concern alone. Sub-section (2) of Section 31 also refers to industrial concern and not the surety. The legislative intent, therefore, to our mind, is clear and unambiguous.

(emphasis supplied by me)

12. Section 32(1-A) lays down the procedure when Clause (aa) of Section 31(1) is invoked. Section 32(4-A) empowers the court to forthwith order the enforcement of liability of the surety if no cause is shown on or before the date notified by the parties. In the event, a cause is shown upon making an investigation as provided for under Sub-section (6) of Section 32, a final order can be passed in terms of Sub-section (7) thereof.

13. Section 32G can be resorted to both against the Industrial Concern and also the Surety. The Corporation can proceed against the Surety only in terms of Section 31 & 32 of the Act.

14. In Morgan Stanley Mutual Fund Vs. Kartick Das, , with reference to the scope of Section 14 of Consumer Protection Act, 1986, it has been held as follows :

44. A careful reading of the above discloses that there is no power under the Act to grant any interim relief of (sic or) even an ad interim relief. Only a final relief could be granted. If the jurisdiction of the Forum to grant relief is confined to the four clauses mentioned u/s 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience.

15. In Gulzari Lal Agarwal Vs. Accounts Officer, , it has been held that, Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of original complaint filed before it.

16. In the absence of an express conferment, power to grant temporary injunction is not implied. The tribunal or the authority constituted under the special enactments, should have the power of making interlocutory orders like granting an interim order of injunction. No express provision has been made u/s 31 or 32 of the Act conferring power on the District Judge to pass an order of temporary injunction against a surety, pending disposal of the main application, the District Judge has passed the order of temporary injunction against the Petitioner by exercising jurisdiction not vested in him. Thus the impugned order being one without jurisdiction and is illegal.

In the result, the writ petition is allowed and the impugned order is quashed.

No costs.

