**(1990) 08 P&H CK 0055**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 14746 of 1989

Hans Tools Co. — APPELLANT

Vs

Punjab Financial Corporation and Others — RESPONDENT

**Date of Decision :** 16-08-1990

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226
State Financial Corporations Act, 1951 — Section 29, 31
Transfer of Property Act, 1882 — Section 69

**Citation :** (1992) 73 CompCas 245 : (1991) 99 PLR 316

**Hon'ble Judges :** Ashok Bhan, J

**Bench :** Single Bench

**Advocate :** M.L. Sarin and Jaishree Thakur, for the Appellant; Arun Nehru, for respondent Nos. 1 and 2 and J.S. Shapuri, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ashok Bhan J.—The petitioner in this case has challenged the vires of Section 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"), and, consequently in quashing the notice issued u/s 29 of the Act dated October 19, 1989 (annexure P-10), besides being arbitrary and erroneous.

2. The facts giving rise to this writ petition are as follows :

The petitioner is registered partnership firm and one of its partners, namely, K. K. Bhandari, who had filed the writ petition floated the present partnership concern known as Hans Tools Co. at Mohali. On February 23, 1979, the petitioner was allotted a two-acre plot at Mohali by the Estate Officer, Urban Estates, Punjab (respondent No. 2), for a consideration of Rs. 1,59,720 which was payable in instalments. The petitioner, being in need of financial assistance, approached the Punjab Financial Corporation (respondent No. 1) constituted under the Act for a term loan of Rs. 13 lakhs and for special capital assistance to the tune of Rs. 72,000. The Corporation (respondent No. 1) agreed to the grant of a loan of Rs. 12,30,000 and Rs. 72,000 as special capital assistance subject to mortgage of immovable property. A regular mortgage deed in respect of plot No. A-13, Phase VI, Mohali, which was allotted to Sh. K. K. Bhandari, a partner of the petitioner-firm, as aforementioned, was executed on March 31, 1980, between the petitioner and the respondent-Corporation, which is annexure P-l. Out of the sum of Rs. 12,30,000 being the loan amount, the actual loan disbursed to the petitioner was Rs. 10,56,000, while the special capital assistance paid to it by respondent No. 3, the Central Bank of India, Sector 17-B, Chandigarh, was Rs. 72,000.

3. The amount of the loan and the special capital assistance as aforementioned was to be repaid by the petitioner in 17 half-yearly instalments, the first instalment beginning on September 15, 1981, and the last one to be paid on September 15, 1989. However, the petitioner could not adhere to the schedule of repayment of various instalments and applied for rescheduling of the instalments to the Corporation and sought the assistance of respondent No. 3, the bank, for raising further loans in order to nurse its unit. Respondent No. 3 agreed to give the assistance subject to a no objection certificate from the Corporation regarding creation of a second charge. The Corporation gave a no objection certificate to the petitioner regarding the creation of a second charge in favour of respondent No. 3 as per the terms and conditions mentioned therein.

4. In the year 1985, the Corporation had asked the North India Technical Consultancy Organisation Ltd. (for short, "NITCON") to conduct a rehabilitation study on the unit of the petitioner and the NITCON recommended rehabilitation of the unit, as it was found viable, provided more funds were pumped into it. This report was accepted by respondent No. 1, the Corporation, vide its memo No. PFC/M&FU/86/25938, dated July 9, 1986. These funds were to be made available by the respondent-bank but they ultimately refused to advance the loan as claimed by the petitioner due to the fact that no second mortgage could be created in favour of the bank, because the mortgage deed, annexure P-l, according to the bank, was defective. It may be mentioned here that the mortgage deed, annexure P-l, was created on deposit of the allotment letter in respect of the plot abovementioned.

5. According to the petitioner and the bank, the mortgage created in favour of the Corporation was a defective deed, as the same was created merely by deposit of the allotment letter regarding the plot, whereas the requirement was deposit of title deeds. The title deeds were not executed in favour of the petitioner because the plot in question had not then been transferred in favour of the petitioner free from all encumbrances on account of non-payment of the whole amount of the price of the plot, and the Estate Officer (respondent No, 2) had the first charge on the plot of land. The case of the petitioner is that the Corporation could not have created the mortgage on the basis of the allotment letter but only against the title deeds, i.e., the conveyance deed. Since the Corporation had created a mortgage merely on the basis of the allotment letter, the mortgage was defective. Consequently, the bank refused to advance the loan

 

thereby causing loss to the petitioner, as it could not revive its unit. Since there was no clear title in favour of the petitioner, the respondent-bank refused to advance the money.

6. The case of the petitioner further is that rehabilitation of the petitioner''s unit could not take place either due to the lapse of the respondent-Corporation or for the lapse of respondent No. 3, the bank, and, so far as the petitioner is concerned, it had met each and every commitment on its part. The bank remained adamant to the petitioner''s attempt in obtaining a no dues certificate, title deed of plot No. A-13, Phase VI, Mohali, while respondent No. 2, the Estate Officer, Mohali, refused to issue the no-dues certificate, because its dues were not cleared. In other words, the case pleaded by the petitioner is that it was made to suffer for no fault of it. The petitioner was served with a notice, vide Memo No. PFC/M&FU/88/7033, dated February 3, 1989, u/s 30 of the Act by respondent No. 2 but no action was taken in pursuance thereof. Thereafter, on October 19, 1989, the petitioner was served with a notice, annexure P-10, u/s 29 of the Act, asking it to clear the defaulted amount of Rs. 15,82,833.23 (although the total amount was more than that) by October 29, 1989, failing which the Corporation would be compelled to initiate action u/s 29 of the Act. The petitioner replied to this notice and pleaded that the Corporation should not take the proposed action for the recovery of that small amount, whereas its property was worth about Rs. 70 lakhs. Ultimately, the petitioner filed the present writ petition challenging the vires of Section 29 of the Act in the first instance and, in the alternative, pleaded that the action taken by the respondent-Corporation was arbitrary and wrong.

7. The case pleaded by the respondent-Corporation is that the petitioner was advanced an amount of Rs. 10,56,000 as a term loan and an amount of Rs. 72,000 as special capital assistance, in terms of the mortgage deed dated March 31, 1980. This loan was repayable in 17 half-yearly instalments out of which the first eleven instalments were to be of Rs. 72,000 and the remaining six instalments for Rs. 73,000 each, the first instalment of principal being payable on September 15, 1981, and the last instalment on this account falling due on September 15, 1989. The interest on the principal amount was also payable on March 15 and September 15, every year, the first instalment being due on September 15, 1980. However, the petitioner committed default in repayment of the loan right from the beginning. It failed to pay the first instalment of Rs. 72,000 and also subsequent instalments. It also failed to pay the instalments of interest. It made a request to the Corporation for waiver of the penal interest for the defaulted instalments up to March 15, 1982, and for rescheduling the loan. The respondent-Corporation, in order to assist the petitioner, agreed to the request and the loan was rescheduled, the first instalment being payable on March 15, 1982, and the last one to be paid on September 15, 1989. The petitioner again failed to honour its commitment and, on its request for the second time, the loan was once again rescheduled in the month of March, 1983 ; the first instalment commencing on March 15, 1983 ; and the last one being due

 

on September 15, 1989. This time, the Corporation/respondent did not agree to the waiver of the penal interest.

8. Again, the petitioner did not honour its commitment and, on its request, further concession was given to it by the Corporation and the loan was rescheduled for the third and the last time in the year 1986, the first instalment commencing in 1987 and the last one ending in the year 1996. The petitioner once again failed to honour the schedule of repayments. It did not pay even the first instalment due on March 15, 1987. Ultimately, after three years'' wait, action was initiated by the respondent-Corporation and they issued the notice, annexure P-10, dated October 19, 1989, u/s 29 of the Act.

9. It would be interesting to note that the petitioner paid only Rs. 716 after October 1, 1984. The respondent-Corporation had agreed to reschedule the overdue interest of Rs. 5 lakhs, apart from the rescheduling of the abovementioned principal amount. The Corporation had agreed to charge interest at 11.5% in the general loan account and at 1% as service charges in the special capital account, in addition to the rescheduling of the instalments made in the year 1986 payable with effect from March, 1987, and ending with the year 1996. All these details were given by the respondent-Corporation in their reply.

10. The Central Bank of India (respondent No. 3) put in appearance and justified its action in not advancing the loan to the petitioner without execution of proper documents by the latter in their favour.

11. Mr. M. L. Sarin, senior advocate, appearing on behalf of the petitioner put forth basically two contentions before me, i.e., (a) challenge to the vires of Section 29 of the Act ; (b) if the vires are upheld, the action taken u/s 29 of the Act is liable to be struck down being arbitrary and against the provisions of the Act.

12. Now, I take up the contentions of Mr. Sarin. The vires of Section 29 of the Act have been challenged by learned counsel on the following grounds :

(i) that Section 29 does not provide any guidelines as to under what circumstances the Corporation can resort to the action as laid down thereunder ;

(ii) that no appeal is provided against the decision of the Corporation u/s 29 of the Act ;

(iii) that the Corporation is acting as a judge in its own cause and, therefore, it would give a biased decision ; and

(iv) that there are two remedies provided under the Act for the recovery of the amount, i.e., sections 29 and 31, and once these two remedies are available for the recovery of loans under the Act, the Corporation cannot resort to a ''pick and choose'' method thereby giving a hostile and discriminatory treatment to two similarly situated defaulters. I do not find any substance in either of these contentions. Sections 29 and 31 of the Act are reproduced below for comparative study :

"29. Rights of Financial Corporation in case of default.--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 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, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, 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, charges 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.

31. Special provision for enforcement of claims by Financial Corporation.--Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan 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, 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 or advance ; 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."

13. A perusal of Section 31 of the Act would show that it operates under totally different situations, i. e., (a) regarding sale of property ; (b) transferring the management of the industrial concern to the Financial Corporation ; (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. Section 29 deals with taking over the property, and once the property is taken over the same vests in the Corporation, free from all encumbrances, but with liberty to the Corporation to sell the same either by private negotiations or through auction. Section 31 is stated to be in the nature of execution proceedings, as held by various courts. To my mind, these two sections do not cover the same field. The language of Section 31 "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882" makes it abundantly clear that the Legislature has deliberately provided for a special right to the Corporation u/s 29. Section 29 is a speedy remedy and Section 31 is an additional right which is without prejudice to the provisions of Section 29 of the Act to approach the civil court whenever assistance is required by the Corporation. The plea of unreasonableness of Section 29 of the Act in that no appeal is provided thereunder against an order of the Corporation or that the Corporation is acting as a judge in its own cause and shall give a biased decision in its own favour is not tenable either. The board and its officers are high-ranking officials and they have no personal interest against any debtor or defaulter. The purpose of creation of the State Financial Corporation under the Act is to advance loans to industries, recover the same and recycle the same to other industries thereby furthering the industrial policy of the State and assisting in the industrial growth of the country. By resorting to Section 29, in fact, the Corporation is taking an administrative decision as to what course of action should be taken in case of default. The Corporation should be the best judge to take a decision as to what

 

course of action should be resorted to in a given case. The provisions of Section 29 of the Act cannot be termed as bad only on the ground that there is no appeal provided for against an action taken by the Corporation u/s 29. If the action is bad, the same can be challenged in a writ petition and struck down. Mr. Sarin was unable to cite any authority in support of this proposition. On the contrary, learned counsel appearing for the respondent-Corporation, has cited Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others, , K. Surendranathan Vs. Kerala Financial Corpn. and Others, and Alka Ceramics Vs. Gujarat State Financial Corporation and Others, . All these authorities have taken the same or similar view as taken by me above that Section 29 of the Act is not violative of Article 14 of the Constitution of India. Apart from these judgments, Mr. Mchra cited an unreported judgment given in limine by a Division Bench of this court in CWP No. 3231, of 1990 (Punjab Rice and General Mills v. Punjab Financial Corporation Ltd.) decided on May 29, 1990, wherein their Lordships concurred with the reasoning given in K. Surendranathan''s case [1991] 70 Comp Cas 801, and dismissed the writ petition. In view of the foregoing discussion, there is no substance in the contention raised by Mr. Sarin regarding the unconstitutionally of Section 29 of the Act, and I reject the plea.

14. Adverting to the other submission of Mr. Sarin that the notice, annexure P-10, is arbitrary and, consequently, liable to be struck down, because the petitioner is not a defaulter (sic). According to learned counsel, the petitioner was unable to make the payment for reasons beyond its control, and such a person, i. e., who is "unable to make the payment" cannot be termed a defaulter. There has to be something more than his inability to pay, that is to say, the person has to be a "wilful defaulter" before the provisions of Section 29 of the Act can be invoked. The case put forth is that the petitioner could not make the payment because of circumstances beyond its control, and that is why it cannot be termed a defaulter within the meaning of Section 29 of the Act. There is no substance in this submission as well. As is evident from a narration of facts given in the earlier part of this judgment, the Corporation had rescheduled thrice the repayment of the loan taken by the petitioner. In spite of the fact that after October 1, 1984, only a sum of Rs. 716 was paid by the petitioner to the Corporation, the latter agreed, vide annexure P-4, to reschedule the payments in 1986, starting from March, 1987, and ending in 1996. Despite all this, the petitioner failed to make the payments as rescheduled and the respondent-Corporation waited for another three years before taking the impugned action against the former. Under the circumstances, it cannot be said that the impugned action on the part of the Corporation was arbitrary or whimsical. The petitioner was given enough latitude by the Corporation by agreeing to the rescheduling of payments by the petitioner thrice, and that too at the reduced rate of interest, i.e., at 11.5%.

15. The Corporation waited for eight years before taking the action u/s 29 of the Act. The Corporation rescheduled the payments of the petitioner thrice even at

 

reduced rate of interest, as noticed above. In my considered view, the action taken by the Corporation u/s 29 of the Act cannot be termed as arbitrary under the circumstances. The word "wilful" cannot be read into Section 29 of the Act. According to the Concise Oxford Dictionary, 1989 edition, the word "defaulter" means failure to act ; failure to pay. Since the petitioner failed to pay the loan for eight long years, it cannot be held that it was not a defaulter or that it had to be a wilful defaulter for the purposes of taking action u/s 29 of the Act.

16. It was also contended by Mr. Sarin that the mortgage deed, annexure P-1, was ipso facto void, as it was created on the basis of a defective title, the contention being that the mortgage deed in favour of the respondent-Corporation was created by depositing the allotment letter for the plot referred to earlier. The said allotment letter was not a proper title deed and, therefore, any mortgage created on the basis of that document would be a void mortgage. This contention also is fallacious. Taking of loan is admitted by the petitioner. Since the petitioner was not in possession of the conveyance deed, the Corporation agreed to the creation of mortgage deed, annexure P-l, on the basis of the letter of allotment. This was done by the Corporation on the basis of letter, annexure P-2, issued in the year 1971 according to which a second mortgage could be created even on the basis of an allotment letter. The case pleaded by learned counsel for the petitioner is that, on the basis of annexure P-2, no second charge could be created, as this document ceased to be valid after 1975. The contention of Mr. Mehra, on the contrary, is that it was not a mortgage by deposit of title deeds and was, in fact, a simple mortgage deed. According to him, the mortgage deed in question is a valid document and cannot be challenged in these proceedings under Article 226 of the Constitution of India. Apart from the fact that I do not agree to the point raised by Mr. Sarin, I need not go into this matter at this stage, because before me the point raised is regarding the constitutional validity of Section 29 of the Act which I have already upheld. I have also upheld the issuance of notice to the petitioner by the Corporation u/s 29 of the Act as being just and proper and in accordance with law. In this case, the loan is admitted ; the default is admitted, as is clear from the narration of facts above, and the Corporation was fully justified in making an effort in recovering the amount by resorting to Section 29 of the Act. The petitioner cannot be permitted to challenge the validity of the mortgage in the present proceedings under Article 226 of the Constitution of India. Moreover, the petitioner was a party to the execution of the mortgage deed, annexure P-1, and it would not be permitted in equity either to challenge the validity of the mortgage.

17. The last submission of Mr. Sarin is that the concept of creation of State Financial Corporations is to promote industries and that indulgence should be shown to a person who is not able to repay the loan for no fault of his. This contention also lacks merit. The narration of facts given above shows that the State Financial Corporation has been over-indulgent towards the petitioner. It rescheduled the repayment by the petitioner thrice and that too at a concessional rate of interest. It was the petitioner who was unable to pay even a single

 

instalment and it paid only a sum of Rs. 716 after October 1, 1984. Under these circumstances, the Corporation was left with no choice but to resort to action u/s 29 of the Act. The Corporation did not violate any principles of natural justice as it gave final opportunity to the petitioner to make the payment before resorting to the impugned action.

18. In view of the foregoing discussion, it is held that Section 29 of the Act is neither arbitrary nor ultra vires Article 14 of the Constitution of India.

19. Before parting with the judgment, I may advert to another request made by Mr. Sarin that a joint inventory of the machinery and other materials lying at the premises of the petitioner at Mohali should be made. I granted this request of Mr. Sarin and asked his client to be present in court so that he could go along with an official of the respondent-Corporation to the spot for this purpose. Mr. Sarin''s client could not, however, be present in court as he was reported to be taken seriously ill all of a sudden. I, therefore, direct that as and when the petitioner makes a written request to the respondent-Corporation, a joint inventory of the goods and machinery, etc., lying at the factory premises of the petitioner be prepared and a copy thereof supplied to the petitioner.

20. It also needs to be mentioned that this writ petition came up for hearing before the Division Bench on November 17, 1989, when notice of motion was issued for January 12, 1990, with stay of operation of annexure P-10 until further orders. It is alleged that, in spite of this order of the Division Bench, the respondent-Corporation took over the premises u/s 29 of the Act on November 18, 1989. The petitioner filed a contempt petition against the officials of the Corporation which is stated to be pending in this court. Thereafter, the petitioner moved Civil Miscellaneous No. 19803 of 1989 for restoration of the possession of its factory whereas the respondent moved C. M. No. 1960 of 1989 for vacation of the stay order granted in favour of the petitioner. Both the applications were disposed of together by the Division Bench in the following terms :

"The Punjab Financial Corporation (for short, ''the PFC''), has no objection to the petitioner''s advertising for sale of the factory in dispute and in bringing customers. It would also remove the notice of sale, if any, pasted on the premises.

The factory, at the present moment, is under the lock and key of the PFC and whenever the petitioner would like to visit the factory for showing the same to any buyer, it will give notice to the PFC during working days to enable it to open the lock, etc., and to facilitate the buyer to go through the factory in order to assess the value. This notice should be at least of 48 hours. The petitioner will not pursue the contempt proceedings till further orders ; case to come up on the date already fixed."

21. While arguing the case, Mr. Sarin made a request that since the writ petition is being disposed of finally, he may be permitted to pursue the contempt petition. The petitioner may, if so advised, pursue his contempt petition in accordance

 

with law.

21. The writ petition is dismissed with no order as to costs.

 