

(1999) 01 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 3935 of 1988

Hotel Seaking and Others

APPELLANT

Vs

Kerala Financial Corporation

RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
State Financial Corporations Act, 1951 — Section 31

Citation : (2000) 101 CompCas 1 : (2000) 1 CTC 101 : (1999) 9 JT 440 :
(1999) 6 SCC 51

Hon'ble Judges : R. P. Sethi, J;M. Srinivasan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Srinivasan, J.—The appellants borrowed a sum of Rs. 5,50,000 from the respondent for their industrial concern and they executed a mortgage deed on 30-12-1971. The loan was repayable in 17 half-yearly instalments as per the schedule annexed to the mortgage deed with interest at 10.5% per annum. The deed also provided for enhancement of interest periodically. The appellant took a further loan of Rs. 2,50,000 on 7-3-1975.

2. The respondent filed a petition u/s 31 of the State Financial Corporations Act, 1951 (for short "the Act") before the District Court, Ernakulam for an order of sale of the properties described in the schedule to the petition for the realisation of Rs. 16,35,359.26 said to be due as on 1-2-1981 with interest at the rate of 15 per. cent per annum till the date of realisation. The appellants filed a statement of objections in which the main contention raised by the appellant was that the industrial unit could not be completed or the hotel could not be commenced on account of several difficulties faced by the appellant. One of them was said to be a dispute raised by a neighbour with regard to a portion of the property and another was said to be the closure of the entrance to hotel from M.G. Road, Ernakulam which was blocked by the Public Health Engineering Department. The

respondent was not responsible for any of the difficulties of the appellants.

3. The District Court framed six points including the relief to which the respondent was entitled. Point 1 was whether the appellants committed any default in payment of the loan instalments. Point 2 was with regard to the entitlement of the respondent to compound and penal interest. Point 3 related to the question whether the appellants were entitled to reduction of interest. The District Court found against the contentions of the appellants on Points 1 and 2. In the 3rd point, it was found that no material was placed before the Court to sustain the contention, of the appellants.' However, while fixing the rate of interest, the District Court reduced the interest to 6 per cent per annum invoking the provisions of Section 34 of the CPC for the period during which the petition was pending in that Court. The relevant paragraph of the District Court's judgment reads as under:

So, I accept the figures given in revised Statement 1 filed by the respondents on 5-8-1983. As per that Statement, the total principal and interest due to the petitioner Corporation from the respondents under the two loans as on 1-2-1981 is Rs. 15,83,265.51. From that Rs. 2,65,000 paid by the respondents prior to and after the filing of the petition has to be deducted. So deducted, the principal and interest due as on 1-2-1981 will be Rs. 13,18,265.61 of which Rs. 7,97,000 will be the principal amount. u/s 34 C.P.C. the petitioner Corporation will be entitled to get interest on the principal amount from the date of the petition till the date of this decree only at the rate of 6% per annum.

4. In the last but one paragraph the District Court observed as under:

In the result, the petition is allowed and the petitioner Corporation is given a decree against the respondents for Rs. 13,18,265.51 with interest thereon at the rate of 15% per annum from 1-2-1981 to 2-9-1981, with further interest of 6% per annum on the principal amount of Rs. 7,97,000 from 2-9-1981 till the date of this decree and thereafter at the rate of 15% per annum on the above-mentioned principal amount till the date of realisation. Petitioner will get its costs from the respondents.

5. The District Court also directed the appellants to pay Rs. 1,00,000 to the respondent on or before 19-9-1983 and the balance decree amount in monthly instalments of Rs. 25,000 and observed that if they commit default in making payment of four consecutive instalments, they will forfeit their right to pay the decree debt in instalments and the respondent will be entitled to realise the balance decree amount in a lump sum.

6. The respondent filed an appeal before the High Court of Kerala. Relying upon the judgment of this Court in Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, the High Court held that Section 34 C.P.C. was not attracted to the proceedings instituted u/s 31 of the Act and interest will be payable in accordance with the terms of agreement between the parties till the entire amount due was paid. Therefore the High Court held that the

Corporation will be entitled to interest as claimed from the date of petition till the same was realised. It modified the order of the District Court as under:

The impugned order is modified by holding that the Corporation is entitled to interest as claimed from the date of petition till the date of order calculated on the amount outstanding. Respondents are at liberty to discharge the total amount now found due in monthly instalments of Rs. 40,000 beginning from 1-5-1988. If the instalments due for any three consecutive months are not fully paid, the respondents are liable to pay the entire balance in lump sum. After the first instalment, interest is liable to be paid on the first of every succeeding month. The MFA is, thus, allowed with costs.

7. The appellants have preferred this appeal on obtaining special leave. It is contended by learned Counsel for the appellants that the conduct of the respondent was such that it was not entitled to claim 15 per cent interest and the Court was empowered to reduce the interest to 6 per cent per annum as a matter of equity even if the provisions of Section 34 C.P.C. are not applicable. Reliance is placed upon some observations made by this Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . That judgment was based on the facts of that case. It is further submitted by learned Counsel that the respondent is a State and not a private party and it is bound to act in a fair manner without insisting upon payment of agreed rate of interest, when the debtor is in difficulty. It is further contended that the High Court is in error in placing reliance upon the judgment in Everest Industrial Corporation v. Gujarat State Financial Corporation (Supra) inasmuch as the facts were entirely different in that case and the ruling would not apply to the situation present in this case.

8. Learned Counsel for the appellants has drawn our attention to the judgment in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, . Placing reliance on certain observations found in para 13 it is argued that the Court is bound to decide whether the claim made by the Corporation is permissible and any relief could be granted on the basis of such claim in favour of the Corporation. The following passage is referred to by the learned Counsel:

13. It was said that if cause is shown by the industrial concern it is obligatory upon the District Judge to investigate the claim of the Financial Corporation in accordance with the provision contained in the CPC, 1908, insofar as such provisions may be applied thereto. The contention is that once an industrial concern shows cause and contests the application of the Corporation there arises a lis between the parties which would include the investigation of the monetary claim of the Corporation and per se it would be a suit between the mortgagee and the mortgagor in which the ultimate relief is sale of mortgaged property for repayment of the mortgage money. Sub-section (6) of Section 32 of the Act has to be read in the context in which it is placed. 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 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 instalment 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-section (7) of Section 32. prescribes what reliefs can be given after investigation under Sub-section (6) is made, and it clearly gives a clue to the nature of contest under Sub-section (6). Sub-section (8) of Section 32 only prescribes the mode and method for executing the order of attachment or sale of property as provided in the CPC. 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 3(1) has not arisen and the relief should not be granted. In the absence of a provision giving such an opportunity to the industrial concern to whose detriment the order is required to be made a serious question may arise about the constitutional validity of the procedure prescribed u/s 31(1) inasmuch as it would be violative of principles of natural justice and that too in a proceeding in a court of law. 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. If that were so, the Corporation would not be entitled to specified reliefs only and if the contract permits it may seek to enforce personal liability of mortgage which it cannot enforce in application u/s 31(2).

The above passage does not help the appellants.

9. Reference is made by learned Counsel to the judgment in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., wherein it was held that if the Corporation entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct to the respondent. In such a situation, the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. The decision has no relevance in this case.

10. Our attention is also drawn to the judgment of this Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, wherein it was held that an arbitrator is not entitled to award interest, pendente lite, when there is no provision in the agreement. It is argued that in the present case the agreement did not provide for interest during the pendency of proceedings u/s 31 and the Court ought not to have granted the same. The ruling has no application to this case.

11. Reliance is placed on the judgment in N.M. Veerappa Vs. Canara Bank and

Others, wherein it was held that Section 21-A of the Banking Regulation Act, 1949 does not override the provisions of Order 34 Rule 11 C.P.C. and the Court has jurisdiction to apply the provision? and award appropriate interest in the facts and circumstances of the given case. The judgment has no relevance here.

12. It is pointed out by learned Counsel for the appellants that they offered to pay the loan in instalments of Rs. 20,000 per month before the proceedings u/s 31 of the Act commenced but the cheques sent to the respondents were returned without being encashed. The learned Counsel contends that the conduct of the respondent disentitled it to insist upon payment of interest at the agreed rate for the period of pendency of proceedings before the District Court as it was unnecessary. He made it clear that he does not question the award of interest for the period prior to the filing of the petition and the period subsequent to the order of the District Court. The only dispute raised here is against the award of interest for the period during which the proceedings were pending before the District Court.

13. Per contra, learned Counsel for the respondent contends that Section 34 C.P.C. has been held to be not applicable to a proceeding u/s 31 of the Act and refers to Everest Industrial Corporation v. Gujarat State Financial Corporation. He points out that a proceeding u/s 31 is akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree and no question of passing any order u/s 34 of the Code would arise since Section 34 of the Code would be applicable only at the stage of passing the decree and not to any stage posterior to the decree. He has also referred to the judgment in Gujarat State Financial Corporation v. Natson Mfg. Co. In that judgment the Court has clearly observed that the substantive relief in an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. It is this principle which has been adopted by this Court in Everest Industrial Corporation case and it was held that Section 34 C.P.C. was not applicable.

14. Learned Counsel has also referred to a case in which the ruling in Mahesh Chandra case was distinguished where it has been made clear that the financial corporations cannot be made to suffer as the loans granted by them had to be recovered vide U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, . Reliance is placed on the following passage in that judgment:

10. It is true that the appellant Corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the corporation is not like an ordinary moneylender or a bank which lends money. It is a lender with a purpose - the purpose being promoting the small and medium industries. At the same time, it

is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one-way street, more particularly in matters like the present one.

The Bench held that Mahesh Chandra (Supra) was decided on the facts of the particular case.

15. After analysing the rulings referred to by both the sides and perusing the records we are of the opinion that the judgment of the High Court is correct. The view taken that Section 34 C.P.C. cannot be invoked in proceedings instituted u/s 31 of the Act and interest will be payable in accordance with the terms of the agreement is right. The question has been squarely answered in Everest Industrial Corporation which was in turn based on the principle laid down in Natson Manufacturing Company (P) Ltd. The rulings cited by learned Counsel for the appellants have no relevance in this case as pointed out earlier.

16. The District Court having found on the facts that the appellants had not made out a case for reduction of interest was in error in reducing the rate of interest for the period from the date of the petition to the date of the order u/s 34 C.P.C. The same is contrary to the law laid down by this Court. Hence we agree with the High Court that the interest should be paid at the rate of 15% till the debt is discharged.

17. We confirm the modification of the order of the District Court as made by the High Court in that the rate of interest which was fixed at 6 per cent per annum for the period 2-9-1981 to 18-8-1993 is altered to 15 per cent per annum. The High Court has also enhanced the instalment amount to Rs. 40,000 from Rs. 20,000 per month. Having regard to the lapse of the long period, we are of the opinion that the instalment amount fixed by the High Court is justified and does not warrant any interference.

18. In the result, the judgment of the High Court is confirmed in toto and the appeal is dismissed. There will be no order as to costs.