

(1986) 12 AP CK 0027
In the Andhra Pradesh High Court
Case No : Writ Petition No. 235 of 1982

K. Subba Reddy

APPELLANT

Vs

Andhra Pradesh State Financial Corporation and Others

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 1987 AP 119 : (1987) 1 APLJ 226

Hon'ble Judges : Sardar Ali Khan, J; Radhakrishna Rao, J; A. Raghuvir, J

Bench : Full Bench

Advocate : M. Rajasekhara Reddy, for the Appellant; Y. Sivarama Sastry and M. Chandrasekhara Rao, for the Respondent

Judgement

Sardar Ali Khan, J.—A Division Bench of this High Court entertained some doubt about the opinion expressed by another Division Bench in *Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others*, about the guidelines provided for implementation of the provisions of S. 29 of the State Financial Corporation Act, 1951 (for short "the Act") and has referred the matter for consideration of a Full Bench for an authoritative pronouncement on the subject. Therefore, the entire W.P. No. 235 of 1982 has been referred to the Full Bench for a decision on the facts as well as the law applicable to the case.

2. Since the entire W.P. has been referred to the Full Bench for a decision on the merits of the case, it becomes necessary to give a brief account of the fact of the case to indicate the controversy involved in the matter.

3. The petitioner had applied for a loan of Rs. 99,500/- to the Andhra Pradesh State Financial Corporation (for short "the Corporation") for carrying on business of manufacturing agricultural implements at Koritipadu village in Amaravathi Road, Guntur. The petitioner executed a mortgage deed with the respondent-Corporation on 27-12-1966 thereby creating a charge on its properties in favour of the Corporation. Thereafter, the allegation made is that the petitioner was being harassed by the respondent-Corporation unnecessarily thus hampering

smooth running of the industrial unit. Finally the respondent-Corporation filed a petition under S. 31 of the Act, O. P. No. 211/69 before the District Judge, Guntur, for directing the mortgaged property to be sold for realising a sum of Rs. 1,09,020-19 together with interest at 81/2% p.a. compoundable every half year from 28-9-1969 onwards. The District Judge allowed the petition vide order dated 7-9-1971, stipulating the future rate of interest at 6% p.a. on the principal sum of Rs.99,500/-. The petitioner preferred C. M. A. No. 176 of 1972 to the High Court against the said order which was dismissed and the Cross - objections filed by the respondent - Corporation were upheld. It is stated that the petitioner paid several amounts towards the dues to the Corporation in pursuance of the order of the District Judge, Guntur. In the month of June, 1981, the petitioner wrote to the Managing Director of the Corporation requesting him to intimate the exact amount due and also to accept the amount due in instalments and also offered to pay a sum of Rs.50,000/- towards the first instalment to the Corporation. However, no reply was given to the petitioner, who wrote another letter on 14-7-1981 to the Managing Director of the Corporation requesting that he may be granted facility of instalments in accordance with the letter written by him earlier.

4. While the petitioner was pursuing with the respondent-Corporation for grant of facility of instalments, a notice was published in EENADU Telugu newspaper to the effect that the industrial unit of the petitioner viz. Kisan Development Corporation, with its machinery would be sold and tenders were invited before 7-1-1982 for purchasing the same. It is further stated in the notice that the purchase amount should be paid within 30 days from 7-1-1982. In this Writ Petition the petitioner challenges the proposed action of bringing the industrial unit to sale by the respondent-Corporation without following the procedure prescribed under S. 32(a) of the Act. The case of the petitioner is that the provisions of the Civil P.C. which are expressly made applicable to such sales under S. 32(a) of the Act, are being short-circuited by the respondent-Corporation by issuing the notice to bring the Kisan Development Corporation with its machinery, etc., to sale. It may also be stated that in pursuance of the aforesaid notice published in Eenadu newspaper the 3rd respondent in the Writ Petition gave his offer to purchase the land and factory for Rs. 2,05,000/- and deposited Rs. 52,000/- on 12-1-1982. Nevertheless, it seems that the balance of consideration which was to be paid within 30 days has not been paid by the 3rd respondent as such. The petitioner, therefore, prayed for the issue of a writ of certiorari calling for the records of the sale proceedings in respect of M/s. Kisan Development Corporation, Guntur, in pursuance of the order in O.P. No. 211 of 1979 on the file of the District Judge, Guntur and to quash the same and also prayed that the sale proceedings taken by respondent-Corporation in respect of M/s. Kisan Development Corporation, in pursuance of the order in O.P. No. 211 of 1969 on the file of the District Judge, Guntur, be stayed.

5. These are some of the basic facts of the case in the light of which it will have to be seen as to how far the provisions of Ss. 29 and 31 of the Act can be

invoked simultaneously by the respondent-Corporation in this case.

6. Before going into the legal aspect of the matter, it may be stated that in the counter-affidavit filed by the respondent-Corporation it is clearly stated that the Corporation having regard to the circumstances of the case was obliged to file an application O. P. No. 211 of 1969 under S. 31 of the Act on the file of the District Judge, Guntur, for sale of the Industrial properties of the petitioner which are mortgaged to the Corporation for recovery of a sum of Rs. 1,09,020-19 with future interest. The O.P. was allowed as prayed for but in the decree as against the sum claimed in the O.P. future interest was granted only on the amount advanced. The petitioner filed C.M.A. No. 176 of 1972 on the file of the High Court which was dismissed. The respondent-Corporation had also filed Cross-objections with regard to the amounts that were not specifically allowed in the O.P. and the Cross-objection was allowed limiting the claim of the Corporation at 6% p.a. with regard to future interest. It is further stated in the counter-affidavit that during the pendency of the C.M.A. stay was granted to the petitioner on condition that he pays 1/4th of the amounts ordered by the District Court in the O.P. hence, an amount of Rs. 27,000/- which comes to 1/4th of the amount due was paid by the petitioner. Later on the petitioner failed to make any payments whatsoever and his whereabouts also could not be traced. After some time it came to light that the petitioner had started two private limited companies in Kakinada and the respondent-Corporation tried to get in touch with him without any success. A further contention in the counter-affidavit is that the procedure laid down under S. 32(8) of the Act for executing the orders passed in the application filed under S. 31 of the Act does not preclude the Corporation from resorting to action under S. 29 of the Act. The procedure under Ss. 31 and 32(1) to 32(8) of the Act is one and the same and any action initiated under those sections is without prejudice to the provisions of S. 29 of the Act. Since the petitioner had failed to make any payments to the respondent- Corporation, the Corporation had initiated action under S. 29 of the Act against the petitioner. In other words the main contention in the counter is that the actions taken under Ss. 31 and 29 of the Act do not exclude each other and it is not for the petitioner to make any grievance of the action taken by the respondent-Corporation.

7. The narration of the above facts clearly reveal the point that it is not at all necessary for this Full Bench to go into the constitutionality or validity of S. 29 of the Act. The entire Writ Petition has been referred to the Full Bench for consideration on the facts of the case as well as the question whether there can be any simultaneous invocation of S. 29 of the Act along with S. 31 of the Act. This point will have to be considered keeping in view the merits of the case and in the light of the facts governing the rights of the parties.

8. During the arguments the point that clearly emerged was that the vires of S. 29 of the Act is not at stake in this case and what will have to be decided basically is, whether the Corporation can resort to the remedies available to it under S. 29 of the Act after initiating action under S. 31 of the Act.

9. The State Financial Corporation has been set up in pursuance of S. 3 of the Act. It is a body corporate having perpetual succession and a common seal, and is capable to acquire and hold property in its own name. The object of setting up of these Financial Corporations is to provide medium or long term loans to the industrial undertakings which falls outside the normal activities of the commercial Banks. The Corporation grants or guarantees loans to be raised by industrial concerns either from scheduled banks or State Co-operative Banks or those floated in the public market.

10. Section 29 of the Act deals with the right of the Financial Corporation in case of default in payment of loans or advances or any instalments thereof by any industrial concerns. It reads as follows :

Section 29 : Rights of Financial Corporation in case of default.

(i) 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-s. (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 provisions of sub-s. (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-s. (1) the Financial Corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern, and shall sue and be sued in the name of the concern.

Section 31 of the Act deals with the question of special provisions for

enforcement of claims by Financial Corporation in the following terms :

"Section 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 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 under S. 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of S. 29 of this Act and of S. 30 and the industrial concerns fails to make such repayment, then, without prejudice to the provisions of S. 29 of this Act and of S. 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 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-s. (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.

11. A close reading of S. 29 of the Act shows that where any industrial concern which is under liability to the Corporation under an agreement makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of the agreement, the Financial Corporation shall have a 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 or hypothecated or assigned to the Financial Corporation. Sub-s. (2) of S. 29 provides that any transfer of property made by the Financial Corporation shall vest in the transferee all rights in or to the property transferred. Under sub-s. (3) of S. 29 the Financial Corporation has the same rights with respect to the 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. It is thus clear that though the heading of S. 29 of the Act is

"rights of Financial Corporation in case of default." It also confers power on the Financial Corporation not only to take over the management or possession of the industrial concern in case of a default, but also to bring the property pledged, mortgaged, hypothecated or assigned to sale to realise the money due to the Corporation.

12. In S. 31 of the Act it has been provided that where any industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or where the Financial Corporation requires any immediate repayment of any loan or advance under S. 30 of the Act and if the industrial concern fails to make such payment, then the Financial Corporation 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 three types of orders viz. (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 (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. Any application made under S. 31 is required to disclose the nature and extent of the liability of the industrial concern and the ground on which it is made. S. 32 of the Act provides for procedure the District Judge has to follow in respect of applications under S. 31. It may also be mentioned that in S. 31 it is mentioned that the action can be taken by the Financial Corporation without prejudice to the provisions of S. 29 of the Act and S. 69 of the Transfer of Property Act, 1882. Even on a fair reading of S. 29 and S. 31 it is clear that in case of default or breach of an agreement committed by an industrial concern, two remedies are available to the Financial Corporation, one under S. 29 and another under s. 31 of the Act. It can resort to the remedy available under S. 29 or to the provisions of S. 31 for enforcement of the claims by the Financial Corporation. The choice in a given set of circumstances for availing the remedies available under S. 29 or S. 31 of the Act is of the Financial Corporation itself. The term "without prejudice to the provisions of S. 29 of the Act" as used in S. 31 of the Act makes it clear that it is not obligatory on the part of the Financial Corporation to invoke only the special provisions of enforcement of the claims under S. 31. It can certainly resort to S. 29 of the Act without invoking the provisions of S. 31 of the Act for realisation of the amounts due to it. The question to be considered however, in this case is, whether having resorted to the provisions of S. 331 of the Act and having filed O.P. No. 211 of 1969 the Financial Corporation can change horses in the midstream and try to invoke the provisions of S. 29 of the Act. As it has been stated earlier in this case, the Financial Corporation has filed an application before the District Judge, Guntur, in O.P. 211 of 1969 under S. 31 of the Act. The O.P. was allowed as prayed for and a decree was passed by the District Judge. The industrial concern filed C.M.A. 176 of 1972 on the file of the High Court

which was dismissed. But the cross-objection preferred by the Corporation was allowed limiting the claim of the Corporation to 6% in regard to future interest. Now in view of the subsequent default committed by the industrial concern, who is the petitioner herein, the respondent-Corporation has tried to invoke the provisions of S. 29 of the Act and has notified the property of the industrial concern for sale in the Eenadu Telugu newspaper. The main point therefore which requires consideration of the Full Bench is, whether the Financial Corporation can be at liberty to resort to the remedy available to it under S. 29 of the Act having obtained a decree after invoking the provisions of S. 31 of the Act.

13. Before attempting to answer this question, it may be necessary for us to refer to some decisions which throw light on this question. In the decision reported in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, the Supreme Court had occasion to consider the provisions of Ss. 31 and 32 of the State Financial Corporation Act. It may be stated at the outset that the provisions of S. 29 were not under consideration in this case. However, while dealing with the provisions of Ss. 31 and 32 of the Financial Corporation Act, the Supreme Court held that S. 31 prescribes a special procedure for enforcement of claims by the Financial Corporation. It enables the Corporation in the event of breach of agreement or default in payment of loan or advance or an instalment thereof to make an application not merely for sale of mortgaged property but even for transferring the management of the industrial concern to Financial Corporation. But the contest put up in an application filed under S. 31 does not render the application to be a suit between a mortgagee and mortgagor for sale of mortgaged property and is not a substantive relief claimed by the Corporation which can be valued in terms of monetary gain or prevention of monetary loss as envisaged by Art. 7 of the Schedule 1 of Court-fees Act. The substantive relief in an application under S. 31 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. The provisions of S. 31 were discussed in the light of S. 32 of the Act and it was ultimately held that the provisions contained in sub-sec. (6) of S. 32 do not expand the contest in the application made under S. 31 as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property thereby attracting the provisions of the Court-fees Act in such a manner that payment of ad valorem court-fee be required on such an application. It is, therefore, clear from the Judgment of the Supreme Court that the rights conferred under S. 31 of the Act are not of substantive nature and are in the nature of special provisions for enforcement of the claims by the Financial Corporation. Section 29 of the Act however deals not only with the question of the rights of the Financial Corporation in case of default, but also provides for remedy to take over the management of the defaulting industrial concern with or without possession as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged or assigned to the Financial Corporation. Hence, S. 29 does not merely confer right but provides a self-contained remedy also to the Financial

Corporation for the enforcement of which it need not invoke the provisions of S. 31 of the Act. The other decision which may be considered in this connection is *Bharat Chemical Works and Others Vs. Gujarat State Financial Corporation, Ahmedabad*, . In this case it was specifically held that an application under S. 31 of the State Financial Corporations Act does not amount to a suit for recovery of the dues within the meaning of S. 3(4) of the Gujarat Public Moneys (Recovery of Dues) Act, 1978. It was held that a proceeding under S. 31 of the Financial Corporations Act is not barred by necessary implication as a result of the enactment of S. 3(1) of the Recovery Act, 1978. The remedy available to the Financial Corporation under S. 31 is to make an application to the District Judge for an order for sale of property or for transferring the management or for ad interim injunction against the transfer or removal of its machinery from the premises of the industrial concern, the remedies available under sub-sec. (1) of S. 3 of the Recovery Act and S. 31(1) of the Financial Corporations Act were held to be distinct in nature and not mutually barred by the operation of each other. In both the cases referred to above, the nature of the remedy available under S. 31 of the Act has been discussed and it is held unequivocally that S. 31 of the Act does not confer any substantive right on the Corporation but only provides for special measures to be adopted by it for the enforcement of the claims by the Financial Corporation against the erring industrial concerns. In none of these cases, the provisions of S. 29 have come up for discussion and nothing has been said about the provisions of S. 31 of the Act in contradistinction to the provisions of S. 29 of the Act. In the decision reported in *Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others*, it was held inter alia that the Commissioner has the option to pursue the remedy available for collection of the taxes under S. 22(4-A) of the M.P. General Sales Tax Act, while levying a penalty on the assessee or in a given case if the Commissioner is satisfied that the assessee has failed without reasonable cause and it is necessary to have recourse to the prosecution under S. 46(1)(c) of the Act, the Commissioner may avail of that remedy available to him. In other words, the two remedies available can be exercised by the Commissioner in a given set of circumstances after being satisfied as to which remedy must be followed for the effective recovery of the tax from an assessee. This case is relied upon by the learned counsel for the respondent-Corporation to show that several remedies may be available to a particular person which need not necessarily be mutually exclusive and similarly all the remedies available under Ss. 29 and 31 of the Act can also be said to be available to the Financial Corporation at any point of time for the recovery of the amounts due from a defaulting industrial concern. In the matter before us, the undisputed fact of the case is that the Financial Corporation has invoked, after due consideration of the facts of the case, the remedy available to it under S. 31 of the Act and has obtained a decree in O.P. No. 211 of 1969. Having thus invoked the jurisdiction of the District Judge under S. 31 of the Act and obtained a decree the Corporation cannot invoke the provisions of S. 29 of the Act. It is true that at the threshold of an action against the defaulting industrial concern the Financial Corporation has got two remedies

available to it one under S. 29 and another under S. 31 of the Act. Once the choice is made and necessary steps are taken, which in this case have culminated in the passing of a decree, the Financial Corporation cannot resort to the remedies available under S. 29 of the Act, which will result in a complete negation of what has been done after taking steps for enforcement of the claims by the Financial Corporation under S. 31 of the Act. In a given case, a situation may arise where the Financial Corporation has ultimately failed to secure an order under S. 31 of the Act on the basis of fact and evidence in the case and an order may have been passed to that effect by the District Court. Can it be said that in the event of such a failure the Financial Corporation can still resort to S. 29 and bring the property of the industrial concern to sale? It is no doubt true that the power contained under s. 29 of the Act available to the Financial Corporation seems to be somewhat wider than the remedies available under S. 31 of the Act. But, as stated earlier it is for the Financial Corporation to make up its mind about the remedy which it wishes to pursue against the erring industrial concern and if the provisions of S. 31 have been invoked culminating in an order passed by the Court, it cannot turn back to the remedies available to it under S. 29 of the Act.

14. The distinguishing feature of S. 29 of the Act is that it can resort to the remedies provided therein without invoking the jurisdiction of any Court. It can exercise its right to take over the management or possession or both of the industrial concern as well as transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. Under S. 31 of the Act also the respondent-Corporation can seek for an order for sale of the property pledged, mortgaged, hypothecated or assigned and can also request for transfer of the management of the industrial concern to the Financial Corporation. It can also plead for issue of an interim injunction restraining the industrial concern from transferring or removing its machinery, etc., from the premises. All these remedies however available under S. 31 can be availed of through an order of the District Court. The Financial Corporation does not have a right to take any unilateral action under S. 31 of the Act and must necessarily invoke the jurisdiction of the District Judge within the limits of whose jurisdiction the industrial concern carries on business to obtain any of the orders mentioned above. It is clear that in so far as the remedies available to the State Financial Corporation under Ss. 29 and 31 are concerned they are the same. In both the Ss. 29 and 31, the Financial Corporation has got a right to take over the management of the industrial concern or bring the property pledged, mortgaged hypothecated or assigned to sale. The choice is therefore left to the Corporation to choose either of the remedies available under Ss. 29 and 31 of the Act. In this case, the Corporation decided to invoke the jurisdiction of the District Judge under S. 31 of the Act and filed O.P. 211 of 1969 in which a decree has been passed in favour of the Corporation. The State Financial Corporation cannot therefore be allowed to go back on the action taken under S. 31 and try to enforce a remedy available to it under S. 29 independent of any action taken by

the District Court under S. 31 of the Act. It is also to be kept in view that in this case final order has been passed by the District Judge in O.P. 211/69.

15. During the course of arguments our attention was drawn to a decision of a learned single Judge in *Rose Potteries Vs. West Bengal Financial Corporation*, . In the said case, the industrial concern defaulted in making repayment of loans obtained from the West Bengal Financial Corporation. A demand notice was served on the defaulting industrial concern asking for repayment of the amounts due to the State Financial Corporation. In a further notice issued by the Corporation it was stated that in exercise of its right under S. 29 of the State Financial Corporations Act a representative of the Corporation will take possession of the factory of the petitioner on a certain date. The industrial concern challenged this notice on the ground that the proceedings may be started against the petitioner under Ss. 30 and 31 which confer upon the Corporation the power to call for repayment, but the Corporation cannot proceed under S. 29 to take over the management of the industrial concern of the petitioner without obtaining an order from Court. It is specifically this point which was considered by the learned single Judge of the Calcutta High Court in the above matter. It was held that the argument that S. 31 lays down the method of exercising the right given by S. 29 cannot be accepted because of the clear wordings of S. 31. Section 31 provides for special provisions and these provisions are "without prejudice to the provisions of S. 29 of this Act". Therefore, it cannot be suggested that provisions of S. 29 are controlled by S. 31 or S. 31 lays down the procedure and S. 29 merely lays down the right. Furthermore, it should be noted that S. 29 specifically provides under sub-sec. (2) that the transferee will acquire all rights in or to the property transferred as if the transfer had been made by the owner of the property. This clearly indicates that S. 29 was dealing with transfer and the legal consequence of such a transfer. We do not see any reason whatsoever to differ with the reasoning of the learned single Judge as it clarifies the principle that S. 29 is not controlled by S. 31 of the Financial Corporation Act or that S. 31 lays down the procedure and S. 29 merely lays down the right available to the State Financial Corporation. Indeed we have clarified this point in our own Judgment also that Ss. 29 and 31 of the Act operate independently of each other in their own domain and it is not necessary that in order to enforce a right available to the State Financial Corporation under S. 29 of the Act, the special procedure provided under S. 31 of the Act must be invoked. What we have held is that having invoked the provisions of S. 31 of the Act by filing an application before the District Judge and obtained a decree, the Financial Corporation cannot go back to the provisions of S. 29 of the Act to enforce the claim without the intervention of the Court.

16. The case before the Division Bench viz. *Srinivasa Kandasari Sugars, Narasimhunipet Vs. Government of Andhra Pradesh and Others*, was one of withdrawal of an application filed by the Financial Corporation under S. 31 before any decision was rendered on the same and resort was sought to be had to the provisions of S. 29 of the Act. It is clear from a reading of the order that O.P.

47/72 was filed on 10-8-1972 and during the pendency of the O.P. the respondent-Corporation anxious to safeguard its own interest, brought the matter before the Board of Directors who authorised the management to take action under S. 29 of the Act. In fact no decision was rendered in O.P. 47/72 and before any such decision could be given by the District Court, the Corporation acting in good faith initiated action under S. 29 by advertising in the newspapers on 28-7-1973 and 30-7-73 calling for tenders for sale of the machinery of the industrial concern. In the case before us, a decision had already been given and a decree has been passed in O.P. 211/69. We do not see any reason to differ with the reasoning of the Division Bench in so far as the availability of the two procedures under Ss. 29 and 31 of the Financial Corporation are concerned. The question that we are deciding on the basis of the fact before us is that in the matter before us the Financial Corporation has initiated action under S. 31 of the Act, filed an O.P. and obtained a decree which can be enforced against the industrial concern. Having done all this, it cannot now initiate fresh action under S. 29 of the Act which will render the whole exercise under S. 31 of the Act as exercise in futility.

17. The reference is therefore answered within the context of the facts of the case which do not require consideration of the vires of S. 29 of the Act and the question posed by the Division Bench is answered accordingly. The writ petition is allowed to the extent indicated above.

18. Order accordingly.