
(2003) 02 MP CK 0027
In the Madhya Pradesh High Court
Case No : Writ Petition No. 35 of 2002

Kalyanmal

APPELLANT

Vs

M.P. Financial Corpn.

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2004) 2 BC 451 : (2004) 122 CompCas 717 : (2003) 3 MPLJ 329 : (2004) 50 SCL 558

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P.V. Bhagwat, for the Appellant; Ritu Bhargav, for the Respondent

Final Decision : Dismissed

Judgement

The short question that arises for consideration in the present writ petition is, whether the right conferred to the Financial Corporation u/s 29 of the State Financial Corporation Act (for short called "the Act") extends over the property mortgaged with the Corporation by a guarantor or not? To appreciate the issue, few facts need to be taken note of.

The petitioner had mortgaged his property for securing a term loan that had been granted by the Corporation (Respondent No. 1) in favour of respondent No. 2 for setting up of some Industrial Unit. As the loanee did not pay up the instalment dues, the Corporation served the notice on the petitioner (Annexure-E) calling upon him to clear the demanded dues with interest failing which the properties mortgaged by the petitioner in favour of Corporation should be taken over, it is against this action of the Corporation, the petitioner has felt aggrieved and filed this writ. Notice of the writ was issued to respondents. They are served and represented so far as respondent No. 1 is concerned. As far as respondent No. 2 is concerned, they are principal borrower and happens to be the son of petitioner.

Heard Shri P.V. Bhagwat, learned Counsel for the petitioner and Smt. Ritu Bhargav, learned Counsel for the respondent No. 1.

Mr. Bhagwat appearing for the petitioner raises the sole contention that u/s 29 of the Act, the Corporation can take possession of the property of the loanee (respondent No. 2) but not the property of the guarantor. Learned Counsel in support of this contention placed reliance on a decision of the Allahabad High Court in the case of Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another, . Learned Counsel also contended that when the Corporation has in their possession the property of loanee then they ought not to have proceeded against the petitioner's property. In reply learned counsel for the respondent while defending the impugned action placed reliance on a decision of Orissa High Court in the case of Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others, and contended that the issue sought to be raised by the petitioner stands decided by the Orissa High Court against the petitioner and hence, petition be dismissed.

Having heard the learned Counsel for the parties and having perused the record of the case, I am of the considered opinion that this petition has no merit and hence, it deserves dismissal.

In my considered opinion, the question raised in this petition has been decided by the Orissa High Court against the petitioner in the case of K.T. Sulochana Nair (supra) wherein identical question was raised. The Division Bench of the High Court presided over by Justice G.B. Patnaik (as his Lordship then was the Judge of Orissa High Court and later became former Chief justice of India) speaking for the Bench expressly overruled the submission of writ petitioner and held as follows :--

"4. In view of the rival stands of the parties, the sole question that arises for consideration is whether a guarantor's property which had been mortgaged with the Corporation can be taken possession u/s 29 of the Act when the loanee did not pay up the loan amount. To appreciate the contention raised, it would be appropriate to extract Section 29(1) of the Act:--

"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 for in meeting its obligation in relations 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 of 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."

A bare reading of the aforesaid provision makes it abundantly clear that the Financial Corporation shall have the right to take over the management or possession of 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. There is nothing in the aforesaid provision to indicate that the right u/s 29 of the Act is only in respect of the property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act. Mr. Palit, however, with reference to the Full Bench decision of the Allahabad High Court argues with vehemence that a guarantor's property cannot come within the purview of Section 29 of the Act. In the aforesaid case, their Lordships of the Allahabad High Court after analyzing the provisions contained in Sections 29, 31 and 32 of the Act came to hold that speedy remedy contained in Section 31 of the Act is available not against the surety but against the borrower only. The aforesaid conclusion was based on reading of Sections 31 and 32 of the Act together more particularly Sub-section (4) of Section 32 of the Act. But the said conclusion, in our considered opinion, will not apply to an action u/s 29 of the Act. In fact, in the aforesaid decision, their Lordships also observed that there is no conflict between the two provisions contained in Sections 29 and 31 inasmuch as the right of the Corporation u/s 29 in general to proceed against the mortgaged property remains intact but could be enforced not by the speedy remedy provided for in Section 31 but by taking recourse to the general law. In other words, though the Corporation can take possession of the mortgaged property of a guarantor u/s 29 of the Act but cannot sale the same by taking recourse to the power conferred u/s 31 of the Act and, on the other hand, can only sale by following the ordinary law contained in the Transfer of Property Act and the Code of Civil Procedure. But at the same time there cannot be any fetter on the power of the Corporation u/s 29 to take possession of the property of the surety also. In this view of the matter, we do not find any infirmity in the letter of the Corporation, annexed as Annexure - 7, and the Full Bench decision of the Allahabad High Court, on which Mr. Palit relied upon, does not support the contention raised by the learned Counsel for the petitioner." (p. 158)

The learned Judge also while distinguishing the view taken by the Allahabad High Court on which learned Counsel for the petitioner had placed reliance held that Corporation has right to invoke Section 29 of State Financial Corporation Act not only against the property of the Borrower but also against mortgaged properties. Learned Counsel for the petitioner was unable to point out any authority taking contrary view except Allahabad High Court. As observed supra, since I am in complete agreement with the view taken by the Division Bench of the High Court, no more discussion is needed to dismiss the petition and uphold the impugned action proposed by the Corporation against the petitioner's property.

Learned Counsel for the petitioner then complained that Corporation should have first proceeded against the respondent No. 2's property and then for residue, they should have proceeded against the guarantor. The submission has no merit. Once, it is held that Section 29 of the Act can be invoked against both the properties then it is the choice of the Corporation as to against which property

they intend to proceed. Learned Counsel for the petitioner could not point out any term in the agreement which prohibits or in any matter restrict the rights of the Corporation in proceedings against the petitioners property. In order to restrict the rights of Corporation, there must be a provision either in statute or in a contract. In the absence of either the impugned action cannot be said to be against any provision of law. Indeed, it has come on record at the instance of Corporation that sincere efforts were made by the Corporation to liquidate the industrial unit of respondent No. 2 but it did not yield any fruitful results in wiping out the liability. In such situation, the Corporation has every right to proceed against all properties which are mortgaged/ hypothecated by the borrower and guarantor in favour of Corporation for recovery of their outstanding loan amount. Indeed, that is the only object for which the properties are kept by way of security with the Corporation.

The Writ Court can only examine the legal issue. It was done. No more factual inquiry is contemplated, nor it can be allowed to be urged. Learned Counsel for the petitioner with vehemence invoked sympathetical submission to save the mortgaged property for being sold. I am afraid such submission can have any persuasive value for setting aside the impugned action. Such submissions are only the submissions for the sake of making but with no relevance. Since, the submissions were pressed with seriousness and hence, need to take note of for repelling.

As a consequence, the petition is found to be devoid of merit. It fails and is dismissed. All interim orders passed, stands vacated.

No costs.