
(1995) 01 KAR CK 0047

In the Karnataka High Court

Case No : Civil Revision Petition No. 1685 of 1991

Karnataka State Financial Corporation

APPELLANT

Vs

Rafiq and another

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (1996) 85 CompCas 47 : (1995) ILR (Kar) 932

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : N.B. Bhat, for the Appellant; G.B. Shastry and G.B. Chandregowda, for the Respondent

Judgement

Kumar Rajaratnam, J.—The petitioner is the second defendant in the trial court. The petitioner is the Karnataka State Financial Corporation. According to the petitioner, some moneys were borrowed by the first defendant, who is the second respondent before this court. For the purpose of convenience the parties will be referred to as they are described in the proceedings before the trial court. The plaintiff filed a suit against the principal borrower and the Karnataka States Financial Corporation. However, the principal borrower does not choose to file the suit. Curiously the plaintiff has filed this suit impleading the principal borrower as the first defendant and the Karnataka State Financial Corporation, as the second defendant. The substance of the suit in brief is that the plaintiff, who claims to be a tenant under defendant No. 1. has sought for perpetual injunction directing the defendants not to interfere with the peaceful possession of Wahiawa of the suit schedule property in any manner. The suit property relates to garage measuring about 4 guntas in survey No. 116/5, situated at Kakatti in Belgaum District.

2. The Plaintiff filed an application I. A. No. 1 for a temporary injunction and the trial court granted an order of temporary injunction against the defendants as prayed for. The second defendant who is the Karnataka State Financial Corporation preferred an appeal against the order of temporary injunction and

the appeal was dismissed and the order of temporary injunction was confirmed in M. A. No. 45 of 1989. The second defendant, being aggrieved by the orders passed by trial court as well as the appellate court in appeal, has filed this civil revision petition.

3. The facts very briefly are, that the second defendant who is the petitioner before me is a financial institution created u/s 3 of the State Financial Corporation Act, 1951 (hereinafter referred to as "the Act"). The object of the Corporation is to help the growth of industry by granting loans to entrepreneurs and institution for improvement of the industrial climate of the State. The facts leading to the filing of the suit are simple. The Karnataka State Financial Corporation had granted loan to the first defendant and there was a default. The Karnataka State Financial Corporation to protect its interest and to secure the amount that was given by way of loan to the first defendant moved an action u/s 29 of Act. Section 29 of the Act reads as follows :

"29. (1) 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 installment 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."

4. The action u/s 29, according to learned counsel for the petitioner, was only after issuing notice to the first defendant. Mr. Bhat, learned counsel for the petitioner, the Karnataka State Financial Corporation, strenuously contends that when once action is taken u/s 29 of the Act the property vests absolutely with the Karnataka State Financial Corporation and the Karnataka State Financial Corporation would be entitled to sell the property that has been pledged to it and recover the amount outstanding and any amount in excess will be returned to the borrower. He also contends that by virtue of section 29(5) of the Act, the financial corporation shall be deemed to be the owner of such concern and the borrower has no longer any rights in the property that is subject to an order u/s 29 of the Act. There is no doubt another remedy open to the finance corporation u/s 31. Section 31 of the Act read as follows :

"31(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 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

(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 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."

5. This section contemplates moving the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for an interim order of attachment of the security or so much of the security or so would be required to realise the amount outstanding. The

procedure that the District Judge will follow is stated in section 32 of the Act.

6. According to learned counsel for the petitioner, it is also possible to take action u/s 31 depending on the circumstance of the case and an order can be passed by the District Judge u/s 32. This, however, will not be a bar to any action that the financial corporation may contemplate to take u/s 29 independently. In fact, section 31 itself makes it clear that section 31 is without prejudice to the provisions of section 29 of the Act. Therefore, it is his submission that when an action has been taken u/s 29 of the Act and an order has been passed in conformity with the principles of natural justice, it would not be open to the principal borrower or any other person claiming under him to approach the civil court for the grant of temporary injunction to frustrate the action taken u/s 29 of the Act. He strenuously contended that the interest of the financial corporation will have to be protected and, therefore, it is entirely for the financial corporation to take action either u/s 29 or u/s 31 and it would be left open to the financial corporation in its wisdom to decide which course of action it has to follow.

7. Learned counsel for the petitioner has brought to my notice a judgment of the Supreme Court in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, In this case, the Supreme Court has held that although action was taken after invoking the provisions of section 31, recourse to remedy u/s 29 can still be had without executing an order u/s 31. The supreme Court has clearly laid down the rule that the option is entirely with the financial corporation and even if an action is taken u/s 31, the financial corporation may resort to section 29 without executing an order u/s 31. Another judgment relied upon by learned counsel for the petitioner is in the case of M/s R.K. Industries Plot No. SPL 35, Industrial Estate, Kallur Vs. The A.P. State Financial Corporation and others, A Division Bench of the Andhra Pradesh High Court has held that sections 29 and 31 are two sections which provide remedy for the financial corporation for the recovery of loans. It is not at all necessary for the corporation to resort section 31 first before invoking the provisions of section 29 initiating action under the said section. If recourse has been had to section 31 culminating in the passing of a decree, then the financial corporation cannot initiate action u/s 29. But, under no circumstance, can it be said that if the corporation wants to initiate action u/s 29 there is a bar or embargo on the the corporation to take such action u/s 29.

8. Both the above case clearly hold that it is not necessary to take action u/s 31 and that any action taken u/s 29 by itself would not be a bar because recourse to section 31 was not had. In the instant case, no action was even contemplated u/s 31 and the action was only taken u/s 29. This case is in a better footing than the other two case referred to above. There is no whisper in the application filed for temporary injunction by the plaintiff, the first respondent, that the Karnataka State Financial Corporation had in any way acted against the principles of natural justice of that it had not sent any notice to the principal borrower before any action was taken. The conduct of the petitioner is perfectly in accordance with

section 29 of the Act and as such there can be no basis for any interim injunction against the Karnataka States Financial Corporation.

9. It is also apparent that as matter of convenience, the plaintiff has made the principal borrower a defendant along with the financial corporation and, therefore, has somehow tried to evade the liability of the principal borrower. In these circumstances, there can be no ground for granting temporary injunction. The application filed by the Karnataka State Financial Corporation for vacating the order of injunction in I. A. No. II, in the suit, stands allowed. The order of the trial court allowing I. A. No. I and the order of the lower appellate court are set aside. The civil revision petition is accordingly allowed.

10. There will be no order as to costs.