

(1997) 02 KAR CK 0037

In the Karnataka High Court

Case No : Civil Revision Petitions No's. 2912 and 2913 of 1995

Karnataka State Financial Corporation

APPELLANT

Vs

Sun Canning (P.) Ltd. and others

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19
State Financial Corporations Act, 1951 — Section 31, 32
Transfer of Property Act, 1882 — Section 69

Citation : AIR 1998 Kar 151 : (1998) 94 CompCas 123 : (1997) 3 KarLJ 61

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Judgement

H.N. Narayan, J.—The petitioner has filed a petition under sections 31 and 32 of the State Financial Corporations Act, 1951, requesting the learned District Judge to pass a personal decree against the respondents with interest and costs amounting to Rs. 11,75,164. The office of the learned District Judge, Bellary, has raised an objection that in view of the general circular issued by the High Court of Karnataka in Circular No. 1 of 1995, dated February 18, 1995, the application is liable to be filed before the Debt Recovery Tribunal, Bangalore, and placed the matter before the learned District Judge for suitable orders to return the papers for presentation before the Debt Recovery Tribunal. The learned District Judge, upon hearing learned counsel for the petitioner has come to the conclusion that the Debt Recovery Tribunal established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, has got jurisdiction as the amount sought to be recovered in the petition is more than Rs. 10 lakhs and, therefore, ordered return of the petition for presentation before the Debt Recovery Tribunal. The order of the learned District Judge is impugned herein on the ground that the same is passed without proper exercise of jurisdiction.

2. Sri K. Gopal Hegde, learned counsel for the petitioner, has submitted that the provisions of sections 31 and 32 of the State Financial Corporations Act, 1951, have to be read together with the provisions of sections 17 and 19 of the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for harmonious construction of the said provisions. He has further submitted that section 34(2) of the said Act is a saving clause under which there is no bar for the petitioner-Corporation either to approach the District Judge under sections 31 and 32 or to make an application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, to the Debt Recovery Tribunal and, therefore, the view taken by the learned District Judge is clearly erroneous and not sustainable.

3. The point that arises for consideration is whether the State Financial Corporation can invoke the jurisdiction of the District Judge under the provisions of sections 31 and 32 of the Act in view of the subsequent enactment, namely, the Recovery of Debts Due to Banks and Financial Institutions Act.

4. The State Financial Corporations Act, 1951, is a special statute, the object of which is to help the industrial growth of the country and necessary provisions have been incorporated in the Act for speedy recovery of the amount lent to the industrial concerns without usual procedural delays. Section 31 of the State Financial Corporations Act is one such provision which reads as follows :

"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 (4 of 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

(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 the industrial concern without the permission of the Board, where such removal is apprehended."

5. Section 32 of the Act further provides that where such an application is made for the relief mentioned in sub-section (1) of section 31, the District Judge shall pass an ad interim order attaching the property as provided thereto.

6. Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, provides that where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction.

"(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain."

7. Section 17(1) of the said Act provides that :

"A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions."

8. Sri K. Gopal Hegde, learned counsel for the petitioner, has pointed out that the language used in section 19(1) of the Act makes it abundantly clear that the Tribunal gets jurisdiction u/s 17 of the Act only when an application is made u/s 19 of the said Act and not otherwise. Moreover, though the provisions of section 34 of this Act have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, the saving clause provided u/s 34(2) gives an option to the Corporation mentioned therein to file applications either before the learned District Judge or before the Debt Recovery Tribunal.

9. To appreciate this contention, the provisions of section 34 itself are extracted here which reads as follows :

"(1) Save as provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

10. Sub-section (2) reads :

"(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)."

11. This saving clause provided u/s 34(2) makes it clear that a provision is made in the Debt Recovery Act in addition to the provisions provided in the five Acts mentioned therein. Therefore, the jurisdiction vested in the authorities named in

the special statute, viz., the Industrial Finance Corporation Act, 1948, the State Financial Corporations Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984, and the Sick Industrial Companies (Special Provisions) Act, 1985, can be invoked notwithstanding the jurisdiction vested in the Debt Recovery Tribunal u/s 19 of the Act.

12. The learned District Judge has clearly erred in relying upon the circular issued by the High Court in Circular No. 1 of 1995 in forming an opinion that the District Judge has no jurisdiction to entertain a petition under sections 31 and 32 of the State Financial Corporations Act, 1951. The circular issued by the High Court is in the nature of general guidance to the District Courts. Therefore, the said circular does not take away the jurisdiction vested with the District Judge under sections 31 and 32 of the Act. Therefore, the view taken by the learned District Judge is erroneous.

13. In the result, these revisions are allowed. The petition filed under sections 31 and 32 of the State Financial Corporations Act, 1951, before the learned District Judge is maintainable.