

(2008) 12 SC CK 0084

In the Supreme Court Of India

Case No : Civil Appeal No. 7288 of 2008 (Arising out of S.L.P. (C) No. 17519 of 2006)

Karnataka State Industrial Investment and Development Corporation Ltd.

APPELLANT

Vs

S.K.K. Kulkarni and Others

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30, 31, 31(1), 31(1A)
Transfer of Property Act, 1882 — Section 69

Citation : AIR 2009 SC 1713 : (2009) AIRSCW 1255 : (2009) 3 AWC 2484
Supp : (2009) 1 JT 267 : (2009) 3 KarLJ 211 : (2009) 3 MLJ 737 : (2009) 1
SCALE 180 : (2009) 2 SCC 236

Hon'ble Judges : S. H. Kapadia, J;Aftab Alam, J

Bench : Division Bench

Advocate : Parag P. Tripathi, A.S.G., Mohini Bhatt, Varun Sarin, Naveen R. Nath and Hetu Arora, for the Appellant; S. K. Kulkarni, Gireesh Kumar and Vijay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The short question which arises for determination in this Civil Appeal is: Whether the High Court erred in law in holding, by the impugned judgment, that the Bangalore court has no territorial jurisdiction to hear the matter in view of the provisions of Section 31(1) of the State Financial Corporation Act, 1951?

3. M/s. Mullur Cylinders Pvt. Ltd., defendant No. 6, is a company registered under the Companies Act. Defendants No. 1 to 5 are its Promoters/Directors. For the manufacture of gas cylinders, defendant No. 6 approached appellant-Corporation for loan of Rs. 37.50 lakhs. The loan was sanctioned vide letter dated 1st September, 1984. Defendants also executed a Deed of Hypothecation whereby the assets of defendant No. 6 Company stood mortgaged in favour of

the appellant-Corporation. The loan amount was released. It was fully utilized by the borrowers. However, when it came to the question of repayment, defaults occurred. Ultimately, a legal notice came to be issued on 8th August, 1988 calling upon defendants to pay the entire loan with interest. Dispute consequently resulted.

4. Appellant exercised its power u/s 29 of the State Financial Corporations Act, 1951 (for short "1951 Act"). Consequently, the unit was sold for Rs. 33 lakhs. However, the full outstanding amount could not be recovered and, in the circumstances, for enforcement of surety, Misc. Case No. 109/1993 came to be filed in the court of VI Additional City Civil Judge, Bangalore City. The Suit was ultimately decreed in favour of the Corporation. Aggrieved by the said decision, the matter was carried in Appeal (Misc. Appeal No. 1441/2001) in the Karnataka High Court.

5. We are not concerned with the merits of the claim. Suffice it to state that the question which arose for determination, as reproduced hereinabove, requires us to interpret the provisions of Section 31(1) of the 1951 Act.

6. We quote hereinbelow Section 31(1) as also Section 32 and Section 46B of the 1951 Act.

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 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 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.

(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.

32. Procedure of district judge in respect of applications u/s 31.---(1) When the application is for the reliefs mentioned in Clauses (a) and (c) of Sub-section (1) of Section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(1A) When the application is for the relief mentioned in Clause (aa) of Sub-section (1) of Section 31, the district judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.

(2) When the application is for the relief mentioned in Clause (b) of Sub-section (1) of Section 31, the district judge shall grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under Sub-section (1) or Sub-section (2) for issuing a notice under Sub-section (1A), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under Sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(4A) If no cause is shown on or before the date specified in the notice under Sub-section (1A) the district judge shall forthwith order the enforcement of the liability of the surety.

(5) If no cause is shown on or before the date specified in the notice under Sub-sections (2) and (4), the district Judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions may be applied

thereto.

(7) After making an investigation under Sub-section (6), the district judge may_

- (a) confirm the order of attachment and direct the sale of the attached property;
- (b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;
- (c) release the property from attachment;
- (d) confirm or dissolve the injunction;
- (da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or 6
- (e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under Clause (c) or making an order rejecting the claim to enforce the liability of the surety under Clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under Clause (e), the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation, such order shall not be given effect to, until the expiry of the period fixed under Sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the CPC 1908 (5 of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.

(9) Any party aggrieved by an order under Sub-section (4A), Sub-section (5) or Sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under Sub-section (1) of Section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) The functions of a district judge under this section shall be exercisable_

(a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and (b) elsewhere, also by an additional district judge or by any judge of the principal court of civil jurisdiction.

(12) For the removal of doubts it is hereby declared that any court competent to grant an ad interim injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental there to.

46B. Effect of Act on other laws.--The provision of this Act and of any rule or orders made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.

7. The right of a State Financial Corporation ("SFC" for short) recognized u/s 29 of the 1951 Act is different from the right which the SFC can enforce u/s 31. Section 31 enables SFC, without having recourse to the provisions of Section 29 of the 1951 Act or Section 69 of the Transfer of Property Act, to have its right emanating from the agreement, enforced by initiating proceedings contemplated there under, namely, applying to the District Judge within the limits of whose jurisdiction the industrial concern carries on its business. Section 31 is one mode of recovery. Therefore, the power u/s 31 and Section 32 are in addition to the power of realization of money under the Transfer of Property Act or any other law. It is within the discretion of SFC to choose the forum under a particular Act. Once there is a default in the payment of loan, it is for the Corporation to decide as to whether it shall proceed u/s 29 for sale of the property mortgaged or whether it shall take any recourse u/s 31 of the 1951 Act. Section 31 of the Act had been enacted to enable the corporation to obtain quicker remedies from the highest Court of Original Civil Jurisdiction in the locality. Where the SFC takes recourse to the provisions of Section 31 of the Act and obtains an order from the Court, it shall ordinarily seek its enforcement in the manner provided for by Section 32 of the 1951 Act, which section is aimed to act in aid of the orders passed u/s 31 of the Act. Where the SFC takes recourse to Section 31 and obtains an order from the Court, it shall seek its enforcement in the manner provided for by Section 32 of the Act, therefore, Section 31 makes a provision for enforcement of claims. It is primarily procedural in nature. The remedy provided

for u/s 31 is not in derogation of any other mode of recovery which is available to the SFC under any other law for the enforcement of its claims. The remedy u/s 31 is not the sole or exclusive remedy available to the SFC. It is only an additional remedy which is conferred upon the SFC. The substantive relief in an application u/s 31(1) is not a plaint. This is clear from the form of the application, the nature of the relief, the compulsion to make interim order, the limited enquiry contemplated by Section 32(6), the nature of the relief that can be granted and the method of execution. The proceedings u/s 32 of the 1951 Act are, therefore, nothing but execution proceedings. A combined reading of Section 31 and Section 32 of the 1951 Act indicates that an investigation has to be made to find out the terms and conditions on which loan was given by SFC to the industrial concern and whether SFC was entitled to the relief u/s 31(1) on account of the breach of the terms of agreement.

8. Having discussed the nature of the proceedings u/s 31(1) of the 1951 Act we are of the view that Section 31 read with Section 32 constitutes a Code by itself. It is a special provision. It is a mode of recovery. It does not prevent or exclude the SFC from invoking any other remedy open to it in law. However, once the SFC invokes Section 31(1), it has to proceed in accordance with the procedure prescribed in Section 32. u/s 31(1), which is invoked by the SFC in this case, an application to obtain quicker remedy has to be made to the District Judge within whose jurisdiction the industrial concern is located. This is the mandate of Section 31(1). It is so mandated because wide powers are given to the District Judge under Sections 31 and 32 to attach, sell and recover outstanding dues of SFCs in the shortest possible time. In fact, Sub-section (aa) stood inserted in Section 31(1) for enforcing the liability of any surety. This Sub-section is in addition to the power given to the District Judge to order sale of the property pledged, mortgaged, hypothecated or assigned to the SFC as security for loan or advance. An application u/s 31 can be filed even before the exercise of power u/s 29 of the 1951 Act or Section 69 of the Transfer of Property Act.

9. Under the circumstances, the High Court was right in coming to the conclusion that the VI Additional City Civil Judge, Bangalore, had no territorial jurisdiction to hear Misc. Case No. 109/1993 in view of Section 31 of the 1951 Act. The High Court was right in observing that the Corporation ought to have instituted the said case before the District Judge, Belgaum, within whose jurisdiction the industrial concern is located.

10. Before concluding, we may indicate the scope of Section 46B. That section mandates that if any other law or memorandum or articles of association or any instrument deriving force from any other enactment is inconsistent with any provisions of the 1951 Act or Rules or orders made there under, the latter will prevail and the inconsistency will have no effect but if the provisions of the 1951 Act or Rules made there under are not inconsistent, they will be deemed to be in addition to the existing laws and memorandum or articles of association. Thus, the provisions of the 1951 Act and the Rules made there under shall have an

overriding effect over the existing law and memorandum or articles of association or any other instrument made under the existing law if they are inconsistent but otherwise if not inconsistent they will be deemed to be in addition to and not derogating to any existing law, rules and orders. The 1951 Act is a special statute. Therefore, the provisions of the 1951 Act have to be strictly construed. In our view, reliance on Section 46B of the 1951 Act is misplaced. Section 46B will not control the parameters of territorial jurisdiction of the District Judge prescribed u/s 31(1) of the 1951 Act. Section 31(1) is a special provision. It mandates that all applications u/s 31(1) shall be made to the District Judge within the limits of whose jurisdiction the industrial concern carries on its business. The word "may" in Section 31(1) only indicates a mode of recovery in addition to any other modes available to the SFC in law.

11. For the aforesaid reasons, we do not find any infirmity in the impugned judgment. Accordingly, Civil Appeal filed by Karnataka State Industrial Investment & Development Corporation Ltd. stands dismissed with no order as to costs.