

(1995) 12 KAR CK 0015
In the Karnataka High Court
Case No : W.Ps. 39659 and 39660 of 1992

K.R. Krishnan Nair

APPELLANT

Vs

Karnataka State Financial Corporation and Others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (1996) ILR (Kar) 2094 : (1996) 5 KarLJ 434

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : K.G. Nayak, for the Appellant; D.S. Joshi, for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The first petitioner started a hotel at Bhadravathi under the name and style of HOTEL ARYA BHAVAN. The first petitioner in partnership with one Krishna Pillai commenced another Hotel at Shimoga also known as HOTEL ARYA BHAVAN. The said two Hotels, that is the Proprietary firm at Bhadravathi and the partnership firm at Shimoga, applied for and obtained term loans of Rs. 3,00,000/- and Rs. 5,00,000/- respectively for their businesses from the first Respondent (also referred to as KSFC) by executing necessary loan documents. As per the loan terms, the borrowers had to repay the loan amounts with interest, in certain stipulated instalments. Both Borrowers committed default in paying the instalments. Hence KSFC issued show-cause notices proposing to take action u/s 29 of the State Financial Corporations Act, 1951 ("SFC Act" for short) and the Karnataka Public Moneys (Recovery of Dues) Act 1979 ("Public Moneys Act" for short) for recovery of the amounts due. But the defaults continued and arrears were mounting.

2. In regard to the Bhadravathi loan, KSFC passed an order dated 10.12.1992 (Annexure-D) u/s 29 of the SFC Act for taking over possession of the assets of

the Hotel at Bhadravathi for recovery of the sum of Rs. 4,23,679.35 due to it, as on 31.10.1992. It is stated that in pursuance of it, the assets of the Hotel Arya Bhavan at Bhadravathi were seized by locking the premises.

3. In regard to the Shimoga loan, KSFC passed an order dated 30.1.1991 (Annexure-E) u/s 29 of the SFC Act, ordering that possession of the assets of the borrower at Shimoga be taken over for recovery of the amounts due and possession was taken on 30.1.1991. The Managing Director KSFC also issued a certificate dated 18.5.1992 u/s 3(1)(C) and (D) of the Public Moneys Act for recovery of Rs. 727,580/60 due as on 20.3.1992, requesting the Deputy Commissioner, Shimoga District, to recovering the said amount. KSFC also issued a public notice proposing to auction the moveables of the borrower (Hotel Arya Bhavan, Shimoga) vide public notice dated 24.11.1992 (Annexure-8).

4. Petitioners filed these petitions on 23.12.1992 for quashing the two orders dated 10.12.1992 and 30.1.1991 passed u/s 29 of the SFC Act, (Annexures D and E) and for quashing the Public notice dated 24.11.1992 (Annexure 6). On 24.12.1992 this Court issued Rule and an interim stay of sale in pursuance of Annexure 6 and an interim order directing KSFC to deliver back the assets to the petitioners if it had taken possession thereof. In view of the said interim order, assets of the Hotel at Bhadravathi which were seized in pursuance of KSFC's order dated 10.12.1992 were released back to the borrower on 31.12.1992 by opening the lock. By a subsequent order dated 29.4.1993, this court however granted an injunction restraining the first petitioner and any one working under his directions, from removing any of the assets kept in the Bhadravathi Hotel Premises. The borrower, that is, the first petitioner who took back the said assets, however disposed of the said assets in violation of the order of injunction. The security available to KSFC was thus lost. KSFC initiated action for contempt in CCC(Civil) 814/1992 against the first petitioner, for violation of the order of injunction and by order dated 6.10.1994, this Court found the first petitioner guilty of disobedience of the order of this Court and directed further proceedings for contempt be taken against him. However, first petitioner has absconded and. the contempt proceedings are still pending. Be that as it may.

5. In these petitions, Petitioners have contended that the actual amount of liability was not made known by KSFC to the borrowers and the borrowers were not given an opportunity to check the correctness of the amounts claimed and therefore the assets could not be taken over under. Section 29 of the SFC Act. There is no merit in this contention. The amounts are due in respect of the financial transactions between the KSFC as lender and the two Hotels as borrowers, covered by the loan documents containing the terms of the Contract between the parties. The borrowers are aware of the terms of contract, amounts borrowed, the particulars of instalments in which the amounts will have to be repaid, the rate of interest applicable and the repayments, if any, made by them. Whenever there is variation in the rates of interest, KSFC notifies the borrowers about such change and KSFC also issues notices showing the overdue

instalments. In these circumstances, the borrowers can always calculate the amounts due by them or verify the correctness of the amount claimed by KSFC. Hence a contention by a borrower that he does not know what is due by him is, to say the least, either a lame excuse for non-payment or proof of carelessness. Even if a borrower does not have the particulars, he can always apply to KSFC seeking an account extract or copies of the loan documents, if he has any doubt and KSFC will furnish them on payment of the required fee.

6. The fact that the petitioners have committed defaults and that amounts are due to KSFC is not disputed. The Borrowers merely contend in a vague manner, that the amounts claimed are not correct, without stating how the amount demanded is incorrect or what is the actual amount due, according to them. Once the borrowing is admitted, repayment is a matter to be proved by the borrower. The borrowers cannot avoid payment or delay payments on a vague plea that they are not aware of the amounts due or the terms of repayment. When there is default, KSFC is entitled to recover the amounts due to it in accordance with the terms of the loan documents by having recourse to its rights under the SFC Act or Public Moneys Act.

7. Interference with the contractual rights of parties, especially in financial transactions of statutory corporations, should be only in exceptional circumstances, that is when prejudice or injustice is caused or likely to be caused to the other party by reason of the Corporation acting unfairly, unreasonably or arbitrarily or in violation of its statutory duty. In this case neither violation of any statutory duty, nor any unfairness or unreasonableness or arbitrariness on the part of KSFC is made out. On the other hand, it is the borrower, who has committed breach of his contractual obligations, by failing to repay the amounts due to KSFC and by selling away the assets secured to KSFC; and it is the borrower who has disobeyed the injunction of this Court not to remove the assets/materials, (which were released by KSFC to the borrower in compliance with an ex parte interim direction) from the Hotel business. Having regard to his conduct, the first petitioner has forfeited his right to claim any relief even if he was otherwise entitled to it.

8. In its anxiety to render justice, a Court should not take over the functions of the Financial institutions nor substitute its wisdom and views in the matter; nor issue directions which are likely to interfere with the statutory or contractual rights of Financial Institutions. It is not for the courts to decide, except in exceptional circumstances, questions relating to the management of financial affairs of statutory financial institutions. Should the courts decide what amounts should be advanced; what securities should be held; when and what security should be enforced; whether advancing of further instalments of loan should be stopped in the event of default; how much time should be granted for repayment; whether and in what circumstances, repayment schedule should be restructured or rescheduled; whether time should be extended for repayment; and whether the creditor should or should not take possession of the assets of

the debtor on default, in exercise of its statutory and contractual rights? There can be little doubt that the answer to all these questions is in the negative, unless malafides or ex facie arbitrariness is made out. It should be borne in mind that these matters governed by contract, have to be assessed and decided by the financial institution not only on the facts and circumstances of the particular loan transaction but also with reference to other factors like availability of funds at its disposal, needs of other applicants for loans, its policy relating to grant of loans and recoveries at the relevant time, and the capacity, conduct and antecedents of the borrower.

9. The Financial institutions have the discretion to nurture basically sound units with bonafide problems by rescheduling instalments, reducing interest and giving other benefits to revive them and lead them out from their difficulties. On the other hand, the financial institutions need not extend a helping hand to borrowers who have no interest in the revival of their industry and who are only interested in syphoning off the funds and stripping the assets for personal gain and with the intention of cheating the creditor. They deserve neither sympathy nor grant of further time for payment.

10. The courts are not exercising appellate or supervisory powers in regard to commercial transactions of financial institutions. Nor are they equipped to do so. Even if there are any errors in judgment by the financial institutions in regard to management of its loan transactions or in regard to recoveries, the Court cannot interfere and impose its views in the matter, as what is under scrutiny by the Court is the decision making process and not the decision itself. It is contended that strict inflexible and unrealistic decisions by the officials of Financial Institutions without realising the difficulties of the borrowers have prejudiced the interests of the borrowers and many a time have virtually destroyed the borrowers' business. But then the solution thereto should be found elsewhere. Obtaining attitudinal changes of the persons in management of the Financial Institutions and overhauling their policies is not in Court's domain.

11. Routine interference in the lending transactions of statutory financial institutions, and misplaced sympathy towards loan-dodgers will ultimately affect the very functioning of such financial institutions and deny the benefits of lending, to genuine and needy entrepreneurs in future. The power of Courts should not be used to interfere or alter the terms of contract or extend time for payment contrary to the terms of contract. Decisions which may be found to be equitable and reasonable in the context of an individual borrower may be found to be unjust and unreasonable with reference to the scheme and policy of the financial institution which is established for public benefit. Loan-dodgers are too ready to approach courts repeatedly to avoid payment under all kinds of pretexts. It bears repetition to say that Courts will have to exercise the greatest care and circumspection in interfering with the contractual rights and obligations, more so in regard to transactions of financial institutions, and much more so in granting ex parte interim relief or directions in such matters. Courts

can do well to keep in mind, the following observations of the Supreme Court in U.P. FINANCIAL CORPORATION v. GEM CAP (INDIA) LTD. AIR 1993 SC 1435:

"It is true that the appellant Corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance... We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose - the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one..... These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tampered - nay determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ Court has no say except in two situations: (1) there is a statutory violation on the part of the Corporation or (2) where the Corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The Jurisdiction may become rudderless."

12. No cause is shown as to why KSFC should not exercise its power u/s 29 of the KFC Act or under the Public Moneys Act to recover its dues by taking possession or by selling the possessed assets. No ground has been made out by the petitioners for granting any of the reliefs that are claimed in the petitions. In these circumstances action taken for recovery of the amounts due cannot be said

to be either unfair or arbitrary or unreasonable.

Hence these petitions are rejected with costs of Rs. 5,000/- each payable by the first petitioner to KSFC.