
(1997) 09 MAD CK 0077

In the Madras High Court

Case No : W.P.No. 14063 of 1997 and W.M.P.Nos. 22570 and 22571 of 1997

Krishna Fabrics

APPELLANT

Vs

State of Tamil Nadu and two others

RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 28, 29, 31

Citation : (1998) 1 CTC 749

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. A. Subramaniya Iyer, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petitioner prays for the issue of writ of mandamus, directing the respondents to take steps as provided u/s 31 of State Financial Corporation

Act, 1951, by referring the matter to the District Judge, Kancheepuram with regard to the petitioner's debts to the respondent No.2.

2. The petitioner claims that it had invested Rs.12,00,000 in the weaving factory. Besides he has raised loan from the second respondent herein.

Petitioner had himself also raised working capital loans and further admitted that the petitioner had already filed a suit in O.S.No.7936 of 1995 on

the file of City Civil Court, Madras against the very same second respondent. The petitioner also admits that already writ petitions have been filed

in W.P.Nos.1713 of 1994 and W.P.No.12465 of 1993 and they are pending.

3. The petitioner alleges that there has been a theft and he had shifted his factory. The petitioner further states that the second respondent issued a

notice during January and February, 1997 calling upon the petitioner to discharge

the loans and on such receipt of the said notices the petitioner had approached the second respondent to take away its other immovable property as well as moveable in full quit for the loan. The second respondent had rightly refused to accede to the said request. The petitioner further states that the petitioner's factory has become sick and without any notice as required by the provisions of the State Financial Corporations Act, 1951, the respondents 2 and 3 are taking action. It is contended that the respondents should consider the reasonable request of the petitioner. It is further contended that respondents 2 and 3 should not have taken action u/s 28 and on the other hand action should have been taken u/s 31 of the State Financial Corporations Act, 1951 before the District Court. Further the respondents 2 and 3 invoked the powers u/s 29 of the said Act, to seize the factory and taking further action to sell the hypothecated machineries, lands and buildings, which is unwarranted, oppressive or arbitrary. It is further contended that instead of helping the industry, the respondents 2 and 3 are harassing the petitioner.

4. Heard Mr.A.Subramanya Iyer, learned counsel for the petitioner in detail. Mr.A.Subramanya Iyer took pains and argued the matter elaborately.

5. Admittedly on 25.11.1993 a foreclosure notice has been issued by the second respondent and by subsequent letter dated 18.12.1996, the

second respondent offered one more opportunity to the petitioner to repay the loan and pointed out a sum of Rs.3,99,630.05 ps. towards "A"

Account and Rs.9,28,622.88ps. towards "B" Account is due as on 31.12.1996. Thereafter on 6.1.1997 the petitioner has issued a notice through

his counsel and contended that the Respondents 2 and 3 cannot proceed against the petitioner as the petitioner offers to give his factory building at

Gandapuram in full quit of all the liabilities due by the sick industry. In the said notice, it has also been admitted that the petitioner had gone before

the National Consumers Redressal Forum and had also lost before it. The second respondent through its counsel had sent a registered notice on

12.2.1997 stating that a sum of Rs.7,00,000 was sanctioned to the petitioner on 4.8.1988 for construction of building and for purchase and

erection of machinery to the petitioner's firm. The petitioner's firm and its partners executed the necessary security documents and mortgaged the

land, building and machinery on 15.11.1988 for repayment of the said loan. The

petitioner had defaulted to repay the loan outstanding, the notice was issued and it was also pointed out that after the foreclosure notice no action has been taken to settle the dues. In the said notice the details of arrears of amount such as principal interest and other dues have been furnished by the second respondent through its counsel. The petitioner was called upon to pay a sum of Rs.13,10,447.10 as on 31.12.1996 within seven days from the date of receipt of the notice and the petitioner was put on notice that further action will be taken against the petitioner if repayment is not made. Once again on 24.2.1997 the petitioner through his counsel sent a detailed reply and reiterated the contents of the earlier notice, it is admitted that the petitioner is due and liable to pay the amounts as claimed by the respondents 2 and 3 and it is not the case of the petitioner that it had paid any portion of the amount. In fact Mr.A.Subramanya Iyer fairly states that no repayment at all had been made by the petitioner to the respondents 2 and 3 up till now. It is obvious that the petitioner had resorted to filing of suits as well as two writ petitions besides going before Consumers Redressal Forum, just to delay the recovery of loan amount.

6. The learned counsel for the petitioner contended that the action of the respondents invoking Section 29 of the State Financial Corporation Act, 1951 is arbitrary and the respondents should have taken action u/s 31 of the State Financial Corporation Act, 1951.

7. In terms of Section 29 of the said Act, the respondents 2 and 3 for default for repayment of loan advanced as well as interest accrued due have the right to take over the Management of possession or both the industrial concern and also the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. It is also open to the State Financial Corporation to take action u/s 31 and it is not as if no action could be taken u/s 29 of the said Act against the petitioner. It is well open to the respondents 2 and 3 to take action either u/s 29 or u/s 31 of the said Act. The petitioner is admittedly a defaulter and he cannot dictate to the respondents to take action u/s 31 and not u/s 29 of the said Act. There is no illegality in the exercise of the power by the second respondent u/s 29 of the State Financial Corporation Act, 1951. Section 29 of the Act has already been upheld and in fact

the petitioner is not challenging the validity of the said

provisions. Further even if a notice has been issued u/s 30 of the Act, the State Financial Corporation cannot be forced to take recourse to Section

31 alone and it is open to the Corporation to take recourse u/s 29 of the Act as has held by the Apex Court in The Maharashtra State Financial

Corporation Vs. M/s. Suvarna Board Mills and another, .

8. In the present case, there is very justification for the second respondent to take action u/s 29 of the Act and the grievance of the petitioner is

without any basis. This writ petition is another attempt on the part of the petitioner to delay the proceedings by the respondents 2 and 3. No

violation of Section 29 been made out. Nor it could be said on facts that the respondents acted arbitrarily.

9. The scope of Judicial review under Article 226 Constitution of India with respect to the action taken by the second respondent State Financial

Corporation was the subject matter of consideration before the Apex Court as well as Division Bench of this Court. The Division Bench of this

Court in Shree Andal Poly Industry Vs. The Tamil Nadu Industrial Investment Corporation Ltd., , after referring to the pronouncement of the

Apex Court in Nashik Vs. State of Maharashtra, and Karnataka State Financial Corporation v. Micro Cast Rubber and Allied Products (P) Ltd.

and others, 1996 (5) Supreme Today, 37 held thus:-

In our opinion, the Corporation has got powers u/s 29 of the State Financial Corporation Act, 1951 to the possession of the assets of the

defaulting units and sell the same to recover its dues. The Supreme Court in Nashik Vs. State of Maharashtra, has held that Courts cannot interfere

with the action u/s 29 of SFC Act unless there is unfairness and that SFC has to recover the dues. A Division Bench of this Court in TIIC v. Vimal

Formulations (p) Ltd., Writ appeal No.507 of 1993 followed the same and has declined to intervene. It is held that Financial Institutions (TIIC)

cannot be made to wait for realisation of their monies and it would frustrate their public purposes viz., making available funds to others either for

the purpose of starting or expanding industries. They are in need of funds for discharging their duties and functions and such funds could be secured

only by taking necessary steps for the recovery of the amounts due to them.

In our opinion, the appellant cannot invoke the extraordinary jurisdiction of this

Court, when the relationship between the appellant and the respondent is that of debtor and creditor and the appellant cannot throw the solemn contract to the wind. Therefore, the present writ appeal is not maintainable in law or on facts. The opinion expressed by us in this case is also fortified by several other vacant pronouncements of the Supreme Court and more particularly the very recent decision of the Supreme Court Karnataka State Financial Corporation v. Micro Cast Rubber and Allied Products (p) Ltd. another 1996 (5) Sup 37.

10. The Division Bench has also held that under identical circumstances, the jurisdiction of this Court under Article 226 Constitution of India cannot be invoked at all as relationship between the petitioner and the second respondent is that of debtor and creditor and the petitioner cannot throw the solemn contract to the mind.

11. In Karnataka State Financial Corporation v. Micro Cast Rubber and Allied Products (p) Ltd. and others 1996 (5) ST 37 the Apex Court has held thus:-

In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it u/s 29 of the Act the scope of judicial review is confined to two situations, namely (1) there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, is, unreasonable, while exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation, See Nashik Vs. State of Maharashtra, it had not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of M/s Prime inputs (India) Ltd., and M/s Shakti Rubbers and in rejecting the offer of respondent No.2. Nor can it be said that the action of the appellant is not accepting the offer of respondent No.2 and accepting the offers of M/s Prime inputs (India) Ltd., and M/s Shakti Rubbers was unfair or unreasonable. The High Court was, therefore not justified in interfering with the action of the appellant in accepting the offers M/s Prime inputs (India) Ltd., and M/s Shakti Rubbers for the sale of the Unit of respondent No.1 The writ petition filed by respondents Nos.1 and 2 is, therefore, liable to be dismissed.

12. In such circumstances, there are absolutely no merit in the above writ

petition and writ petition is another attempt on the part of the petitioner to delay the recovery proceedings by the State Financial Corporation. The writ petition is dismissed in limine. Consequently, W.M.P.Nos.22570 and 22571 of 1997 are also dismissed.