
(2014) 04 P&H CK 0206

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8891 of 2007 (O&M)

Labh Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Small Industries Development Bank of India Act, 1989 — Section 3(1)
State Financial Corporations Act, 1951 — Section 2(c), 2(fa), 29, 31, 32G
Transfer of Property Act, 1882 — Section 69

Citation : (2014) 04 P&H CK 0206

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Rahul Sharma, Advocate for the Appellant; B.S. Sidhu, Advocate for Respondents No. 2 and 3, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner, Labh Singh, approached the Punjab Financial Corporation/respondent No. 2 in 1990 for grant of a loan of Rs. 3,80,000/- for purchase of a new truck which was duly sanctioned, but for an amount of Rs. 2,80,000/- vide letter dated 29.3.1990. The petitioner executed various loan documents to secure the loan which was guaranteed by respondent No. 4 by mortgaging as proprietor her two shops bearing No. 2/813 measuring 5x10 square feet situated in Mansa, Tehsil and District Mansa. The petitioner, however, defaulted in the loan, though he claims to have paid almost Rs. 2,35,000/- to respondent No. 2-Corporation till 15.11.1992.

2. It appears that the petitioner sold off the truck without permission of the respondent No. 2-Corporation and even respondent No. 4/mortgagor had already sold both the shops pledged as security for loan. The respondent No. 2-Corporation apparently slept over this issue without taking any steps for recovery of its loan for more than a decade.

3. It is only on 6.11.2003 when an application u/s 31 of the State Financial

Corporation Act, 1951 (hereinafter referred to as "the said Act") is stated to have been filed claiming amount of Rs. 9,75,976/- with penal interest and costs with future interest being claimed at 17.5% per annum with interest @ 1% from 15.4.2003 compounded with half yearly rests. The petitioner did not enter appearance despite service and was proceeded ex parte whereafter he moved for setting aside the ex parte proceedings. This application was, however, withdrawn by respondent No. 2-Corporation on 22.3.2006. The order records that the counsel for respondent No. 2-Corporation made a statement to withdraw the petition with permission to initiate legal proceedings against the loanee for recovery of outstanding dues of the Corporation. Thereafter the order directed "The petition is therefore dismissed as withdrawn". Apparently, there is no mention of leave and liberty granted to initiate separate legal proceedings. Respondent No. 2-Corporation, however, filed an application u/s 32G of the said Act seeking recovery of Rs. 16,21,790/- with future interest @ 17.5% per annum along with charges and miscellaneous expenses in terms of a stated mortgage deed which had been executed along with bond of guarantee. The petitioner once again failed to participate in the proceedings resulting in an adverse order dated 23.8.2006.

4. It is the aforesaid order which has been assailed by the petitioner in the present petition filed under Article 226 of the Constitution of India. We may note that the operation of the impugned order was stayed while issuing notice of motion on 30.5.2007. The petition was admitted and interim order confirmed on 11.3.2008.

5. The matter came up for final hearing on 20.1.2014 when it was noticed that over a period from 1990 to 1996 against the loan of Rs. 2,80,000/-, a sum of Rs. 2,84,840/- has been paid. No security was available qua the loan as the truck was stated to have been sold by the petitioner himself and the shops given as security were sold possibly even prior to the mortgage. In order to put the dispute to an end, learned counsel for the petitioner stated that he would obtain instructions if the petitioner was willing to pay another sum of Rs. 3 lacs in full and final settlement of the account. The counsel for respondent No. 2-Corporation also sought time to obtain the approval of the Board of Directors of the respondent-Corporation especially as no securities to recover the loan were available. The petitioner on the next date on 11.2.2014 brought a bank-draft of Rs. 3 lacs. There were no proper instructions from the respondent-Corporation and it just wanted the matter to be examined at the appropriate level including under an OTS Policy of 2.3.2009 which has been in force intermittently including up to 20.1.2013. However, on 28.3.2014, we were informed that the respondent-Corporation had taken a decision not to accept the amount of Rs. 3 lacs but that at least Rs. 5,60,000/- should be paid which the petitioner expressed his inability to pay. The draft of Rs. 3 lacs was, thus, returned to the petitioner. We did put to learned counsel for respondents No. 2 and 3 that this would in turn imply that if the petitioner succeeds in the petition, no amount would be recovered and even if he fails there are no assets available, which have been located, to recover the

loan. The matter was thereafter heard on 2.4.2014 when judgment was reserved.

6. The arguments advanced by learned counsel for the parties are noted hereinafter:

(I) Applicability of Section 32G of the said Act to the petitioner

Learned counsel for the petitioner referred to Section 32G which reads as under:-

32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue.-Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

7. His submission was that recovery process for any amount due under the said provisions could only be qua an "industrial concern". The expression "industrial concern" in turn has been defined u/s 2(c) of the said Act. The relevant portion reads as under:

2. Definitions.-In this Act, unless the context otherwise requires,-

(a)-(b) xx xx xx

(c) "industrial concern" means any concern engaged or to be engaged in-

(i)-(iii) xx xx xx

(iv) the transport of passengers or goods by road or by water or by air or by ropeway or by lift;

Explanation 2.-If any doubt arises as to whether a concern is an industrial concern or not, the same shall be referred to the Small Industries Bank for its decision and the decision of the Small Industries Bank thereon shall be final;

8. Learned counsel for the petitioner contended that the expression "industrial concern" would essentially refer only to an industry and not to an individual person like the petitioner. He sought to buttress this submission with the plea that Explanation-2 provides for a clarification of any doubt as to whether a concern is an industrial concern or not by a decision of the Small Industries Bank (Small Industries Bank has been defined as per Section 2(fa) to mean the Small Industries Development Bank of India established u/s 3(1) of the Small Industries Development Bank of India Act, 1989);

(II) The bar of limitation:

9. Learned counsel for the petitioner contended that the sole plea in respect of the ability of a financial corporation to invoke the provisions of the said Act at any time is based on the absence of any provision in the said Act making the Limitation Act, 1963 (for short "the Limitation Act") applicable. Such a plea was based on a judgment of the Division Bench of this Hon"ble Court in Jagdish Rai Vs. The Haryana Financial Corporation, which opined that there was no limitation provided under the said Act for recovery process which naturally included Section 32G. The process u/s 32G being in the nature of execution proceedings, no period of limitation could be read in these proceedings. It was further opined that in any case Article 62 of the Schedule to the Limitation Act prescribes 12 years period in cases where mortgage deed was executed and recovery certificate issued.

10. The aforesaid view was sought to be distinguished by the learned counsel for the petitioner by relying upon a judgment of the Supreme Court in Maharashtra State Financial Corporation Vs. Ashok K. Agarwal and Others, opining that in respect of an application u/s 31 of the said Act, the time period for limitation would be as per Article 137 of the limitation Act. It was, thus, urged that the Division Bench could not have opined that in the absence of express provisions there was no application of the Limitation Act to processes of recovery under the said Act. A situation where the Limitation Act is applicable to one provision and not to the other was urged to be unacceptable and Section 29(2) of the Limitation Act was relied upon to contend that the provisions of the Limitation Act would apply to all local or special laws. The said sub-section reads as under:

29. Savings.

(1) xx xx xx

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

11. Learned counsel for the petitioner also relied on the judgment in Asia Resorts Ltd. Vs. Usha Breco Ltd., to advance the plea that Article 137 had been inserted to cast a wider net so as to include any application for which no period of limitation is provided elsewhere in that division. It was, thus, in the nature of a residuary article prescribing period of limitation for filing petitions and applications under various special laws.

12. Learned counsel for the petitioner submitted that what the respondent-Corporation sought to do was to recover a time-barred debt by resorting to coercive mode of recovery u/s 32G of the said Act, a course of action

impermissible in view of the observations in *State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr*, . It was opined that time-barred claims of State Financial Corporation cannot be recovered and the Kerala Revenue Recovery Act, 1968 only provided for a mechanism of speedy recovery and did not create any new right (Section 71). The law of limitation itself rested on the foundations of public interest.

13. The alternative submission by learned counsel for the petitioner was based on a legal position if the Limitation Act was held not to be applicable. It was contended that even in such a situation, the power of recovery has to be exercised within reasonable time when no time limit is prescribed for exercise of power (*Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*,).

(III) If the Limitation Act is applicable which article would prescribe the limitation

14. Learned counsel for the respondent-Corporation pleaded that even if the Limitation Act was to apply, it would be governed by Article 62 providing for a limitation of 12 years in view of observations in *Jagdish Rai's* case (*supra*). However, this plea was sought to be rebutted by learned counsel for the petitioner by suggesting that it is the residuary Article 137 of the Limitation Act which would apply, as it prescribes limitation for filing petitions and applications under various laws. Article 62 falls in Part-5 with a heading "suits relating to immovable property". Undisputedly, Section 32G is not a suit. On the other hand, the submission of learned counsel for respondent-Corporation is that they are akin to execution proceedings. In the absence of being a suit, it was urged that Article 62 would apply.

(IV) Doctrine of Limitation:

15. In the facts set out it has been pointed out that earlier proceedings u/s 31 of the said Act were initiated which were withdrawn whereafter proceedings were initiated u/s 32G of the said Act. It was the contention of learned counsel for the respondents that the statement of the counsel is accordingly recorded and the fact that the application was ordered to be simpliciter withdrawn does not amount to rejection of that prayer of leave and liberty to initiate other legal proceedings. This plea was also supported by the plain language of Section 32G of the said Act which authorises the recovery process "without prejudice to any other mode of recovery". Since the respondent-Corporation formed an opinion that Section 32G would be a more appropriate mode of recovery, that is why the proceedings u/s 31 are stated to have been withdrawn and fresh proceedings u/s 32G initiated.

16. The aforesaid argument is also sought to be supported by the judgment of the Supreme Court in *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills* and another, opining that the remedies u/s 29 and Section 31 of the said Act are separate and after initiating proceedings in Civil Court for recovery of loan u/s 31 of the said Act, the Corporation has a right to switch over to its remedy available u/s 29 of the said Act at any stage, even at the stage of

the execution. The aforesaid judgment was, however, sought to be distinguished by learned counsel for the petitioner on the ground that the said judgment was being misread and misconstrued as it was based on the language of Section 29 and Section 31 of the said Act. The power conferred for enforcement of claims by a Financial Corporation u/s 31 clearly stipulated that it was "without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882". Thus, the language of the Section has specifically carved out two separate proceedings without prejudice to the other. The view of the Full Bench of this Court in Haryana Financial Corporation Ltd., Chandigarh Vs. Bags and Cartons and another, is to the same effect.

17. We have given a thought to the aforesaid elaborate submissions advanced by learned counsel for the parties.

18. We are of the view that taking into consideration the views expressed by the Division Benches of this Court including in Jagdish Rai's case (supra), various aspects in law, as have emanated in the present proceedings, need an answer from a larger Bench. We, thus, consider it appropriate to refer the matter to a larger Bench framing the following questions of law:

- (i) Whether the recovery process u/s 32G is applicable to an individual?
- (ii) Whether the Limitation Act is applicable to the recovery process under the said Act including the process u/s 32G?
- (iii) In case the answer to the second question is in the affirmative, which article of the Limitation Act would apply to recovery process u/s 32G of the said Act?
- (iv) If the answer to question No. 2 is in the negative, is the principle of "reasonable time limit" applicable for a recovery process under the said Act?
- (v) Is it open to a Financial Corporation to switch over at any time from a remedy u/s 31 of the said Act to one u/s 32G of the said Act?

19. The papers be placed before a larger Bench, to be constituted for the aforesaid purpose.