(1987) 06 BOM CK 0005

In the Bombay High Court

Case No : Execution Petition No. 146 of 1986

Maharashtra State Financial Corporation	APPELLANT
Vs	
Esther D. Gama, Bombay	RESPONDENT

Date of Decision : 15-06-1987

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 2, 60
State Financial Corporations Act, 1951 — Section 31, 32, 32(6), 32(8)

Citation : (1987) MhLj 731

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Advocate : R.C. Dharmadhikari instructed by M/s. Nanu H. Co, for the Appellant; P.K. Samdhani instructed by M/s. Apte and Co., for the Respondent

Final Decision : Allowed

Judgement

H. Suresh, J.—The petitioner, the Maharashtra State Financial Corporation, having filed the above petition as against the respondent, obtained an order on October 21, 1974, the relevant portion of the order as passed on October 21,1974 is as follows :

"THIS COURT DOTH ORDER that the right, title and interest in the monthly tenancy of the Respondent in the premises at No. 1181-C Parel Tank Road, Bearing C.S. No. 429 (part) of Parel/Sewree Division in the City and Registration sub-District Bombay together with the plant and machinery and equipment and accessories mentioned in the First and Second Schedules to Exhibit ''A'' to the Petition and also in the First and Second Schedule hereunder written or brought in and kept at the Factory premises along with its goodwill be sold by the Commissioner of this Hon''ble Court for taking Accounts by public auction AND THIS COURT DOTH FURTHER ORDER that the net sale proceeds of such sale or so much thereof as may be sufficient, be paid to the Petitioners for appropriating the same towards outstanding amount of Rs. 85,596.00 (Rupees eighty five thousand five hundred ninety six) due to them as on 15th February 1974."

Prior to the petitioner obtaining this order, this Court had granted an ad-interim injunction on April 19,1974 restraining the respondents from transferring or removing the machinery or plant or equipment or any accessories from the said premises without the previous permission of the Board of the petitioners and also this Court had granted an ad-interim attachment as provided u/s 32 sub-section (i) of the State Financial Corporation Act, 1951. When the Court passed the final order on October 21, 1974 the Court expressly stated that the interim orders "do continue pending the sale of the said mortgaged properties."

2. It is an admitted position that the attachment still continues, so also the order of injunction restraining the respondents from disposing of the properties so attached.

3. Presently, the petitioners have made an application for executing the said order and the petitioners were advised to take out a notice under Order 21 Rule 22 of the Code of Civil Procedure. It is their prayer that after the notice is made absolute, they may be permitted to execute the decree by sale of the mortgaged properties as stated above.

4. Initially, the respondent contended that the present application under Order 21 Rule 22 is barred by law of limitation inasmuch as the order which is sought to be executed is more than twelve years old. The application for execution was declared on May 13,1986, and the notice under Order 21 Rule 22 of the CPC was issued on October 24, 1986. However, on a careful consideration, when I pointed out that in all probability, there is no question of execution application under Order 21 Rule 11 of the Code of Civil Procedure, in a matter of this type, inasmuch as the order itself continues the attachment, and the Commissioner for taking Accounts has been directed to sell, both the advocates took time to consider the legal position. Thereafter Mr. Dharmadhikari, appearing for the petitioner, drew my attention to a case decided by a Division Bench of Kerala High Court being the case of Rahima Beevi Vs. Kerala Financial Corporation, , to which, I will presently refer.

5. It is well settled by now that u/s 31 read with 32 of the State Financial Corporation Act, 1951, there is no question of any money decree being passed. u/s 31, a Corporation may apply for the reliefs as set out therein viz.

"(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."

6. On such applications being made and if the reliefs, as mentioned in clauses (a) and (c) of sub-section (1) of section 31, are to be granted, then u/s 32 subsection (1) the Court,

"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."

If the application is for transferring the management of the industrial concern under sub-section 2, the Court shall grant an injunction restraining the industrial concern from transferring or removing the machinery etc. At the time the Court passes the aforementioned ad-interim order, the Court shall also issue notice to the industrial concern to show cause as to why ad-interim orders of attachment and/or of injunction should not be made absolute or the injunction be confirmed. If no cause is shown the Court would confirm the ad-interim orders and direct the sale of the property or transfer the management of the industrial concern to the Financial Corporation. If the cause is shown, the Court shall investigate the claim of the Corporation and may pass an order as provided under sub-section (7) of section 32. Sub-section (7) of section 32 reads as follows:

"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

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf;"

In the present case the Court passed an order in terms of sub-clause (a) of sub section (7) of section 32 whereby the attachment was confirmed and the sale of the attached property was ordered on October 21,1974. We are concerned with the execution of the said order. The execution is provided under sub-section (8) of section 32, which is as follows:

"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 Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder."

So also in the case of transfer of management under sub-section (8A) the same shall be carried into effect as far as may be practicable in the manner provided in the CPC for possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.

7. Therefore, if one has regard for the scheme of the Act, it becomes clear that the order contemplated under the Act is not a decree as such. The order gives a limited relief. It secures the property which is mortgaged or hypothecated or pledged to the Financial Corporation. If the amount due to the Financial Corporation is not repaid and the Financial Corporation wants to enforce the securities, the same has to be done as mentioned above. That is all. In such a situation there is no question of any further application for execution as such. As long as the attachment continues and as long as the order for sale remains in force, it is open to the Financial Corporation to carry into effect the said order if the Corporation so desires. It is possible, that in a given case, in spite of the Financial Corporation obtaining an order from the Court, may not carry into effect the said order if the Financial Corporation decides that the industrial concern would ultimately pay the amount due to the Financial Corporation and, therefore, it is not necessary to execute the said order. But, if after giving all opportunities, ultimately, the Corporation feels that there is no other go but to execute the said order, the Corporation can always execute the order whenever it so decides.

8. However, under the Act the sale of the property must be done in accordance with the provisions of the CPC relating to the sale in execution of a decree. Therefore, such of the provisions under Order 21 which relates to sale of property in execution of the decree or which relates to attachment of property, will apply when the Financial Corporation seeks to carry into effect the order passed by the Court. It is in this sense that the Corporation is to be treated as the decree-holder.

9. In the case of Rahima Beevi vs. Kerala Financial Corpn., (referred to above) the Kerala High Court, while considering as to whether section 60 of the CPC has any application in the matter of execution of an order passed u/s 31 read with section 32 of the Act, held that section 32(6) and section 32(8) of the Act only provided for procedure to be followed to carry into effect, the order of attachment or sale, and thereby the order did not become a decree. The Court also considered the definition of "decree" as provided u/s 2 sub-section (2) of the Code of Civil Procedure, and after considering the scheme of the Act, held that the order envisaged in section 31 is not a decree as contemplated u/s 2 subsection (2) of the Code of Civil Procedure. I am inclined to agree with the view taken by the Kerala High Court

10. In the result, I pass the following order.

I declare that there is no question of any notice being issued under Order 21

Rule 22 of the Code of Civil Procedure. I direct that if the petitioner moves the Commissioner for taking Accounts, the Commissioner should proceed with the sale of the property so attached as provided u/s 32 sub-section 8 of the Act.

There will be no order as to costs.

