(1986) 12 BOM CK 0023

In the Bombay High Court

Case No : Misc. Petition No. 357 of 1985

Maharashtra State Financial Corporation — APPELLANT

Vs

Hindtex Engineers Pvt. Ltd. — RESPONDENT

Date of Decision : 03-12-1986

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 3
State Financial Corporations Act, 1951 — Section 29, 30, 31, 31(1), 32
Suits Valuation Act, 1887 — Section 9
Transfer of Property Act, 1882 — Section 69

Citation : (1987) MhLj 243

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Advocate : Subramanian with E.P. Bharucha instructed by M/s. Nanu Hormasjee and Co, for the Appellant; S.V. Kamdar with D.H. Mody instructed by M/s. Mehta and Co., for the Respondent

Judgement

Sujata V. Manohar, J.—This is a petition u/s 31 of the State Financial Corporation Act, 1951 praying that the property hypothecated to the Maharashtra State Financial Corporation as security for the loans advanced by the said Corporation to the Respondents should be sold for recovery of a total amount of Rs. 16,75,305.85 inclusive of interest as set out in the particulars of claim Exhibit ''F to the petition,

2. On or about 13th August 1975 the petitioners sanctioned a loan of Rs. 5,75,000/- to the respondents for setting up a project for the manufacture of textile (machinery spare parts. The sanctioned amount was increased to Rs. 7,15,000/- under a resolution of the Board of Directors, of the petitioners Corporation dated 11th December 1976. Out of this sanctioned loan of Rs. 7,15,000/- a sum of Rs. 5,06,690/-was the rupee component and a sum of Rs. 2,08,310/- was the foreign exchange component for purchase of the machinery. The said amounts have been advanced as per particulars which are set out in the petition against letters of hypothecation dated 24-3-1977 and 3-6-1977. Out of

the foreign exchange component of the loan a sum of Rs. 8276/- was subsequently converted into the rupee component of the loan and was lent and advanced to the respondents under a fresh letter of hypothecation dated 3-1-1979. Under these letters of hypothecation plant, machineries, furnitures, fixtures as also other tangible and moveable assets as set out in these letters of hypothecation are hypothecated In favour of the petitioners as security for the said loan. The petitioners have a first charge on the properties described in these deeds of hypothecation. There is no dispute that these amounts were lent and advanced to the respondents as set out in the petition. Each of the said deeds of hypothecation sets out the terms of repayment of the amounts advanced and the time of repayment and quantum of the installments. Under the deeds of hypothecation dated 24th March 1977 which is in respect of the foreign exchange component of the said loan, under clause 1, the said amount aggregating to Rs. 2,08,310/- is repayable by eleven half yearly installments. The first installment is payable on 20th March 1979 and the last installment is payable on 24th March 1984. Similarly under the letter of hypothecation dated 3rd June 1977 which is in respect of the rupee component of the loan, the first installment is payable on or before 20th March 1979 and the last on or before 20th March 1984. Under the deed of hypothecation dated 3rd January 1979 which is in respect of Rs. 8,276/- which is transferred from the foreign exchange component of the loan to the rupee component, the first installment is payable on 20th March 1979 and the last on 24th March 1984. The rate of interest is also prescribed under these letters of hypothecation. The respondents, as on the date of the petition, have failed and neglected to pay any installments of principal amount. They had paid interest on the said amounts only up to December 1979. Thereafter the respondents have failed and neglected to pay any further installments of interest. In these circumstances, in view of more than two defaults committed by the respondents, the petitioners have filed the present petition for realisation of their security under the letters of hypothecation.

3. This petition is filed under sections 31 and 32 of the State Financial Corporation Act, 1951. u/s 31 of this Act it is provided as follows :

"31. (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 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 any office 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 :-

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 :"

The relevant portion of section 32 provides as follows :

"32(1)......,.....

(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, in so far 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; or

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

(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 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.

(11) The function 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."

4. It is the contention of the respondents that this court has no jurisdiction to entertain the petition because u/s 32 sub-section 11(a) jurisdiction is conferred only on the City Civil Court at Bombay and not on the High Court of Bombay since Bombay is Presidency Town. In this connection it is necessary to note the language of sub section 11 of section 32. Under this sub section the functions of a district judge u/s 32 are exercisable where there is a City Civil Court having jurisdiction by a judge of that court. If there is no City Civil Court having such jurisdiction the functions of the District Judge are required to be performed by the High Court. It is therefore necessary to examine whether there is a city civil court having jurisdiction to examine and pronounce upon the claim made in the present petition.

5. Under the Bombay City Civil Court Act, 1948 section 3 prescribes that "Notwithstanding anything contained in any law, such (Bombay City Civil Court)

court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding fifty thousand rupees in value, and arising within the Greater Bombay." "There are certain exceptions carved out in that section which are not relevant in this case. In the present case the actual amount of loan in connection with which the present petition is filed, far exceeds Rs. 50,000/- in value. The Supreme Court in the case of Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, considered the provisions of sections 31 and 32 of the State Financial Corporation Act 1951 in connection with Court-fee payable in respect of such petitions. The Supreme Court has held that Section 31(1) prescribes a special procedure for enforcement of claims by the Financial Corporation. The Supreme Court has held that looking at the whole conspectus of provisions in section 32 coupled with the nature of relief sought u/s 31(1) it becomes clear that special provision is made for certain types of reliefs that can be obtained by a corporation by an application u/s 31(1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property. Nor can it be said to be proceeding to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. It held that an application u/s 31(1) is neither a plaint as contemplated by article 1 of Schedule 1 of the Bombay Court-fees Act nor an application in the nature of a plaint as contemplated by Article 7 of Schedule 1 of the Bombay Court Fees Act. Hence such an application is governed by Article l(c) of schedule 11 of the Bombay Court Fees Act (as applicable to Gujarat). It should therefore bear a fixed court fee in the sum of 0.65 paise.

6. The present petition which is u/s 31(1) of the State Financial Corporation Act, 1951 must therefore be considered as incapable of being valued in monetary terms for the purpose of payment of court fees. u/s 9 of the Suits Valuation Act, 1887 as applicable to the State of Maharashtra, Suits which do not admit of being satisfactorily valued are to be treated as if their value is three hundred rupees for the purposes of the Suits Valuation Act 1887 and court fees. This section applies only to suits. It does not cover an application u/s 31(1) of the State Financial Corporation Act. The Supreme Court has observed that such an application is not a plaint or in the nature of plaint. It is therefore not governed by section 9 of the Suits Valuation Act as applicable in Maharashtra.

7. Since the present application cannot be valued in monetary terms, does the Bombay City Civil Court have jurisdiction to entertain it ? In respect of such a claim, looking to the language of section 3 of the Bombay City Civil Court Act 1948 the City Civil Court will not have jurisdiction because the jurisdiction which is conferred on the City Civil Court is in respect of suits and other proceedings of a Civil nature capable of valuation in monetary terms. Section 3 requires that such monetary value shall not exceed Rs. 50,000/-. It assumes that such suits or applications are capable of monetary valuation. The present petition cannot be considered as a proceeding not exceeding Rs. 50,000/- in value since it is incapable of monetary valuation. As against that, under clause 12 of the Letters Patent the High Court shall exercise its ordinary original civil jurisdiction in cases

of every description, save and except for cases which fall within the jurisdiction of the Small Causes Court at Bombay. Out of this wide jurisdiction which is conferred on the High Court, jurisdiction of the City Civil Court has been carved out by the Bombay City Civil Court Act, 1948. The present petition does not fall within the jurisdiction of the Bombay City Civil Court.

8. In this connection it was submitted by the respondents that the phrase ''''having jurisdiction" u/s 32 sub-section 11 of the State Financial Corporation Act refers only to territorial jurisdiction and not to pecuniary jurisdiction. There is however, nothing in the subject or context of section 32 subsection 11 which would require the term "jurisdiction" to be confined only to territorial jurisdiction. The term jurisdiction includes both territorial and pecuniary jurisdiction. Hence looking to the subject matter of the present petition the City Civil Court does not have jurisdiction to deal with and dispose of the present petition.

9. The respondents relied upon a decision of the Delhi High Court in the case of M/s. Prakash Playing Cards Manufacturing Co. vs. Delhi Financial Corporation AIR 1980 Del 48. The said two sections of State Financial Corporation Act, viz. sections 31 and 32 came up for consideration before the Delhi High Court in the above case. The decision turned upon the interpretation of section 5 of the Delhi High Court Act, 1966. u/s 5 of the Delhi High Court Act, 1966, the High Court of Delhi has, in respect of territories set out in that section, Ordinary Original Civil Jurisdiction "in every suit the value of which exceeds Rs. 50,000/-". The Delhi High Court held that an application under sections 31 and 32 of the Financial Corporation Act in respect of an amount of Rs. 67,196.92 and further interest could not be considered as a suit. In this connection it relied upon the decision of the Supreme Court cited above and it held that since the application could not be properly described as a suit the value of which exceeded Rs. 50,000/- the petition was correctly filed before the District Court. This decision is based entirely on the interpretation of section 5 of the Delhi High Court Act. The language of the Bombay City Civil Court Act 1948 and the jurisdiction of the Bombay High Court which is governed by Letters Patent, is very different in nature. The decision of the Delhi High Court therefore has no relevance to the present proceedings.

10. My attention was also drawn by the petitioners to a decision of the Calcutta High Court in the case of West Bengal Financial Corporation and Another Vs. Gluco Series Private Ltd., . In that case the Calcutta High Court held that the value of the claim in the proceedings u/s 31 of State Financial Corporation Act exceeded Rs. 50,000/- and therefore, the claim was rightly filed before the High Court. This Judgment was delivered prior to the decision of the Supreme Court cited above. The Calcutta High Court considered the application u/s 31 of the State Financial Corporation Act as capable of monetary valuation and held that in the case before it, its value exceeded Rs. 50,000/-. In view of the Supreme Court judgment cited earlier, it would not be proper to place reliance on this decision of the Calcutta High Court. Incidentally, if the ratio of that case is applied, the claim

in the present case far exceeds Rs. 50,000/- in value.

11. Section 32 sub-section 11 does not confer jurisdiction on the City Civil Court to dispose of applications under sections 31 and 32 of the State Financial Corporation Act. It merely provides that where in a Presidency Town there is a City Civil Court having Jurisdiction to try claims of this nature, that Court will try such a claim. In the absence of such a court, the High Court will have jurisdiction to try such a claim. Hence unless the City Civil Court in question already possesses jurisdiction to try applications of such a nature, the applications will have to go before the High Court. In the present case looking to the subject matter of the petition, the Bombay City Civil Court does not have jurisdiction to try it. It is the High Court which has jurisdiction to try such a claim.

12. It was next submitted that the prayer in the petition asking for net sale proceeds to be handed over to the petitioners for appropriating the same towards the amount due to them is misconceived and cannot be granted under the provisions of sections 31 and 32. This submission cannot be accepted. Section 31 entitles the Financial Corporation to obtain an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan advanced. u/s 32 sub-section 6 the District Judge is required to investigate the claim of the Financial Corporation as set out therein and binder subsection 7 after such investigation the District Judge may direct the sale of the attached property. Under sub-section 8 an order of attachment or sale of property under this sub-section shall be carried into effect as far as may be practicable in the manner provided in the CPC 1908 for attachment or sale of the property in execution of a decree as if the Financial Corporation were the decree holder. In the light of these sub-sections, therefore, the District Judge has to investigate and ascertain the amount of the Financial Corporation''s claim, and order sale of the security as if, such a sale were in execution of the decree, and the Financial Corporation were the decree holders. This clearly contemplates recovery by the Financial Corporation of its claim so investigated, out of the sale proceeds as if the Financial Corporation were the decree holder. An order for payment of sale proceeds or such part thereof as will satisfy the Financial Corporation''s claim is therefore, contemplated in these sections.

13. In this connection the respondents relied upon certain observation of the Supreme Court in the case of Gujarat State Financial Corporation vs. M/s. Natson Manufacturing Co. Pvt. Ltd and others referred to earlier. My attention was drawn to observations to the effect that "the provision contained in sub-section 6 of section 32 does not expand the contest in the application made u/s 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of the mortgaged property". These observations are made in the context of determination of value of the claim in such an application for payment of court fees. These observations are merely to the effect that an application u/s 31 cannot be treated as a mortgage suit for the purpose of payment of court fees.

These observations do not in any manner suggest that the sale proceeds cannot be paid over to the Financial Corporation under the provisions of sections 31 and 32.

14. The respondents have contended that they have not committed any default in payment of installments because under these various agreements which were entered into by the respondents with the petitioners there was a moratorium on repayment of the loan for a period of 2 years. Hence they had not committed any default. This contention is contrary to the express term relating to repayment contained in the three letters of hypothecation. Each of these letters contains dates of repayment of installments. There is no other document recording such a moratorium and there is nothing to indicate such a moratorium. The respondents have not paid the installments as set out in these three letters of hypothecation. They are therefore clearly in default. Under the terms of these agreements the petitioners have become entitled to realise their claim.

15. The petitioners have also submitted that the respondents have committed a breach of these agreements because they have shifted their machinery from Goregaon to Virar without the consent of the Maharashtra State Financial Corporation. According to the respondents they had informed the petitioners about the machinery being shifted. This dispute need not be examined at any length because there are clearly several defaults in payments of installments by the respondents and the defaults are such as would entitle the petitioners to realise the security.

16. The respondents have also claimed a set off as described in para 7 of the affidavit in reply. According to the respondents the petitioners did not disburse the accounts in accordance with the agreements and thus created various difficulties for the respondents. As a result of this delay in disbursements there was a delay in implementing the project and commissioning the factory. According to the respondents, although the loan was sanctioned as far back as 1975 disbursements were not effected till after 1977-78. The respondents have claimed damages for this delay amounting to Rs. 6 lakhs and have sought to set off this amount against the plaintiffs'' claim under sections 31 and 32 of the said Act however, there is no provision under which such a set off can be claimed. Assuming that there is a valid claim for such a set off, in fact no particulars of such damages are given in the affidavit in reply. In any event, since a petition u/ s 31 has now been held to be a distinct proceeding and not a suit, the provision for a set off cannot apply to such a proceeding. The two sections also do not provide for any such set off. The respondents, therefore, cannot agitate their claim for such a set off in these proceedings. It is of course open to them to claim the amount which is claimed by them in such manner as may be open to them in law.

17. After the filing of the present petition the respondents have repaid certain amounts to the petitioners. The petitioners have now filed a detailed statement of account showing the amounts advanced, the amount of interest charged and

the repayments made by the respondents. As per the terms of the agreement the petitioners have charged interest at the rate of 14%% on the. foreign exchange component of the said loan and have charged interest at the rate of 14 1/2% and a further 2% penal interest as per the terms of the agreement in connection with the rupee component of the loan. As per the statement of account submitted which is taken on record a sum of Rs. 4,21,006.80 inclusive of interest at the rate of 14 1/2% up to 30th September 1986 is payable by the respondents to the petitioners under the Foreign Exchange component of the said loan. A further sum of Rs. 14,98,588.65 inclusive of (interest up to 30th September 1986 is payable by the respondents to the petitioners in respect of the rupee component of the said loan. The respondents do not dispute the correctness of these accounts. The petitioners are also entitled to further interest at the rate of 14 1/2% in respect of the foreign exchange component and further interest at the rate of 14%% on the rupee component of the said loan.

There will be an order in terms of entire prayer (a), prayer (b)(ii) and prayer (f) of the petition. The Petitioners do not press prayer (b)(1) since they do not have a charge on the said property under the letters of hypothecation.

On the application of the respondents the sale is not to take place for a period of 8 weeks from today. The interim order will continue for the said period of 8 weeks.

