
(1987) 02 BOM CK 0008
In the Bombay High Court
Case No : Misc. Petition No. 29 of 1986

Maharashtra State Financial Corporation	APPELLANT
Vs	
Jaycee Drugs and Pharmaceuticals Pvt. Ltd.	RESPONDENT

Date of Decision : 10-02-1987

Acts Referred:

Constitution of India, 1950 — Article 14
State Financial Corporations Act, 1951 — Section 31, 32

Citation : (1987) MhLj 291

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H. Suresh, J.—The Maharashtra State Financial Corporation has filed this petition under Sections 31 and 32 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act") for a decree in the sum of Rs. 15 lakhs and odd as against the Respondents.

2. Respondent No. 1 is a private limited company. The company proposed to set up a factory at Taloja and sought the assistance of the petitioners. The petitioners sanctioned the loan of Rs. 30,00,000/-. As and by way of security, the said company executed a deed of mortgage dated June 29, 1973. Respondents Nos. 2, 3 and 4 also stood surety for and on behalf of respondent No. 1 company, in respect of the loan to be advanced by the petitioners. The company has not been able to go ahead with the project. In the meanwhile the company had received about Rs. 14 lakhs and odd. Since the company failed, the petitioners took steps to realise the amount. As provided under the Act, they took possession of the project and took charge of the assets of respondent No. 1-company sometime in September 1984. Thereafter, it appears that they advertised for sale on three or four occasions. The best offer they could get was of about Rs. 5 lakhs for land and building. Now, the petitioners want to proceed as against the sureties, being respondents Nos. 2, 3 and 4.

3. Though in the petition, the petitioners have asked for a decree in the sum of Rs. 15 lakhs and odd as against all the respondents, Mr. Virag V. Tulzapurkar appearing for the petitioners frankly conceded that no such money decree can be passed as against respondent No. 1, having regard to the scheme of the Act. But at the same time he maintained that it is possible for the Court to pass such a decree as against respondents Nos. 2, 3 and 4.

4. Mr. Mehta appearing for the respondents has advanced three contentions.... Firstly, he submitted that this Court has no jurisdiction to entertain this petition, inasmuch as under the Act such a petition could be preferred only in the Court of the District Judge, and the High Court on the Original Side cannot be considered as the Court of the District Judge, for the purposes of the Act. Secondly, he contended that in any event, the provision of the Act which relates to enforcement of the securities and the realisation of the amounts is ultra vires Article 14 of the Constitution of India. Thirdly, he submitted that the petition itself is not maintainable, inasmuch as no money decree is contemplated under the Act, and that sureties having given no security as such, the petitioners cannot seek any relief under this Act, as against the respondents Nos. 2, 3 and 4. He also submitted that if it is not possible for the petitioners to get a money decree as against respondent No. 1, the principal debtor, certainly the same principle in any event should apply as against the guarantors, viz, respondents Nos. 2, 3 and 4.

5. On the question of jurisdiction, my attention has been drawn to a judgment given by this Court in *The Maharashtra State Financial Corporation v. Hindtex Engineers Pvt. Ltd.* (1986) Misc. Petition No. 357 of 1986 decided by Mrs. Sujata V. Manohar J., on December 3, 1986 (Unrep.) in which the learned Judge has given a finding that under the Act this Court has jurisdiction and for the purposes of the said Act this Court can be considered as the Court of the District Judge. I am told as against the said judgment an appeal has been preferred before the Division Bench and the said appeal is pending. In these circumstances, I told Mr. Merita that I would not decide this question here, but I would proceed on the assumption that I have jurisdiction to entertain and try this petition.

6. Similarly, on the question of the provisions of the Act being ultra vires Article 14 of the Constitution of India, I told Mr. Mehta that normally the Court should not go into the question of constitutionality of any provision, unless it is absolutely necessary. However interesting, novel and new a constitutional argument may be, an expression of opinion should be avoided if the matter can be disposed of "within the narrow domain of appropriate adjudication". In these circumstances, I have not entertained any arguments from either side on this aspect of the matter, inasmuch as, according to me, I can decide this matter on the question of maintainability of the petition itself having regard to the scheme of the Act and, therefore, without going into the constitutional aspect of the matter.

7. On the question of maintainability of the petition, my work has been

simplified, inasmuch as the Supreme Court in the case of Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, has set out in detail the ambit and the scope of the scheme of the Act, and that clearly rules out a money decree in a petition of this type. That should normally answer the contention of Mr. Tulzapurkar.

8. However, the situation is slightly different, inasmuch as when the Supreme Court decided the matter and explained the provisions of the law. the Act had not been amended so as to include the claim as against the sureties. The relevant provision, in this connection, which I have referred to, is Section 31 of the Act. As it stood prior to its amendment in 1985, there was no provision to enforce the liabilities of the sureties under the Act. But such a question had arisen in two High Courts-one in Allahabad and the other in Kerala. The Allahabad High Court took the view that no petition was maintainable u/s 31 of the Act, as against the surety in respect of the properties mortgaged by such surety, the remedy being an ordinary suit in a Civil Court. (See the case of Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another, . As against this, the Kerala High Court took the contrary view and held that such a petition was maintainable as against the mortgaged properties of the surety. (See Thressiamma Varghese Vs. Kerala State Financial Corporation and Others,).

9. It is precisely because of this uncertainty in the law, the law was amended. Section 31 of the Act, which provides for various reliefs against the principal debtor, now provides for an additional relief as against the surety and the amended provision is as follows:

(aa) for enforcing the liability of any surety; or

Therefore, the question is, what is the meaning of the words "enforcing the liability" of any surety.

10. Mr. V.V. Tulzapurkar for the Petitioners submits that enforcing the liability of any surety must necessarily include obtaining a money decree as against the surety, inasmuch as the law has not specified that such enforcement should be restricted to the properties mortgaged by the surety. He also submitted that having regard to the rules of interpretation, if the law is clear, it should be interpreted according to its ordinary meaning. He also submitted that there is no ambiguity in the language and, therefore, there is no question of any construction as to the meaning of the words used in the law.

11. In my view, whenever any statute provides for a special remedy deviating from the general remedy available to" a party, such a special provision has to be construed strictly. The provision has to be understood in the context in which it is found. According to me, having regard to the scheme and the policy of the Act and having regard to the other provisions of the Act, the amended provision must necessarily mean, sale of the property mortgaged, hypothecated or assigned to the Corporation as security by the surety. That is how the liability of the surety is enforced within the scheme of the Act. The word "enforcing" is a

term of art which is generally found in matters of mortgage or security where they are to be enforced. In this connection, one has to refer to the other amended provisions which relate to procedure and the order to be passed in such proceedings, and they make the position quite clear. Section 32 provides for the procedure in respect of applications u/s 31. Amongst others it provides for a notice to" be given under Sub-section (4) to the concerned parties before an order "of attachment" is made absolute. Prior to the amendment, notice was to be given to the industrial concern, meaning thereby, the principal debtor. But now the following words have been added, viz. "or to the owner of the security attached." These words must necessarily mean "the owner of the security" other than the industrial concern to which loan was advanced. The owner of the security must mean the surety and if a surety has given any security, that can be attached.

12. Again Sub-section (7) of Section 32 of the Act provides for the order to be passed by the Judge, After amendment, it contemplates as against the surety, the following order to be passed, viz.:

(aa) direct the enforcement of the liability of the surety or reject the claim made in this behalf.

These words again indicate no money decree at all. Sub-sections (8) and (8A) of Section 32 which provide for execution of the orders passed by the Judge, in terms, speak of attachment and sale of the attached properties and/or of possession of moveable and Immovable properties which the Corporation is entitled to take possession of. Again, I must mention that the Act contemplates seizure and attachment of what is pledged or mortgaged to the Corporation, by a simple remedy of an application to be made u/s 31 of the Act. It does not contemplate any trial or any action or any lengthy proceedings, save and except the requirements relating to compliance with the principles of natural justice. Therefore, there is no question of the petitioners getting any money decree as against the sureties.

13. In the present case, admittedly the sureties have given no such security at all excepting their personal assurance to the petitioners. In my view that can be enforced in the ordinary course and not under the special machinery provided under the Act.

14. Hence the petition stands dismissed with no order as to costs.