
(1982) 03 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No. 86 of 1982

Maharashtra State Financial Corporation

APPELLANT

Vs

Pankaj kumar P. Shah and Others

RESPONDENT

Date of Decision : 25-03-1982

Acts Referred:

State Financial Corporations Act, 1951 — Section 32, 32(5), 32(6)

Citation : (1983) 1 BomCR 352

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Advocate : V.P. Tipnis and S.L. Kulkarni, for the Appellant; M.L. Palan, A.G. and P.G. Godhamgaonkar, for respondent No. 1, D.Y. Lovekar, for respondent Nos. 2 and 3 and U.B. Binwade, for the Respondent

Judgement

S.J. Deshpande, J.—This revision application is filed by the Maharashtra State Financial Corporation (hereinafter referred to as the "M.S.F.C.") the original respondent No. 1 in Miscellaneous Petition No. 61 of 1976 filed by to be present respondent No. 1, who was the original petitioner in this District Court at Nanded. Although it was stated in the petition initially that this was a petition under Order 21, Rule 58 of the Code of Civil Procedure, it was conceded in the trial Court subsequently that the claim of the original petitioner was not under Order 21, Rule 58 of the CPC and it was also conceded that the said provision was not applicable to the facts of this case. Emphasis was laid in the trial Court at that time that the application was maintainable u/s 32 of the Financial Corporation Act, 1951 (herein after referred to as the "Act") and this original petition arises out of the following facts.

2. Respondent No. 2. in this revision application was a partnership firm. Respondent No. 3 Bhanjibhai, his wife Laxmibai respondent No. 4 (who is now reported to be dead) and his daughter Ratanbai (present respondent No. 5) were the partners of this firm. The respondent No. 1 in this civil revision application, Pankaj kumar is the son of respondent No. 5 Ratanbai.

3. The M.S.F.C. had advanced a loan of Rs. 5 lakhs 17 thousands and odd to the partnership firm initially and at later points of time some further loans were also given by M.S.F.C. to the said firm. In this application we are not much concerned with the amounts of loan and so we need not dilate over that aspect. Admittedly, by way of security for these loans, certain plots, equipments and machinery of the firm was hypothecated to the M.S.F.C. A deed to that effect was executed on 27th June, 1963.

4. The loan and the interest were to be repaid by instalments and the usual default clause was also embodied in the deed executed by the partnership firm. The partnership firm committed default for the payment of loan along with the interest and, therefore, on 10-1-1967, the M.S.F.C. applied to the District Court at Nanded u/s 31 of the Act. By that time, the dues had swelled to Rs. 6,33,355.15. It is not disputed that u/s 31 of the Act three kinds of orders are contemplated :-

- (1) Immediate attachment of the hypothecated property and its order for sale;
- (2) Taking over the management of the enterprise by the M.S.F.C.
- (3) The transfer of management of the enterprise to the M.S.F.C.

This is clear from the provisions of section 32(5) of the Act.

5. After the M.S.F.C. filed this application in the District Court, an order of attachment was passed on 14-12-1967. But it was brought to my notice on behalf of the petitioner itself that the order for sale was passed on 26-4-1969.

6. It appears that after the Court passed the order of attachment on 14-12-1967, the M.S.F.C. filed Darkhast No. 1 of 1967 for recovery of the money due to M.S.F.C. It is not disputed that when attachment order was issued, an ice-factory situated in Plot No. 29 was also attached along with the other property in the other plots and the present contest is a sequel to this attachment of Ice-Factory in Plot No. 29.

7. On 9-6-1972, the present respondent No. 1 filed an application in the Court in respondent of the Ice-Factory located in Plot No. 29. We are also not concerned with the details of this application and it is an admitted fact that on 13-1-1975 the Court passed an order raising attachment in respect of the Ice-Factory located in Plot No. 20.

8. Then, it will be worthwhile to make a reference to certain other litigation. On 26-7-1975, Ratanbai (present respondent No. 5) filed Civil Suit No. 50 of 1975 in Nanded Court against the present respondent Nos. 3 and 4 for a dissolution of the partnership firm which had originally taken the loan from M.S.F.C. That dispute was referred to the arbitration of one Advocate Mukhedkar. As a result of the award given by the said Arbitrator on 1-11-1975, the present respondent No. 5 was allowed to retire from the partnership and the present respondents Nos. 3 and 4 were to be responsible for all the dues and liabilities of the partnership

firm, i.e. the present respondent No. 2.

9. On 26-7-1975 i.e. on the same day on which respondent No. 5 filed the earlier suit, respondent No. 1 filed another suit against the present respondent Nos. 3 and 4 for realization of certain property alleged to have been left behind by one Jiwabai, the grandmother of Pankaj kumar the present respondent No. 1. It appears that the suit was originally filed in the Court of Junior Division, but it was subsequently returned and re-filed in the Court of Senior Division and it was numbered as Civil Suit No. 11 of 1976. This suit again was also referred to the Arbitrator and on 25-11-1975 the Arbitrator made his Award. By virtue of this Award the assets of M/s. Sharat Dye Chem Industries, Nanded, i.e. respondent No. 2, were given to present respondent No. 1 and similarly the equity of redemption in all the hypothecation made to M.S.F.C. was transferred in favour of Pankaj Kumar the present respondent No. 1 and it is thereafter that the present respondent No. 1 filed the petition in the District Court at Nanded and the present revision arises out of the same. Contention of the present respondent No. 1 before the District Court was that in view of the wrongful attachment of Ice-Factory located in Plot No. 29 by the M.S.F.C. he, suffered damage to the extent of Rs. 20,70,000/- and odd. He further contended that as a result of award in the suit filed by him against the present respondents Nos. 3 and 4, the equity of redemption was transferred in his favour and, therefore, he had a right to redeem this property. He, therefore, sought for relief in the trial Court that the trial Court should investigate the claim of Rs. 20,70,000/- and odd which was the claim of the present respondent No. 1 against the M.S.F.C. by way of damages for wrongful attachment. It was further claimed that the amount due to the M.S.F.C. from the firm should be deducted from this amount of damages and the surplus amount should be paid over to him from M.S.F.C.

10. The M.S.F.C. raised several contentions but we are not concerned with the other contentions. A preliminary objection was taken by the M.S.F.C. that such an application was not maintainable and this was heard as a preliminary question and after hearing both sides, the learned Extra Assistant Judge, Nanded, to whom the matter was made over by the District Nanded, held that such an application was maintainable and he overruled the objection raised by the M.S.F.C. holding that the present petition was tenable under the provisions of section 32 of the Act. He held further, the Court was competent to investigate the claim of the parties to the present proceedings and, therefore, he passed an order that the parties should be given an opportunity to lead evidence. It is against this order that the M.S.F.C. has come to this Court.

11. Mr. V.P. Tipnis, appearing on behalf of the revision petitioner contended that this order of the trial Court is clearly without jurisdiction and according to him, the question of investigating the claim of present respondent No. 1 regarding damages due to the alleged wrongful attachment does not fall within the jurisdiction of the trial Court and also does not fall within the ambit of sub-section (6) of section 32 of the Act. Mr. M.L. Palan appearing on behalf of the

respondent No. 1 has made a clear-cut statement before me, also he relies upon sub-section (6) of section 32 of the Act to show that it is within the competence of the trial Court to investigate the claim of respondent No. 1 relating to damages. Sub-section (6) of section 32 runs as follows :

"If the 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."

Hence, we have to consider the matter by taking into consideration the working of sub-section (6) of section 32 of the Act. Before turning to this question, Mr. Tipnis invited my attention to the relevant provisions regarding the scheme of the Act. We are not concerned with the entire scheme but he laid emphasis on the scheme of the Act enabling the Financial Corporation to recover their loans from their debtors. He took me through the provisions of sections 31 and 32 of the Act and he pointed out to me that such an investigation of claim for damages does not fall within the ambit of sub-section (6) of section 32 of the Act.

12. He invited my attention to a decision of the Supreme Court to ascertain as to what is the nature of proceedings under sections 31 and 32 of the Act. That ruling is Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, The question in that ruling related to the payment of Court fees and although the question of Court fees is not relevant in this revision petition, the observations of the Supreme Court regarding the nature of proceedings under sections 31 and 32 of the Act are germane for our consideration. In para 9 of the judgment, the Supreme Court observed as follows :

"Section 31(1) prescribes a special procedure for enforcement of claims by the Financial Corporation. The Corporation is to make an application for the reliefs set out in section 31(1)."

In so far as sub-section (6) of section 32 is concerned, Mr. Tipnis invited my attention to the observations from para 13 of the judgment of the Supreme Court and they are as follows :

"Sub-section (6) of section 32 of the Act has to be read in the context in which it is placed. The claim of the corporation is not the monetary claim to be investigated, though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making re-payment of loan or advance or instalment thereof and, therefore, the mortgaged property should be sold. It is not a money claim."

I have particularly referred to these observations because during the course of his argument. Mr. Palan has tried to place reliance upon the principles of equitable set-off. I shall come to this aspect in due course. Hence, according to Mr. Tipnis this ruling of the Supreme Court provides an answer to the question

raised by present respondent No. 1 in the original petition. As against this, Mr. Palan placed reliance upon some rulings and the first one is Durlabh Kumar Vs. The District Judge, Indore and Another, . In that ruling the Financial Corporation had started action against debtor u/s 31 of the Act and by way of defence the debtor contended that the factory was closed for a long number of years for reasons beyond his control and so it was not possible for him to repay the whole amount he made a prayer for instalments. It was held by the Court below that this could not be done but the Madhya Pradesh High Court held that this enquiry could be made in the petition filed by the Financial Corporation u/s 31 of the Act. Mr. Palan tried to place reliance upon the following observations in para 7 :---

"Therefore, the special provisions for enforcement of claims by the Corporation are very similar to the proceedings in the nature of the suit."

Similarly he placed reliance upon earlier observations in para 6 and they are as follows :

"Consequently the question of default and the justification sought by the petitioner would also fall within the ambit of investigation into the claim."

I do not think that any of these observations will apply to the facts of this case. The defence that was raised was very clear and the prayer of the debtor was also a very limited prayer for the grant of instalments. In that ruling any claim made by the debtor against the M.S.F.C. did not arise for consideration at any point of time. In the instant case the crucial question is that the claim of the present respondent No. 1 was against the M.S.F.C. for damages for the alleged wrongfully attached property in Plot No. 29 and this ruling does not support the case of the present respondent No. 1.

13. Then, reliance was sought to be placed upon the decision of the Nagpur High Court in AIR 1948 118 (Nagpur) I do not think that this ruling has any bearing on the facts of this case and the last one is Munshi Ram and Others Vs. Radha Kishan (decd.) and Others, This ruling is on the point of distinction between pleas of adjustment, set-off and counter-claim and it does not apply to the facts of the present case at all. Mr. Tipnis was right when he urged that by virtue of the aforesaid Supreme Court ruling, proceedings started by the M.S.F.C. do not become a suit.

14. The stress of Mr. Palan was that the claim of the present respondent No. 1 for damages was arising out of the same transaction by the M.S.F.C. Assuming it to be so, I do not think that it lies within the competence of the District Court under sub-section (6) of section 32 of the Act to investigate the claim of the present respondent No. 1 relating to the damages alleged to have been suffered by him on account of the so-called wrongful attachment of the property in Plot No. 29. Sub-section (6) of section 32 clearly shows that the District Judge shall proceed to investigate the claim of the Financial Corporation. It does not make any reference whatsoever to the claim of the debtor against the Financial Corporation. The marginal note to section 32 also is to the following effect :-

"Procedure of District Judge in respect of application u/s 31."

As already stated, the claim of the respondent No. 1 is that he has suffered damage to the extent of 20 lakhs and odd and that this enquiry should be made by the District Court, before granting relief to the M.S.F.C. I am unable to construe the provisions of sub-section (6) to confer jurisdiction on the District Judge to investigate such claim. Remedy of civil suit, if the respondent No. 1 is so advised, is open and is available to respondent No. 1. He cannot ask for that relief under sub-section (6) of section 32 of the Act.

15. Mr. Palan then made a reference to Order, Rule 6. Earlier, while reproducing some contentions from the judgment of the Supreme Court, I have pointed out that the Supreme Court has clearly laid down that it is not a money suit and hence the provisions of set-off etc. will not be applicable to the facts of the present case. Of course, position could be otherwise if respondent No. 1 had obtained a separate decree against the M.S.F.C. for damages by filing a regular suit against the M.F.S.C. In such an event, the respondent No. 1 could possibly show that now equity of redemption is transferred in his favour and as he is entitled to redeem this property, the decretal dues from M.S.F.C. to him should be set-off against these dues. That is not the position here and hence, I do not think that the principle of set-off is applicable to the facts of this case. Reference was also made to a decision of Privy Council in Sheo Narayan Singh v. Bishnunath Singh AIR 1914 PC 153. That is also on the point of set-off and I have so far pointed out that the question of set-off does not arise for consideration. The question of set-off would arise only after the claim of respondent No. 1 against the M.S.F.C. for damages is adjudicated and I have so far pointed out that looking to the wording of the entire section 32 and particularly sub-section (6) of section 32, there is no jurisdiction vested in the District Judge to investigate into the claim of the so-called damages alleged to have been suffered by the present respondent No. 1 in view of the alleged wrongful. In this view of the matter, the petition filed by the respondent No. 1 in the District Court is not tenable and on going through the order of the learned Assistant Judge, Nanded, I find that by giving funny reasons he had overruled the preliminary objection raised by the M.S.F.C. The District Judge does not get any jurisdiction to adjudicate upon the question of damages and hence this petition filed by respondent No. 1 in the District Court is not tenable at all and, therefore, the civil revision application deserves to be allowed. Accordingly, the civil revision application is allowed. Miscellaneous Application No. 61 of 1976 filed by the present respondent No. 1 in the Court of the District Judge at Nanded is held to be not tenable and it is dismissed. Rule is made absolute with costs of both the courts. Stay automatically stands vacated.