(1997) 02 MAD CK 0074

In the Madras High Court

Case No : R.C. Miscellaneous P. No. 8 of 1995 and W.P. No. 7532 of 1992

Maladi Drugs and Pharmaceuticals Ltd. APPELLANT

Vs

M/s. Tuber Pharma Chemicals Ltd. and Others RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 31

Citation : AIR 1997 Mad 322

Hon'ble Judges : Raju, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : V.R. Gopalan, for the Appellant; A.L. Somayaji, for K.R. Tamizhmani, K.T. Palpandian, for the Respondent

Judgement

AK. Lakshmanan, J.—By a deed of mortgage dated 30-3-1977 for Rs. 28.80 lakhs, deeds of modification dated 31-3-1978 and 3-3-

1979. deed of agreement dated 18-2-1987 and deed of modification dated 28-1-1487 for Rs. 38,80 lakhs. M/s. Tuber Pharma Chemicals

Limited, Ranipet (hereinafter referred to as the Writ Petitioner) has mortgaged the lands, buildings and premises together with all plant and

machinery in favour of the Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as the Corporation) for the due

repayment to the Corporation of the principal amount with interest, commitment charges, sundry dues, expenses and other charges as provided

therein, and also undertaken to comply with several terms and conditions stipulated therein. On 24-5-1990, the Corporation issued a legal notice

fore-closing the loan and calling upon the writ petitioner to pay the Corporation within 15 days of receipt of the said notice the sum of Rs.

77.11.350.07., being the entire principal of the loan, interest thereon, etc., upto 31-3-1990 and overcharges and dues amounting to Rs, 18,827.80

and aggregating to Rs. 77.30,212.87 with further interest and additional interest at the prevailing rates till dale of payment and other charges and

dues, failing which the Corporation will without any further intimation or reference, proceed to exercise and enforce the rights reserved to it under

the said deeds of mortgage, etc.. including the right to exercise the power of sale, appointment of receiver or filing a suit in Court of Law or

resorting to action under the provisions of the Slate Financial Corporations Act (hereinafter referred to as the Act). The specimen advertisement

proposed to he made by the Corporation was also enclosed along with that notice for information.

2. With reference to the advertisement made by the Corporation in the Hindu daily dated 10-7-1991, M/s. Malladi Drugs and Pharmaceuticals

Limited. 2nd respondent in the writ petition and the petitioner in the Review Application (hereinafter referred to as the Review Petitioner),

submitted an offer for an amount of Rs. 32,10 lakhs to purchase all the assets of the writ petitioner. The review petitioner has also enclosed a

demand draft for Rs. 3.21 lakhs. It further promised to pay an additional sum of Rs, 1.79 lakhs on acceptance of its offer and before taking

delivery of the assets and the balance will be paid in quarterly instalments spread over to three years. The Corporation by its communication dated

6-9-1991 accepted the offer made by the review petitioner for the purchase of land, building and machineries of the writ petitioner for Rs. 32.10

lakhs in a public auction held on 14-8-1991 subject to the following conditions :

i) An initial payment of nut less than 25% of the tender amount, i.e.. Rs. 8.10 lakhs should be remitted within 15 days of the receipt of the order

dated 6-9-1991.

ii) Balance of Rs. 24 lakhs shall be paid in 12 quarterly instalments of Rs. 2. lakhs each, bearing interest at 15% per annum, commencing from 1-

10-1991 onwards. The assets shall be handed over to the Review Petitioner on remittance of 25% of the tender amount.

iii) In case of defauIt in payment of instalments and interest, penal interest of 5% over and above the 15% will be levied on the defaulted amount

for the defaulted period.

iv) The review petitioner shall execute the necessary documents as required by the Corporation.

v) The review petitioner shall insure the assets sold out to them on deferred payment basis for Rs. 32.10 lakhs till such time the entire sate

consideration is paid.

The Review Petitioner was requested to sign the duplicate copy of the letter dated 6-9-1991 as a token of acceptance of the said order.

3. As already seen, to realise the dues of the writ petitioner, an auction was conducted on 14-8-1991 and the offer of the review petitioner for Rs.

32.10 lakhs was accepted and the assets of the writ petitioner were handed over to the review petitioner on 24-9-1991. After giving credit to the

amounts realised in the auction, a sum of Rs. 64,46,538.77 was payable by the writ petitioner to the Corporation with future interest. Therefore, a

registered notice dated 20-2-1992 was issued to the guarantors and directors of the writ petitioner company. They were jointly and severally liable

to pay the said sum within seven days from 20-2-1992, failing which the Corporation will be constrained to intiate appropriate legal action to

recover the dues.

4. Mr. A. M. Raja, one of the guarantors of the writ petitioner company''s loan to the Corporation, sent a reply to the Corporation on 27-3-1992

requesting the Corporation todefer further action. He replied staling that the guarantee was executed long back and only on going through the copy

of the guarantee he will be able to give his effective reply. Thereupon, the Corporation tiled S. F. C. O. No. 7 of 1992 before the Dislrict Judge,

North Arcot, Vellor, under S. 31(AA) of the Act for recovery of the balance of Rs. 68,85,007.22 together with future interest and costs,

impleading all the directors and guarantors. The same was filed on 16-4-1992. One N. Shailendra Prabhu/ 6th respondent filed a counter affidavit

stating that no statement of account was filed with the copy of the petition and therefore, he is unable to know on what basis the Corporation has

arrived at the figure and that he reserves his right to file an additional counter.

5. The writ petitioner filed W.P.No. 7581 of 1992 in this Court with the following prayer :

To issue writ of certiorarified mandamus or any other appropriate writ, order or direction in the nature of a writ calling for the records of respondents 1 and 2 relating to the auction sale of M/s. Tuber Pharma Chemicals Limited. No. 3, SIPCOT Industrial Complex, Rampet, and

quash all the proceedings of auction sale of the said properly of the petitioner as communicated in the letter of the 2nd respondent in Ref. No. PR.

Lr./ Legal/92-93 dated 29-2-1992 and direct the respondents 1 and 2 to restore the possession and title to restore the possession and title of the

said properties to the petitioner subject to fresh schedule for repayment on par with the schedule of repayment given to the 5th respondent.

6. An interim application for an order of injunction restraining the Corporation from proceeding further with all steps including the S. H. C. O. P.

No. 7 of 1992 on the file of the District Court, Vellore, which was filed to recover the alleged interest dues pursuant to the notice of the

Corporation dated 20-2-1992, pending disposal of the writ petition. However, W. P. No. 7581 of 1992 was dismissed as withdrawn by A.

Abdul Hadi.J. on 6-7-1994 pursuant to the letter written by the writ petitioner''s counsel to the Registry dated 30-6-1994 stating that the writ

petition may be dismissed as withdrawn.

7. One N. Shailendra Prabhu, one of the Directors of the writ petitioner company, filed W. P. No. 7532 of 1992 for the issue of a writ of

certiorarified mandamus calling for the records of the Corporation relating to the sale of the writ petitioner company pursuant to the notice

published in the Hindu daily dated 20-7-1991, as notified in Ref. No. BR/VLR/ Legal/92-93 dated 20-2-1992 and quash the sale held on 14-8-

1991 and direct the Corporation to deliver possession of the said unit to the writ petitioner. They also prayed for stay of all further proceedings

pursuant to the notice of the Corporation dated 20-2-1992. In the writ petition, the following main grounds have been raised :

a) The proceedings of the Corporation are violative of Section 29 of the Act.

b) The enforcement of the mortgage deed dated 30-3-1977, as modified, under the deed of modification dated 28-1-1987. otherwise than in

accordance with the provisions of the Transfer of Properly Act is not valid.

c) The principle underlying Section 29 of the Act has been declared by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P.

Financial Corporation and others, . The Corporation has observed none of the principles declared by the Supreme Court. The sale is, therefore, without power and jurisdiction and against the principles of natural justice.

d) The sale has been effected without ascertaining the correct market value of the property as on the date.

8. The Corporation filed a counter-affidavit denying the allegations contained in the affidavit filed in support of W.P. No. 7532 of 1992. It is

specifically mentioned in paragraph 8 of the counter that the writ petitioner has chosen to suppress the fact of taking over possession on 22-8-

1990 and after taking over the unit and after its notification in the press, the first auction sale was conducted on 12-2-1991. As no offers were

there, the sale was again published in the dailies. The second auction was conducted on 18-6-1991. Since the amount quoted by the two bidders

was not acceptable to the Corporation, a third auction was conducted. It is further stated in the counter that the writ petitioner refers only to the

third auction in paragraph 14 of the affidavit and pretends to be ignorant of the first two auctions, which were conducted after due notification in

the press. It is also stated in the counter that on 3-8-1990. a notice was issued recalling the loan and the writ petitioner did not protest. In the third

auction, one Mahadcvan offered Rs. 24.25 lakhs and the review petitioner through tender offered to pay on deferred payment scheme a sum of

Rs. 32.10 lakhs and the sale was confirmed in favour of the review petitioner. The counter-affidavit also refers to S.F.C.O.P. No. 7 of 1992 filed

before the District Court, Vellore and the appearance of all the Directors in Court through counsel. According to the Corporation, it is only after

the receipt of notice from the District Court. Vellore in S.F.C.O.P. No. 7 of 1992, the present writ petition has been filed on 15-6-1992.

9. In W.M.P. No. 10862 of 1992 in W.P. No. 7532 of 1992. interim slay was granted by M. Srinivasan, J.. ;is he then was on 18-6-1992. The

same was made absolute by J. Kanakaruj J., on 18-3-1993. against which Writ Appeal Nos. 1376 and 1377 of 1993 were filed by the

Corporation contending that the facts and circumstances of the case do not warrant stay of the notice of the Corporation dated 28-2-1992 and the

consequential stay of S.F.C.O.P. No. 7 of 1992 since the prayer in the Writ Petition does not cover the proceedings in S.F.C.O.P. No. 7 of

1992. A Division Bench of this Court on 11-1- 1994 allowed the Writ Appeals observing as under :--

Learned single Judge, pending disposal of the writ petition, has directed that the interest portion of the demand has to await till the disposal of the

writ petition. It is not possible to appreciate the direction issued by the learned single Judge, because even if the sale is set aside, the amount due

from the 1st respondent to the appellant will remain. Now. the amount recovered by way of sale has been adjusted towards the principal amount

and the interest is now tried to be recovered. Therefore, we are of the view that the proceedings taken u/s 31 of the Act are not required to be

stayed. If, ultimately, the 1st respondent succeeds in the writ petition and the payment of loan is re-scheduled on restoring the industrial unit to the

1st respondent, it would be open to the respondent to bring the altered circumstances on record in the proceedings initiated before the District

Judge for recovery of the amount in O.P. No. 7 of 1992. In that extent the learned District Judge shall have to take the alteredcircumstances, on

record and consider the effect of it on the O.P. Therefore, we are of the view that the interim order passed in W.M.P. Nos. 10862 of 1992 and

7291 of 1993 by the learned single Judge on 18-3-1993 cannot be affirmed.

Accordingly, the Writ Appeals are allowed. The orders passed in W.M.P. Nos. 10862 of 1992 and 7291 of 1993 dated 18-3-1993 are set

aside. Now, it would be open to the appellant to proceed with the O.P. No. 7 of 1992, subject to the observations made in the Judgment.

10. The Corporation filed acounter-affidavit. One P. Sivaprasad. Executive Vice President (Finance) of the review petitioner company (auction

purchaser) filed a counter-affidavit adopting the counter-affidavit filed by the Corporation. It was contended that the sale was conducted in

pursuance of Section 29 of the Act and was effected only after ascertaining the correct market value of the property as on the date of sale and

after it was found to be adequate. The writ petitioner was aware of the proceedings including the public auction and the price offered.

11. Thereupon, the matter came before our Bench for final hearing. On 29-7-1994. we passed an order giving liberty to the counsel on either side

to issue notice to the auction purchaser/ review petitioner informing about the further date of hearing since there is no appearance in Conn on their

behalf. The matter was again adjourned to 19-8-1994 and on 30-8-1994, it was adjourned by one week. After some adjournments, the matter came before us on 7-4-1995 and we passed the following order in W.P. No. 7532 of 1992 :

Heard the counsel appearing for the respective parties. The counsel appearing for the auction purchaser viz. M/s. Sangari and Mahalakshmi are

absent even, to-day. It is conceded hy the Corporation that the procedure contemplated for conduct of the auction by the Corporation as per the

Supreme Court''s Judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, admittedly has not been followed.

Under such circumstances, the auction conducted contrary to the principles laid down hy the Supreme Court has necessarily to be set aside.

Accordingly, we set aside the auction conducted by the Corporation.

The next question that arises in the consequential relief that has to he granted to the writ petitioner. Admittedly the auction purchaser was put in

possession of the property in question pursuant to the auction held by the Corporation and was said to have made some improvements to the unit

in question. Therefore, to ascertain the improvements made by the auction purchaser, by consent of parties we appoint Thiru T. S. Ranganathan.

Civil Engineer to make local inspection of the unit in question to ascertain the presence of the parties after giving due notice and to submit a report

to the Corporation in regard to the improvements, if any, made by the auction purchaser and the value thereof. It is not also in dispute that the

auction purchaser had already deposited a sum of Rs. 32 lakhs with the 1st respondent-Corporation before being put in possession of the unit in

question. The Engineer shall file his report within eight weeks. The Engineer will also serve the copy of his report to all parties concerned. The fee

payable to the Engineer will be fixed later while passing final order. The Corporation counsel is permitted to inform the Engineer Mr. T.B.

Ranganathan and take necessary steps. Post the w rit petition before us after vacation.

There was no representation on behalf of the auction purchaser/and respondent/ review petitioner either in person or through counsel in the writ

proceedings.

12. The auction purchaser thereafter filed R.A. No. 8 of 1995 to review and vary the order dated 7-4-1995 made in W.P. No. 7032 of 1992. It

is contended by the learned counsel for the review petitioner that the then counsel was not present in Court when the writ petition was taken up.

for arriving at a proper conclusion and this Court had absolutely no opportunity to consider the case on merits as full facts were not placed before

this Court. It is also contended that the case on hand can be casiIy distinguished from the facts in Mahesh Chandra''s case, that the subsequent

decision rendered by the Supreme Court had changed the effect of the Judgment in Mahesh Chandra''s case and that if the same is allowed to be

placed before this Court, a totally different situation will arise. It is further contended that the writ petitioner was fully aware of the auction notices

and the proceedings as is evident from the allegations made in the writ affidavit that the public auction was held on 14.8.1991 and that the

Corporation had followed all the rules and regulations in conducting the public auction as laid dow n under the Act and the Rules. It is submitted

that the auction purchaser is the bona fide purchaser having purchased the unit in public auction for valuable consideration and that they have

invested heavily to effect necessary improvements and as such, it is neither fair nor rcasonahlc that they should be sought to be disturbed at this

belated stage, that too after four years alter the possession of the unit was taken over by them. The Review Application was admitted by this Court

and notice was ordered to the respondents therein.

13. The Writ Petitioner filed a counter-affidavit in the Review Application through its Director N. ShaiIendra Prabu contending that the Review

Application is not maintainable and since the counsel for the Corporation rightly conceded that the auction held on 14-8-1991 was not in

conformity with the Principles laid down by the Supreme Court in Mahesh Chandra''s case, the review petitioner is not entitled to maintain the

present review petition. It is also contended that at the time when the factory was sold, the assets will easily exceed Rs. 80 lakhs and that the bid

amount was not even one half of it. Other contentions raised in the review application have also been dented by the writ petitioner.

14. The Corporation filed a separate counter-affidavit contending that as the writ petitioner has become a chronic defaulter, the loans were fore-

dosed by a communication dated 24-5-1990 and as the dues were not liquidated the possession of the unit was taken over on 22-8-1990 and the

sale was held ultimately on 14-8-1991. The sale was held after due publicity in the press and the writ petitioner did not protest throughout and that

the writ petition was filed only long alter possession was handed over to the review petitioner. It is also contended that the writ petitioner filed the

writ petition after the Corporation had filed S.F.C.O.P. No. 7 of 1992 before the District Judge. Vellore, for enforcing the guarantee. The sale in

the instant case was held long before the publication of the judgment in Maheshchandra''s case. Therefore the Corporation prayed that this Court

may pass appropriate orders.

15. Since the Review application and the writ petition are linked with one another we decided to bear both together with the consent of both

parties.

16. To sum up the review petitioner would plead for an opportunity to be given to them to address arguments in the main writ petition. The auction

purchaser would further plead that in the interest of justice and fair play, an opportunity should be given to their present counsel to be heard on all

the points in the main writ petition, especially when the Court is still seized of the main writ proceeding and no final orders had been passed in the

main writ petition as such.

17. Counsel on either side were fully heard not only in the Review Application hut also in the main writ proceedings on all points. The engineer''s

report on the improvements, effected by the review petitioner was placed before this Court. The review petitioner had also filed a detailed further

affidavit on the question of improvements and compensation. They had also enclosed documents in that regard. The review petitioner would allege

that towards the purchase amount of the unit with inierest. it works out to Rs. 57.18 lakhs and on the other investments, it works out to Rs. 5.05

lakhs. Towards research work undertaken by them, the review petitioner claimed compensation in the sum of Rs. 25 lakhs. In the further affidavit it

is staled that there had been a considerable delay and laches on the part of the writ petitioner in moving this Court. The research programmes

undertaken by the review petitioner would be seriously disturbed and irreparable loss and damage would be caused if possession at this stage is

taken away. It is also pointed out that the sale took place on 14-8-1991 to the knowledge of the writ petitioner but the writ petition has been filed

only on 15-6-1992 after a lapse of more than ten months. In the meantime, possession had been banded over to the review petitioner/auction

purchaser, who had made considerable improvements and also commenced the research programme. It is, therefore, pleaded that the settled

possession should not be disturbed at this siage especially when the writ petitioner was a chronic defaulter, who should not be given any indulgence

by this Court under Article 226 of the Constitution.

18. In reply to the arguments of Mr. K. T. Palpandian that when the auction sale was sel aside by this Court on the concession made by the

counsel for the corporation that the procedure contemplated for the conduct of auction sale by the Corporation as per the Judgment of the

Supreme Court in Mahesh Chandra''s case has not been followed, the present application for review is not mamainahle. Mr. V.R. Gopalan,

learned counsel for the review petitioner, submitted that so long as there is no statutory violation on the part of the Corporation in the conduct of

the sale and where the said Corporation had not acted unfairly or unreasonably, this Court may not come to the aid of such a defaulting party, that

too to the determent of a bona fide third party purchaser.

19. Mr. K. T. Palpandian, learned counsel for the writ petitioner, submitted that even though the Corporation has re-scheduled the repayment

under a deed of modification dated 28-1-1987. It has however, advertised for auction sale on 20-7-1991 and that the writ petitioner protested

against the manner in which the Corporation has illegally invoked its power u/s 29 of the Act and prayed for six months time to tide over the

difficulties. However, the Corporation did not send any reply. In fact, when the sale was advertised on 14-8-1991, one of the directors of the writ

petitioner personally presented to the Chairman and Managing Director of the Corporation request ing him to give an opportunity to the writ

petitioner to revive the industry with the aid of a board of Industrial and Financial Corporation and to postpone the proposed auction. It is also

submitted that at the time when the factory was sold, the assets would easily exceed Rs. 80 lakhs and the bid amount is not even one half of it and

that even after the payment of the bid amount, the Corporation has claimed a further sum of Rs. 64,42,538.77 and since the sale is a distraint sale

and an oppressive one. it is wholly unsustainable. He further contended that the Corporation had admitted that the property was brought to sale and sold without following the principles laid down by the Supreme Court in Mahesh Chandra''s case. Therefore. Mr. K.T. Palpandian contended

that the plea raised by the review petitioner in their affidavit arc not germane.

20. It is submitted that the writ petitioner was not negligent and that the review petitioner has made several claims which arc not sustainable in law.

Mr. K. T. Palpandian also contended that the review petitioner has raised new contention of alleged practical difficulties and he is not entitled to

re-open the case on the basis of new pleas. In review petitioner has to work out his claims in accordance with the order dated 7-4-1994. The plea

that the review petitioner had no opportunity to go into the details and the essential features pertaining to the case and therefore, the order requires

review is also not sustainable in law. According to Mr. K. T. Palpandian, such a plea cannot be raised.

21. The review petitioner has claimed a total expenditure of Rs. 59.32.031/-, which, according to Mr. K. T. Palpandian. is impermissible in law.

According to him. items 2 to 12 are totally impermissible. The review petitioner has also omitted to mention two equipments viz.. 1000 litres

stainless steel the reactors with motors, stainless steel distillation unit gear box. etc.. which they have removed to another factory, and the value of

the same is not less than Rs. 5 lakhs. In any event, the review petitioner cannot seek to claim this amount in these proceedings. The engineer has

inspected the premises and has submitted his report. It is seen from the report that the review petitioner has not made any substantial improvement

and that the review petitioner had only benefitted itself by the use of the factory, which can also be evaluated in terms of money. These care the

submissions made by Mr. K. T. Palpandian.

22. We have considered the rival submissions. In this case, the sale of the unit was on 14-8-1991 in favour of the review petitioner, whieh was

confirmed by the Corporation on 6-9-1991 and possession was handed over to the review petitioner 24-9-1991. Therefore, a valid right of a third

party had accrued. In the main writ proceedings, the auction purchaser/review petitioner is the contesting respondent. The writ petition was filed

after a delay of more than ten months, i.e. on 15-6-1992. In the meanwhile, possession was handed over to the review petitioner on 24-9-1991.

Since no action was taken by the writ petitioner nor the sale questioned till

15-6-1992. the review petitioner, who occupied the unit, made

considerable improvements and started research programmes at a heavy cost.

23. When the writ petition was posted for hearing on 7-4-1995, the review petitioner, who filed a counter-affidavit in the main writ proceedings,

was not represented by their then counsel. The then counsel did not choose to appear and advance arguments for and on behalf of the review

petitioner, who is the main contesting party. An interim order was passed by this Court on the concession made by the counsel for me

Corporation, was conceded that the proceedure contemplated for the conduct of the auction by the Corporation has not been followed. Since the

auction purchaser/review petitioner was put in possession of the unit pursuant to the auction held by the Corporation and since the auction

purchaser was said to have made some improvements to the unit in question, by consent of the counsel for the writ petitioner and the Corporation,

we appointed one Mr. T. S. Ranganathan. Civil Engineer, to make a local inspection of the unit in question and submit a report to the Corporation

in regard to the improvements, if any, made by the auction purchaser, and the value thereof. The writ petition was directed to be listed before as

after the Summer Vacation, 1995.

24. As pointed out by the learned counsel for the review petitioner, we did not consider the case on merits and we decided me matter on the short

point of application of Mahesh Chandra''s case, that too on the concession made by the counsel for the Corporation since the counsel for the

auction purchaser did not choose to appear and defend the main writ petition. We have already noticed that only after the Corporation filed

proceedings before the Disirict Judge, Vellore, u/s 31(AA) of the Act for recovery of the balanec amount due by enforcing the personal guarantee

of the directors, the writ petitioner had chosen to move this Court leisurely in June, 1992. Since there are very many arguable points in the main

writ proceedings and unfortunately none was placed before us and the main contesting party viz.. the auction purchaser was unrepresented

because of the act of the then counsel on record, we permitted both parties to advance arguments on the maintainability of the Review Application

and also on the merits of the Writ Pctition.

25. We are unable to countenance the contention of Mr. K. T. Palpandian that the

review application is not maintainable since the writ petition had

already been disposed of by this Court on the ground that the Corporation has not followed the judgment of the Supreme Court in Mahesh

Chandra''s case and when once it is held that the auction had been conducted contrary to the principles laid down by the Supreme Court, the

further course of action would be to value the improvements made by the auction purchaser and to direct the writ petitioner to pay the same. We

are afraid that such acontenlion is acceptable. We have not finally disposed of the main writ petition as could be seen from our judgment itself. This

Court is fully seized of the main writ proceedings still and no final orders had been passed in the main writ petition. In the meanwhile, the review

application had been filed and as such, no prejudice would be caused to the writ petitioner if due opportunity is given to the main contesting 2nd

respondent/review petitioner in making its submission tor the consideration by this Court in. the main writ petition. We are also of the view and it

would be in the interest of justice to hold that a party should not suffer because of the inaction or non-appearance on the part of the then counsel

for the 2nd respondent/review petitioner. It is also worth noticing that the review application had been filed immediately within time i.e., in July,

1995 itself.

26. In support of his contention that the review application is maintainable in order to prevent mis-carriage of justice or to correct grave and

palpable errors, Mr. V.R. Gopalan. learned counsel for the review petitioner cited the decision reported in Shived Singh v. State of Punjab AIR

1963 SC 1909, wherein the Supreme Court has held in paragraph 8 as follows :--

It is sufficient to say that there is nothing under Article 226 of the Constitution to preclude the High Court from exercising the power of review

which inheres any other Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

Here, the previous order of Khosla, J., affected the interest of persons who were not made parties to the proceeding before him. It was at their

instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural

justice required him to do.

27. In the decision reported in Jamun Poddar Vs. State of Bihar and Others, a

Division Bench of the Patna High Court has held that the power of

reviewing the judgment or orders pronounced and/or made under Article 226 of the Constitution is somewhat analogous to the Code of Civil

Procedure, which confers no new right on Courts but furnishes legislative recognition of age old and well established principle that every Court has

inherent power to act Ex debitojustitiae to prevent abuse of process of Court may be termed as procedural review to correct orders passed under

some mis-apprehensions or inadvertently or in breach of the principles of natural justice or on account of some false representations and/or

toprevent abuse of process of Court. This is an ancillary and incidental power necessary to discharge Court''s function effectively and for the

purpose of doing justice between the parties.

28. In the decision reported in State of Madhya Pradesh and Another Vs. Jaswantpuri and Others, . a Division Bench of that High Court observed

in paragraph 4 of the judgment as follows fat page 116) :--

The review is a strict legal remedy and not an equitable proceeding. Often it is regulated and controlled by statute and is limited and confined to

such eases as a statute enumerates. Although there must be strict compliance with the statutes authorising reviews, sueh statutes arc remedial and

should be liberally construed in order to advance the remedy. A review may be granted because of mistakes of parties or of their attorneys. as well

as for the mistakes of the Court clerk of the Court or of the commissioner in particular proceedings. Mistakes consisting an error of computation or

a mistake which is result of an accident or misfortune may yet afford a ground fur review. The review may also be granted on the ground of newly

discovered evidence or when there is an error apparent on the face of the record.

29. Thus, the learned counsel for the review petitioner submitted that the then counsel, for reasons best known to her. did not choose to appear

and place all the facts and materials before the Court for and on behalf of the review petitioner resulting in mis-carriage of justice. Therefore, the

review application is maintainable in law.

30. It is further submitted by Mr. V. R. Gopalan, learned counsel for the review petitioner, that the review petitioner being third party who had

purchased the unit for valuable consideration in a public auction held by a public authority, should not suffer because of the mistake committed by the then counsel and that therefore, the review petitioner is entitled for a fair and reasonable opportunity to place all the arguments and contentions

in the main writ proceedings in the interest of justice and fair play. It is also reiterated that since the review petitioner is the main contesting party in

the writ petition and had not been heard on 7-4-1995. he should now be given a reasonable opportunity.

31. Mr. K.T. Palpandian. learned ocunsel for the writ petitioner, in reply contended that the review is sought only on three points viz.. that the writ

petitioner is a defaulter, that the judgment of the Supreme Court in Mahesh Chandra''s case is not deviated and that there is laches and delay on

the part of the writ petitioner in approaching this Court. These three points, according to Mr. K. T. Palpandian. do not fall within the purview of

review.

32. On the question of laches. Mr. K. T. Palpandian contended that there is no laches on the part of the writ petitioner in approaching this Court

and that even assuming that there are laches on the part of the writ petitioner, the review petitioner, who is the auction purchaser, cannot argue.the

same in this case. He invited our attention to paragraph 5 of the counter-affidavit. He further contended that the question of laches has not been

pleaded or proved and therefore, the learned counsel for the auction purchaser should not be allowed to argue a case which was not pleaded. Mr.

K. T. Palpandian also contended that it is not fair on the part of the auction purchaser/review petitioner to attribute knowledge of the lender to the

writ petitioner.

33. We are of the view that the review application is maintainable to prevent miscarriage of justice. When the main writ proceeding itself had not

been disposed of finally and this Court is fully seized of the proceeding, no prejudice would be caused to the wril petitioner in affording a

reasonable opportunity to the review petitioner to address the Court on the merits of the case. We, therefore, allow the Review Application and

set aside our order dated 7-4-1995. We now proceed to consider the writ petition on merits.

34. A term loan of Rs. 24 lakhs was sanctioned on 20-2-1976 to the wril petitioner. An Additional amount of Rs. 4 lakhs was sanctioned on 27-

2- 1976. The writ petitioner has to pay the first four instalments at the rate of

Rs. 70,000/- each, the second four instalments at the rate of Rs. 1.50

lakhs each, the third four instalments at the rate of Rs. 2 lakhs each and the fourth four instalments at the rate of Rs. 3 lakhs each. A mortgage deed

was also executed for Rs. 28.80 lakhs on 30-3- 1977. A holding period of two years was also given and after the holiday period, the repayment

schedule was to commence on 30-9-1979 and was to have been completed on 31-3-1987.

35. It is not in dispute that the major portion of the loan remained unpaid and repayment was re-scheduled from lime to time and a deed of

modification was also executed from time to lime. A foreclosure notice was issued on 24-5-1990, to which a reply was sent by the writ petitioner

on 5-6-1990. A rejoinder was sent by the Corporation on 3-8-1990. The Corporation took possession of the unit on 22-8-1990. After

advertisement, the first public auction was held on 12-2-1991. Since there was no offers, after advertisement, the second auction was fixed on 18-

6-1991. Since the two offers made in the second auction were not acceptable to the Corporation, a third auction by way of advertisement in The

Hindu. The Indian Express and Dinamalar was conducted on 3-8-1991. There were two bidders. The review petitioner made the highest offer of

Rs. 32.10 lakhs and the auction was confirmed in their favour on 6-9-1991 and possession of the unit was handed over on 24-9-1991.

Thereafter, notice was issued to the directors and guarantors of the writ petitioner company on 20-2-1991 calling upon them to pay the balance of

Rs.64.46.538.72. Only one director by name A.M. Raja sent his interim reply. On 16-4-1992. S.F.C.O.P. Nos. 7 of 1992 was filed by the

Corporation before the District Court, Vellore, u/s 31(AA) of the Act for recovery of the balance amount of Rs. 68.85.007.22. On 14-6-1992.

W.P.N. 7581 of 1992 was filed by the writ petitioner i.e.. nearly one and half years after the judgment of the Supreme Court in Mahesh

Chandra''s case. That writ petition was dismissed as withdrawn on 6-7-1994. W.P.No. 7532 of 1992 was filed on 15-6-1992 and W.M.P. No.

7221 of 1993 was filed on 27-1-1993 for stay. The Corporation filed its common counter-affidavit on 16-3-1993. The revision petitioner filed its

counter-affidavit on 5-9-1994. W.A. Nos. 1376 and 1377 of 1993. were filed against the interim order of J. Kanakuraj. J-. dated 18-3-1993.

The same were disposed of by the first Bench on 11-1-1994 allowing both the appeals filed by the Corporation and directing the Corporation to

proceed with S.F.C.O. P. No. 7 of 1992.

36. As rightly pointed out by the learned Senior Counsel for the Corporation, from the date of the foreclosure notice dated 24-5-1990. tilI the sale

was confirmed on 6-9-1991. no efforts at all had been made by the writ petitioner to make any payment or come with any concrete proposal.

Even during the pendency of the writ petition, i.e.. from June. 1992. no payment was made or any proposal or offer was ever made by the writ

petitioner in writing expressing the readiness and willingness to pay the dues or settle the matter. It is a'' clear case where the writ petitioner failed

to keep the commitments and none of the instalments which were agreed to was kept up even though the instalments were to commence after a

holiday period of two years. We have already noticed the two writ petitions filed by the petitioner, one by its Managing Director Dr. K. M.

Nallaswami and the other by Mr. N. Shailendra Prabhu, one of the directors of the company.

37. It is to he noticed that the factum of the first two auctions dated 12-2-1991 and 18-6-1991 alter due press advertisements has not been

mentioned in the present writ proceedings for the reasons best known to the writ petitioner. The writ petitioner never took any steps to prevent the

sale taking place on three occasions. He was a silent spectator throughout. The writ petitioner would also concede in paragraph 16 of the affidavit

that the Board of Industrial and Financial Corporation had also subsequently rejected the writ petitioner''s request. Even though the sale was

notified thrice and took place only on the third occasion, the writ petitioner would pretend that they came to know about the sale only on 14-3-

1992 when they received the notice dated 20-2-1992 from the Corporation. Even to the notice sent by the Corporation to the Directors on 20-2-

1992. there was absolutely no reply from any of the directors excepting the Director by name A. M. Raja who gave an interim reply on 27-3-

1992.

38. The conduct of the Corporation in making all efforts by series of advertisements in newspapers on three occasions to sell the unit for a good

price would show the hona fides on the part of the Corporation and only when the best price was given by the review petilioner on 14-8-1991, the

same was accepted. It only shows that the Corporation was not anxious for any quick sale and to given away the property for a song. The writ

petitioner has also not disclosed in its affidavit about the material fact that the company was dispossessed on 22-8-1990 itself. Corporatin to the

Directors on 20-2-1992. i.e..one year prior to the sale which took place on 14-8-1991. It is alleged by the review petilioner that this material

suppression of fact is highly wanton. The conduct of the writ petitioner company would show that the company has not evinced any interest in

getting back the unit. Therefore, we are of the opinion, that the writ petitioner is not entitled to any indulgence and this is not a fit case to exercise

the extraordinary remedy under Article 226 of the Constitution when the right of a third party/ auction purchaser had come into play. The writ

petitioner having full knowledge of the advertisements given on three occasions, last of which on 20-7-1991 for the auction to be held on 14-8-

1991, and having kept quiet all along cannot now come and complain that the sale was a sudden one. During the period of dispossession of the

unit from August. 1991, for a period of one year, no attempts were made by the writ petitioner to come to Court. The writ petitioner has not

challenged the action of the Corporation. Therefore, we are of [he view, [hat in a case of this kind, a defaulting party should not be granted any

further indulgence in writ jurisdiction, particularly when rights of third parties also intervene and got crystallised in the meantime. At the same time.

this Court should keep in mind that it is the duly of the Court to protect an honest and sincere litigant.

39. The auction purchaser/review petilioner has filed a delailed further affidavit and it is seen from the said affidavit that the review petitioner after

getting and occupying the unit, improved the same and commeneed research programmes in respect to the development of Antigen for filarisis and

Cyclosporin. The details have been fully supplied in paragraphs 8 to 12 of the further affidavit dated 30-7-1996 supported by documents. It is also

admitted by the Corporation that the review petitioner had fully discharged the entire amount due and a certificate to the said effect dated 6-8-

1996 had also been issued. Thus, it will be seen that the full sale price together with interest had been completely paid and discharged by the review petitioner/auction purchaser and nothing is due to the Corporation, who is no more concerned about the unit, excepting the recovery of the

balance of Rs. 64,46,538.72, interest and costs from the directors of the writ petitioner company.

40. Mr. V. R. Gopalan has also invited our attention in regard to the various investments and expenditures incurred by the review petitioner

including payments made by them on behalf of the writ petitioner to SIPCOT, TNEB. etc., All these details had been catalogued in the affidavit

filed on 30-7-1996, along with proof of documents filed in Volume II of the typed set. However. Mr. K.T. Palpandian. at the time of hearing,

orally said that the writ petitioner, if given time, would pay and reimburse the auction purchaser/review petilioner all the amounts found due by the

Court. Such a request was never made earlier or in the pleadings. This apart, no suggestion was also forthcoming from the counsel as to the

payment of the balance of Rs. 64 lakhs and odd to the Corporation together with interest and costs and nothing has been placed before Court in

concrete terms as to the credibility or capacity of the writ petitioner or the mode and method of payment of the aforesaid amounts in full.

41. On the question of laches, delay and inaction, third party''s rights have been created in the meanwhile and the third party has purchased the

property in public auction and that such a third party has also in vested large sums of money on the property. This apart, the delay of ten months is

obvious and therefore, this Court will refuse to issue a writ in exercise of its discretion as it would mutilate against the third party''s interest for no

fault of his. The Supreme Court in the decision reported in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , held that a

Court will not inquire to the delayed and stale claims or take note of evidence of neglect of one''s own right for a long time; the part claiming

fundamental right must move the Court before other rights of new parties emerge by reason of delay on the part of the person moving the Court. In

the decision reported in N.S. Mehta and Others Vs. Union of India (UOI) and Others, , the Apex Court has held that the delay in invoking the

jurisdiction under Article 32 of the Constitution, which may create equitable rights of others, may give rational grounds for discrimination so that it

would cease to be a case of any violation of Articles 14 and 16 of the Constitution at all.

42. In the decision reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, the Supreme Court has observed as follows (at page

272: of AIR) :--

It is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High

Court with the exercise of its discretion does not ordinarily assist a tardy and the indolent or the acquiescent and the lethargic. If there is inordinate

delay on the part of the writ petitioner in filing the writ petition and such delay is not satisfactorily explained, the High Conn may decline to intervene

and grant the relief under the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The

High Court does not ordinarily remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its

train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ filed after unreasonable delay, it may

have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is

invoked unexplained delay coupled with the creation of third parly rights in the meanwhile, is an important factor which always weights with the

High Court in deciding whether or not to exercise such jurisdiction.

43. We, therefore, hold that the delay in approaching this Court has not been satisfactorily explained by the writ petitioner and therefore, we

decline Io intervene and grant the relief sought for by the writ petitioner in exercise of our jurisdiction under Article 226 of the Constitution. This

issue is answered against the writ petitioner.

44. As already seen, Mahesh Chandra''s case was relied on by the learned counsel for the writ petitioner for the proposition that the procedure

contemplated for the conduct of the auction by the Corporation as per the said judgment has not been followed. The learned Senior Counsel for

the Corporation also conceded the said legal position. In the above decision, stress was made more on the responsibilities and duties of the

Corporation before bringing the unit to sale. The view expressed was that the Corporation deals with public money for public benefit and hence the

approach has to be public oriented and helpful to loanee without loss to the Corporation, and that the Financial Corporations under the Act were visualised not as profit earning concern but an extended arm of a welfare State to harness business potentials of the country to benefit the common

man (vide paragraph 6 of the said decision). The Supreme Court has also observed in paragraph 10 of the said judgment that the helping attitude

on the part of the Corporation to constantly monitor the working of the industrial concern or unit would subserve the purpose of the loan, object of

the Act and the constitutional objective of economic justice to the needy. The Supreme Court has further observed in paragraph 15 that Section 29

of the Act confers very wide powers on the Corporation and the same should be exercised to effectuate the purpose of the Act. that it demands

purposeful approach--the exercise of discretion should be objective. The lest of reasonableness is more strict and its actions and decisions, which

touch the common man. have to be tested on the touchstone of fairness andjustice. and that which is not fair and just is unreasonable and what is

unreasonable is arbitrary. In the above case, it has been found that the partners of the firm did not co-operate and the Corporation without any

explanation whatsoever refused to release the full amount of loan sanctioned. The result was that the appellant stood pressed on one hand from

absence of capital and on the other hand by recovery proceedings. The Supreme Court felt that in the absence of release of the full sanctioned

amount, the proceedings for recovery u/s 29 of the Act may not be justified. The Supreme Court also felt that the delay in electric supply or

delayed delivery of machines vital for the functioning of the unit do require rescheduling and that endeavour should be to adjust and accommodate

as business considerations require the unit to function for benefit, both of the general public and the Corporation.

45. In the above background, the Supreme Court formulated six guidelines to be observed by the Corporation while exercising the power u/s 29

of the Act. In the above decision, the Supreme Court observed in paragraph 22 that keeping these various factors giving rise to conflicting interest,

the following directions are necessary to be issued, to be observed by the Corporation while exereising power u/s 29. On a reading of the above, it

is submitted that what the Supreme Court felt was that the guidelines to be issued and to be observed by the Corporation while exercising powers

u/s 29 of the Act. As already seen. Mahesh Chandra''s case was rendered on 12-2-1992 and the sale of the unit in the instant case took place on

14-8-1991 long prior to the aforesaid judgment. Therefore, none could have anticipated or visualised the same earlier to the said judgment. The

same had been spelt out only on 12-2-1992 when the judgment was rendered in Mahesh Chandra''s case.

46. The decision reported in U. P. Financial Corporation v. M/s. Com Cap (India) Pvt. Ltd. AIR 1993 SC 1435 : 1993 AIR SCW 1189 is a writ

proceeding filed questioning the taking over of the unit by the Corporation u/s 29 of the Act and the Allahabad High Court allowed the said writ

petition. The Supreme Court has clearly stated that even though the financial institution is supposed to act in the interest of the industrial concern

with the object primarily to promote and advance the industrial activities, yet, the approach has got to be business like in conformity with the

declared policy of the State Government. In paragraph 10, the Supreme Court has observed as follows (at page 1438: of AIR) :- -

It is true that the appellant Corporation is an instrumentality of the State created under the State Financial Corporations Act. 1951. The said Act

was made by the Parliament with a view to promote industrialisation of the Stales by encouraging small and medium industries by giving financial

assistance in the shape of loans and advance repayable within a period not exceeding 20 years from the date of loan. We agree that the

corporation is not like an ordinary money lender or a Bank which lends money. It is a lender with a purpose-the purpose being promoting the small

and medium industries. At the same time, it is necessary to take certain basic facts in view. The relationship between the Corporation and the

borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so

that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act ami in furtherance of the object

underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrecl sick industry irrespective of

the cost involved. Promoting indusirialisaiion at the cost of public funds does not serve public interest, but it merely amounts to Iran transferring

public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is

due to it. While not insisting upon the borrower to honour the commitments undertaken by him. the Corporation alone cannot be shackled hand

and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of facts

shows that the respondents have no intention of repaying any pan of the debt. They are merely putting forward one or other ploy to keep the

Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another circumstance. These

Corporations are not sitting on King Solomon''s mines. They too borrow monies from government or other financial Corporations. They too have

to pay interest thereon. The fairness required of it must be tampered -- say. determined, in the light of all these circumstances. Indeed, in a matter

between the Corporation and its debtor, a writ Court has no say except in two situations : (1) there is a statutory violation on the pan of the

Corporal ion or (2) where the Corporation acts unfairly i.e.. unreasonably. While the former does not present any difficulty, the latter needs a little

reiteration of its precise meaning. What does act ing unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction

under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the Corporation and seek to correct them?

Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not

supposed to convert the writ Courts into appellate authorities over administrative authorities. The constraints -- Self-imposed undoubtedly -- of

writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

47. In paragraph 13, the Supreme Court had also referred to Mahesh Chandra''s case and has stated as follows :--

On behalf of the appellant reliance has been placed upon the decision of this Court it. Mahesh Chandra v. Regional Manager. U. P. Financial

Corporation 1992 (2) JT 326 : 1992 ALJ 1202. We have perused the decision. That was a case where the debtor was anxious to pay off the

debt and had been taking several steps to discharge his obligation. On the facts of that particular case it was found that the Corporation was acting

reasonably. In that context certain observations were made. The decision also deals with the procedure to be adopted by the Corporation while

selling the units taken over u/s 29. That aspect is not relevant in this case. We are therefore, of the opinion Ihal the said decision is of no help to the appellant herein.

48. In AIR 1993 SC 1435 : 1993 AIR SCW 1189, the Supreme Court had considered the earlier views expressed in Mahesh Chandra''s case

and had chosen to shift the importance in favour of the financial Corporation and against the debtor. The Supreme Court has clearly held that in

Mahesh Chandra''s case, a liberal view was taken by the Supreme Court in favour of the debtor on the facts of ihal particular case.

49. The decision reported in Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director

(Finance) Seetharaman, Madras and another, has been rendered by the Apex Court after considering all the earlier decisions including Mahesh

Chandra''s case and as such, it assumes importance. The facts in that case would clearly indicate that the sale of the unit took place on 6-9-1993.

A reading of the entire judgment would reveal that the emphasis and strees had completely shitted in favour of the Corporation and against the

debtor. The sale was set aside on the ground that the guidelines and procedures as laid down by the Supreme Court in Mahcsh Chandra''s case

had not been followed by the Corporation. Admittedly, the sale in the Contramix case took place very much subsequent to the decision rendered

in Mahcsh Chandra''s case, and that was the reason why both the learned single Judge as well as the Division Bench of this Court were of the clear

opinion that the sale should be set aside for not having followed the procedures and guidelines laid down by the Supreme Court in Mahcsh

Chandra''s case. On a complete reading of the judgment in this case would reveal that a totally different approach and complete departure had

been made by the Supreme Court. The Supreme Court after considering all the earlier eases including Mahcsh Chandra''s case, observed in

paragraphs 12 and 13 as follows :--

It cannot, therefore, be said that a sale by inviting tenders is ipso facto invalid. The validity of such a sale will have to be considered in the light of

the facts and circumstances of the particular case.....Similarly, the failure on the part of SIPCOT to give intimation to respondent No. 1 before

accepting the offer of Rs. 38 lakhs made by respondent No. 2. is of little consequence in the facts of this case because respondent No. 1 has had

sufficient opportunity both before the High Court as well as in this Court to obtain a higher oiler, but he has failed to do so.

50. A rending of the judgment reported in Orissa State Financial Corporation and Another Vs. Hotel Jogendra, would clearly indicate that a

different approach had been made by the Supreme Court in consequence with the other cases cited supra and reported in AIR 1993 SC 1435:

1993 AIR SCW 1189(Gom Cap case) and Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its

Director (Finance) Seetharaman, Madras and another, (Contromix case). The Supreme Conn in paragraph 8 held as fallows :

It would, thus, be seen that the respondent is only interested to delay the re payment of the dues and has abused the process of the Court taking

indulgence of the Court''s direction. Under these circumstances, we find that no indulgence would be shown to such recalcitrant defaulter in

repayment of the loan. Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tacties defeat the public policy and the

Court process becomes an instrument of abuse. Court would protect only honest and sincere litigants.

51. In the decision reported in Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, , the

Supreme Court held that the direction in Mahesh Chandra''s case are only in the nature of guidelines for the exercise of power u/s 29 of the Act

and the action of the State Financial Corporation is not liable to boi (be) interfered with if it has acted broadly in consonance with these guidelines

and that the judicial review is confined only to two situations viz. (1) there is statutory violation on the part of the financial Corporation: and (2)

where the financial Corporation acts unfairly or unreasonably.

52. A Division Bench of this Court consisting of D. Raju and A. R. Lakshmanan. JJ.. in M/s. Shri Kandavel Industries v. The Tamil Nadu

Industrial Investment Corporation Ltd.. 1995 W I.R 281 held in paragraphs 21 and 22 as follows :--

We are unable to accept the above contention of the learned Senior Counsel for the petitioner. The Supreme Court has already laid down the

principles as to the scope of interference in this category of cases under Article 226 of the Constitution of India in regard to me action taken by the

Corporation u/s 29 of me Act for recovering the amounts due to it. The Supreme

Court has also observed in the various judgments cited supra the

part of the Corporation or whether the Corporation acts unreasonably or unfairly or arbitrarily and that this Court cannot sit as an appellate

authority over the acts and deeds of the Corporation and seek to correct them at every stage before the properties of the individual concerned are

brought to sale. Following the guidelines evolved by the Supreme Court, we have also in this judgment laid down guidelines to be followed by the

Iniancial Corporations for taking action u/s 29 of the Act. There are no merits in the contentions of the petitioner.

For the foregoing reasons, the writ petition fails and is dismissed. There will be no order as to costs. It is open to the Corporation to proceed

further in recovering the dues from the petitioner as per the guidelines laid down supra by us.

53. We are, therefore, of the view that applying the principles laid down by the Supreme Court in Chairman and Managing Director, SIPCOT,

and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, and the two subsequent decisions of

the Supreme Court referred to supra, the writ petition in the instant case at the stage at which this Court was approached is not maintainable and

deserves to be dismissed.

54. In the result, the Review Application is allowed and the writ petition is dismissed. However, there will be no order as to costs.

This petition coming on for hearing for further orders on this day in the presence of Mr. V. R. Gopalan, Advocate for the petitioner and of Mr. K.

T. Palpandian, advocate for the 1st respondent and of Mr. A. L. Somayaju, Senior counsel for Mr. K. R. Tamizhmani, advocate for the 2nd

respondent the Court made the following order :--

Further order passed on the memo dated 6-2-1997 filed by the Counsel for the writ petitioner

The Counsel for the writ petitioner has filed a memo on the evening of 6-2-1997 in the above matter. Having regard to the contents of the memo

and the nature of disposal it deserved we considered the same, on circulation made to us, sitting in our Chambers and passed the following order :

1. The common judgment was pronounced at 10-30 A.M., on 6-2-1997 in R.A. No. 8 of 1995 and W. P. No. 7532 of 1992. The learned

Counsel Mr. K. T. Palpandian, who filed the memo, as also the Counsel for the petitioner in the Review Application/2nd respondent in the writ

petition, and the 2nd respondent in the Review Application/ 1st respondent in the writ petition were present. There was no mentioning whatsoever

in Court after orders were pronounced though we sat in open Court for more than 15 minutes thereafter dealing with another matter. It is seen

from the endorsement made on the memo filed that the same has been presented at 4-20 p.m., before the Additional Registrar (Judicial) without

even serving a copy of the same on the other side (respondents in the writ petition). The matter has been returned for service and even then service

was said to have been attempted and sent by post by certificate of posting to one of the parties and not even to the other party. The same, as per

the covering letter of the counsel, has been circulated to us.

2. In the memo it is claimed by the Counsel who filed it that the Review Application was for rehearing of the writ petition and arugments were

confined to that prayer only and even this Court directed the Counsel to confine arguments only within the scope of the prayer in the Review

Application and no arguments with respect to the writ petition were advanced.

3. The claim made in the memo is a pure afterthought and opposed to what really transpired in Court when the matter was heard. The Review

Application was filed to review and vary the earlier order passed on 7-4-1995, no doubt after hearing of the main writ proceedings since the writ

petition was not also finally disposed of once and for all and complete relief was not given to the writ petitioner. Even while arguing the Review

Application, both counsel attempted to make long winding arguments on merits of their respective claims in the writ petition. We, in such

circumstances, directed specifically in open Court to avoid duplication of work and waste of judicial time, the counsel to argue both the Review

Application and the main writ petition together in order to have a decision once and for all on both. Thereafter, the matter was heard on several

days when the Bench sat on the afternoons of such days since it was a broken Bench and not regularly silling. References to judgments of the Apex

Court, which have been adverted to in the order passed were made in the open Court and copies of them were also filed in open Court during

such arguments in a book from and if it was not for the reason that the matter had to be decided on the merits of the writ petition, there, was no

need for reserving orders and prepare such adetailed order. One of us who authored the judgment has also taken elaborate notes of arguments

made on all such dates of hearing. The claim made that the Court directed the Counsel.to confine arguments only within the scope of the prayer in

the Review Application apparently under an erroneous impression of the prayer too is perse incorrect and not the truth of what happened and we

are only surprised that such statement could have been made by the Counsel. The statement made in paragraphs 15 to 22.31 and 32 of the

judgment is the real truth of what transpired and on the basis of submissions made. There was no need or occasion for the Court to make such

reference or deal with the merits of the contentions made at great length unless when such arguments were made on merits before us at the hearing

on several dates.

4. In view of the above, we do not consider it worthwhile or necessary for us to countenance the claim made in the memo or take cognizance of

the same for any further action as a result thereof and consequently, we reject the memo. This orders passed by us on circulation of the memo,

shall also form as an annexure to our order dated 6-2-1997 and be furnished to the parties along with the earlier order dated 6-2-1997.

55. Order accordingly.

