

(1997) 02 MAD CK 0076

In the Madras High Court

Case No : Review Civil Miscellaneous Petition No. 8 of 1997 in Writ Petition No. 7532 of 1992

Malladi Drugs and Pharmaceuticals Ltd.

APPELLANT

Vs

Tuber Pharma Chemicals Ltd. and another

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31(AA)

Citation : (1998) 93 CompCas 580

Hon'ble Judges : Doraiswamy Raju, J;Ar. Lakshmanan, J

Bench : Division Bench

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

Judgement

Ar. Lakshmanan, J.—By a deed of mortgage dated March 30, 1977, for Rs. 28.80 lakhs, deeds of modification dated March 31, 1978,

and March 3, 1979, deed of agreement dated February 18, 1987, and deed of modification dated January 28, 1987, for Rs. 38.80 lakhs, Tuber

Pharma Chemicals Limited, Ranipet (hereinafter referred to as "the writ petition"), has mortgaged the lands, building 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 May 24, 1990, the Corporation issued a

legal notice foreclosing 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., up to March 31, 1990, and other charges 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 date 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 a

court of law or resorting to action under the provisions of the State Financial Corporations Act (hereinafter referred to as "the Act"). The specimen

advertisement proposed to be 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 July 10, 1991, Malladi Drugs and Pharmaceuticals

Limited, the second respondent in the writ petition and the petitioner in the review application (hereinafter referred to as "the review petitioner"),

submitted an offer of 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 three years. The Corporation by its communication dated

September 6, 1991, accepted the offer made by the review petitioner for the purchase of land, building and machinery of the writ petitioner for Rs.

32.10 lakhs in a public auction held on August 14, 1991, subject to the following conditions :

(i) An initial payment of not less than 25 per cent. of the tender amount, i.e., Rs. 8.10 lakhs should be remitted within 15 days of the receipt of the

order dated September 6, 1991.

(ii) The balance of Rs. 24 lakhs shall be paid in 12 quarterly instalments of Rs. 2 lakhs each, bearing interest at 15 per cent. per annum,

commencing from October 1, 1991, onwards. The assets shall be handed over to the review petitioner on remittance of 25 per cent. of the tender

amount.

(iii) In case of default in payment of instalments and interest, penal interest of 5

per cent. over and above the 15 per cent. 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 sale consideration is paid.

3. The review petitioner was requested to sign the duplicate copy of the letter dated September 6, 1991, as a token of acceptance of the said order.

4. As already seen, to realise the dues of the writ petitioner, an auction was conducted on August 14, 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 September 24, 1991. After giving credit for 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 February 20, 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 February 20, 1992, failing which the Corporation will be constrained to initiate appropriate legal action to recover the dues.

5. 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 March 27,

1992, requesting the Corporation to defer further action. He replied stating 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 filed S.F.C.O.P. No. 7 of 1992, before the

District Judge, North Arcot, Vellore, u/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 April 16, 1992. One N. Shailendra Prabhu, the sixth 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.

6. 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 Nos. 1 and 2 relating to the auction sale of Tuber Pharma Chemicals Limited, No. 3, Sipcot Industrial Complex, Ranipet, and quash

all the proceedings of auction sale of the said property of the petitioner as communicated in the letter of the second respondent in Ref. No.

PR.LR./Legal/92-93, dated February 29, 1992, and direct respondents Nos. 1 and 2 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 fifth respondent.

7. An interim application was filed for an order of injunction restraining the Corporation from proceeding further with all steps including the

S.F.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 February 20, 1992, pending disposal of the writ petition. However, W.P. No. 7581 of 1992 was dismissed as withdrawn

by A. Abdul Hadi J., on July 6, 1994, pursuant to the letter written by the writ petitioner's counsel to the Registry dated June 30, 1994, stating

that the writ petition may be dismissed as withdrawn.

8. 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 July 20, 1991, as notified in Ref. No. BR/VLR/Legal/92-93, dated February 20, 1992, and quash the sale

held on August 14, 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 February 20, 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 March 30, 1977, as modified under the deed of modification dated January 28, 1987, otherwise

than in accordance with the provisions of the Transfer of Property Act is not valid.

(c) The principles underlying section 29 of the Act have 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.

9. 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 August 22,

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

were there, the sale was again published in the dailies. The second auction was conducted on June 18, 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 August 3, 1990, a notice was issued recalling the loan and the writ petitioner did not

protest. In the third auction, one Mahadevan 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 June 15, 1992.

10. In W.M.P. No. 10862 of 1992, in W.P. No. 7532 of 1992, interim stay was granted by M. Srinivasan J., as he then was, on June 18, 1992.

The same was made absolute by J. Kanakaraj J., on March 18, 1993, against which Writ Appeals 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 February 20,

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 January 11, 1994, allowed the writ appeals observing as under :

The 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 first 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 first respondent succeeds in the writ petition and the payment of loan is re-scheduled on restoring the industrial unit

to the first 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 event, the learned District Judge shall have to taken the altered

circumstances 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 March 18, 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 March 18, 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.

11. The Corporation filed a counter-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.

12. Thereupon, the matter came before our Bench for final hearing. On July 29, 1994, we passed an order giving liberty to 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 court on their

behalf. The matter was again adjourned to August 19, 1994, and on August 30, 1994, it was adjourned by one week. After some adjournments,

the matter came before us on April 7, 1995, and we passed the following order in W.P. No. 7532 of 1992 :

Heard counsel appearing for the respective parties. The counsel appearing for the auction purchaser, viz., Sangari and Mahalakshmi are absent

even today. It is conceded by 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 by the Supreme Court has necessarily to be set aside. Accordingly,

we set aside the auction conducted by the Corporation.

The next question that arises is the consequential relief that has to be 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 first 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 the final order. The Corporation counsel is permitted to inform the engineer, Mr. T. S.

Ranganathan, and take necessary steps. Post the writ petition before us after vacation.

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

the writ proceedings.

14. The auction purchaser thereafter filed R.A. No. 8 of 1995, to review and vary the order dated April 7, 1995, made in W.P. No. 7032 of

1992. It is contended by 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 the merits as the full facts were not

placed before this court. It is also contended that the case on hand can be easily distinguished from the facts in Mahesh Chandra Vs. Regional

Manager, U.P. Financial Corporation and others, , that the subsequent decision rendered by the Supreme Court had changed the effect of the

judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, 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 August 14, 1991, and that the

Corporation had followed all the rules and regulations in conducting the public auction as laid down 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 reasonable that they should be sought to be disturbed at this

belated stage, that too after four years after 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.

15. The writ petitioner filed a counter-affidavit in the review application through its director, N. Shailendra Prabhu, contending that the review

application is not maintainable and since counsel for the Corporation rightly conceded that the auction held on August 14, 1991, was not in

conformity with the principles laid down by the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others,

, 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 denied by the writ petitioner.

16. The Corporation filed a separate counter-affidavit contending that as the writ petitioner has become a chronic defaulter, the loans were foreclosed by a communication dated May 24, 1990, and as the dues were not liquidated, the possession of the unit was taken over on August 22, 1990, and the sale was held ultimately on August 14, 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 after 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 Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . Therefore, the Corporation prayed that this court may pass appropriate orders.

17. Since the review application and the writ petition are linked with one another we decided to hear both together with the consent of both the parties.

18. 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 interests 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.

19. Counsel on either side were fully heard not only in the review application but 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 interest, 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 stated 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 August 14, 1991, to the knowledge of the writ petitioner but the writ petition was

been filed only on June 15, 1992, after a lapse of more than ten months. In the meantime, possession had been handed 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 stage 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.

20. In reply to the arguments of Mr. K. T. Palpandian that when the auction sale was set aside by this court on the concession made by 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 Vs. Regional Manager, U.P. Financial Corporation and others, has not been followed, the present application for review is not

maintainable. 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 detriment of a bona fide third party purchaser.

21. 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 January 28, 1987, it has however, advertised for auction sale on July 20, 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 August 14, 1991, one of the directors of the writ petitioner personally presented to the chairman and managing director of the Corporation requesting him to give an opportunity to the writ petitioner to revive the industry with the aid of the Board for Industrial and Financial Reconstruction 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 distress 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 Vs. Regional Manager, U.P. Financial Corporation and others, . Therefore, Mr. K. T. Palpandian contended that the pleas raised by the review petitioner in their affidavit are not germane.

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

Mr. K. T. Palpandian also contended that the review petitioner has raised new contentions of alleged practical difficulties and he is not entitled to re-open the case on the basis of new pleas. The review petitioner has to work out his claims in accordance with the order dated April 8, 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.

23. 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, terms Nos. 2 to 12 are totally impermissible. The review petitioner has also omitted to mention two equipments, viz., 1,000

litres two stainless steel 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 benefited itself by the use of the factory, which can also be evaluated in terms of money.

These are the submissions made by Mr. K. T. Palpandian.

24. We have considered the rival submissions. In this case, the sale of the unit was on August 14, 1991, in favour of the review petitioner, which was confirmed by the Corporation on September 6, 1991, and possession was handed over to the review petitioner on September 24, 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 June 15, 1992. In the meanwhile, possession was handed

over to the review petitioner on September 24, 1991. Since no action was taken by the writ petitioner nor the sale questioned till June 15, 1992,

the review petitioner, who occupied the unit, made considerable improvements and started research programmes at a heavy cost.

25. When the writ petition was posted for hearing on April 7, 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 counsel for the

Corporation, who conceded that the procedure 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 us

after the summer vacation, 1995.

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

point of application of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , that too on the concession made by

counsel for the Corporation since 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 District Judge, Vellore, u/s 31(AA) of the Act for recovery of the balance

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 then counsel on record, we permitted both the parties to advance arguments on the

maintainability of the review application and also on the merits of the writ petition.

27. 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 Vs. Regional Manager, U.P. Financial Corporation and others, and then 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 a contention is not 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 second respondent/review petitioner in making its submission for 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 second respondent/review petitioner. It is also worth noticing that the review

application had been filed immediately within time, i.e., in July, 1995, itself.

28. In support of his contention that the review application is maintainable in order to prevent miscarriage of justice or to correct grave and

palpable errors, Mr. V. R. Gopalan, learned counsel for the review petitioner, cited the decision reported in *Shivdeo 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 in every 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.

29. In the decision 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 the legislative recognition of the age old and well established principle that every

court has inherent power to act *ex debito justitiae* to prevent abuse of process of court which may be termed as procedural review to correct

orders passed under some misapprehension or inadvertently or in breach of the principles of natural justice or on account of some false

representations and/or to prevent abuse of the process of court. This is an ancillary and incidental power necessary to discharge the court's

function effectively and for the purpose of doing justice between the parties.

30. In the decision 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 :

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

cases as a statute enumerates. Although there must be strict compliance with the statutes authorising reviews, such statutes are 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 mistakes of the court, a clerk of the court or of the Commissioner in particular proceedings. Mistake consisting of an error of computation or a mistake which is the result of an accident or misfortune may well afford a ground for 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.

31. Thus, 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 miscarriage of justice. Therefore, the review application is maintainable in law.

32. It is further submitted by Mr. V. R. Gopalan, learned counsel for the review petitioner, that the review petitioner being a 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 to 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 petitioner and had not been heard on April 7, 1995, he should now be given a reasonable opportunity.

33. Mr. K. T. Palpandian, learned counsel 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 Vs. Regional Manager, U.P. Financial Corporation and others, is not deviated for 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.

34. On the question of laches, Mr. K. T. Palpandian contended that there are 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, 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 tender to the writ petitioner.

35. 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 writ 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 April 7, 1995. We now proceed to consider the writ petition on the merits.

36. A term loan of Rs. 24 lakhs was sanctioned on February 20, 1976, to the writ petitioner. An additional amount of Rs. 4 lakhs was sanctioned

on February 27, 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 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 March 30, 1977. A holiday period of two years was also given and after the holiday

period, the repayment schedule was to commence on September 30, 1979, and was to have been completed on March 31, 1987.

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

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

petitioner on June 5, 1990. A rejoinder was sent by the Corporation on August 3, 1990. The Corporation took possession of the unit on August

22, 1990. After advertisement, the first public auction was held on February 12, 1991. Since there were no offers, after advertisement, the second

auction was fixed on June 18, 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 August 7, 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 September 6, 1991, and possession of the unit was handed over on September 24, 1991.

38. Thereafter, notice was issued to the directors and guarantors of the writ petitioner-company on February 20, 1992, 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 April 16, 1992, S.F.C.O.P. No. 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 June 14, 1992, W.P. No. 7581 of 1992 was filed by the writ petitioner, i.e., nearly one and a half years after the judgment of the Supreme

Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . That writ petition was dismissed as withdrawn on July

6, 1994. W.P. No. 7532 of 1992 was filed on June 15, 1992, and W.M.P. No. 7221 of 1993 was filed on January 27, 1992, for stay. The

Corporation filed its common counter-affidavit on March 16, 1993. The revision petitioner filed its counter-affidavit on September 5, 1994. W.A.

Nos. 1376 and 1377 of 1993, were filed against the interim order of J. Kanakaraj J., dated March 18, 1993. The same were disposed of by the

first Bench on January 11, 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.

39. As rightly pointed out by learned senior counsel for the Corporation, from the date of the foreclosure notice dated May 24, 1990, till the sale

was confirmed on September 6, 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 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 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.

40. It is to be noticed that the factum of the first two auctions dated February 12, 1991, and June 18, 1991, after the press advertisements has not been mentioned in the present writ proceedings for 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 for Industrial and Financial Reconstruction 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 March 14, 1992, when they received the notice dated February 20, 1992, from the Corporation. Even to the notice sent by the Corporation to the directors on February 20, 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 March 27, 1992.

41. The conduct of the Corporation in making all efforts by a series of advertisements in newspapers on three occasions to sell the unit for a good price would show the bona fides on the part of the Corporation and only when the best price was given by the review petitioner on August 14, 1991, the same was accepted. It only shows that the Corporation was not anxious for any quick sale and to give 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 August 22, 1990, itself,

corporation to the directors on February 20, 1992, i.e., one year prior to the sale which took place on August 14, 1991. It is alleged by the review

petitioner 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, the last of which was on July 20, 1991, for the

auction to be held on August 14, 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 the court.

The writ petitioner has not challenged the action of the Corporation. Therefore, we are of the view, that in a case of this kind, a defaulting party

should not be granted any further indulgence in writ jurisdiction, particularly when the rights of third parties also intervene and get crystallised in the

meantime. At the same time, this court should keep in mind that it is the duty of the court to protect an honest and sincere litigant.

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

getting and occupying the unit, improved the same and commenced research programmes in respect of the development of antigens for filariasis

and cyclosporin. The details have been fully supplied in paragraphs 8 to 12 of the further affidavit dated July 30, 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

August 6, 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.

43. Mr. V. R. Gopalan has also invited our attention in regard to the various investments and expenditure 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 July 30, 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 petitioner 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 counsel as to the payment of

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

44. 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 such a third party has also invested 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 militate against the third party's interest for no

fault of his. The Supreme Court in the decision in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , held that a court will not

inquire into delayed and stale claims or take note of evidence of neglect of one's own right for a long time; the party 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.

45. In the decision in State of Madhya Pradesh v. Nandlal Jaiswal AIR 1987 SC 521, the Supreme Court has observed as follows (page 272) :

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

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

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

grant relief in 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 permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public

inconvenience and bring in its train new injustices. The right of third parties may intervene and if the writ jurisdiction is exercised on a writ petition

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 party rights in the meanwhile is an important

factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

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

decline to 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.

47. As already seen, the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, was relied on by 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 the loanee without loss to

the Corporation, and that the financial corporations under the Act were visualised not as profit-earning concerns but an extended arm of a welfare

State to harness the business potential 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, the 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 test of reasonableness is more strict and its actions and decisions, which though the common man, have to be tested on the touch-

stone of fairness and justice, 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 the one hand from the 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 re-scheduling and that endeavour should be to adjust and accommodate as business considerations require the unit to function for the benefit, both of the general public and the Corporation.

48. 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 those various factors giving rise to conflicting interest, the following directions are necessary to be issued, to be observed by the Corporation while exercising 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 are to be observed by the Corporation while exercising powers u/s 29 of the Act. As already seen, the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, was rendered on February 12, 1992, and the sale of the unit in the instant case took place on August 14, 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 February 12, 1992, when the judgment was rendered in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, .

49. The decision in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408; AIR 1993 SC 1435, 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 (page 414) :

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

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

assistance in the shape of loans and advances, 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 keep 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 and in furtherance of the object

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

irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve public interest; it merely amounts to

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 part 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 the Government or other financial Corporations. They too

have to pay interest thereon. The fairness required of it must be tempered - any, 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 part of the

Corporation, 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 acting unfairly on 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. The 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.

50. In paragraph 13, the Supreme Court had also referred to Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others,

and has stated as follows (page 417 of 78 Comp Cas) :

On behalf of the appellant reliance has been placed upon the decision of this court in Mahesh Chandra v. U.P. Financial Corporation [1993] 78

Comp Cas 1; [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

unreasonably. 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 that the said decision is of no help to

the appellant herein.

51. In U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [1993] 78 Comp Cas 408; AIR 1993 SC 1435, the Supreme Court had

considered the earlier views expressed in Mahesh Chandra v. U.P. Financial Corporation [1993] 78 Comp Cas 1 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 v. U.P.

Financial Corporation [1993] 78 Comp Cas 1, a liberal view was taken by the Supreme Court in favour of the debtor on the facts of that

particular case.

52. The decision 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 v.

U.P. Financial Corporation [1993] 78 Comp Cas 1 and as such, it assumes importance. The facts in that case would clearly indicate that the sale

of the unit took place on September 6, 1993. A reading of the entire judgment would reveal that the emphasis and stress had completely shifted 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 Mahesh Chandra v. U.P. Financial Corporation [1993] 78 Comp Cas 1, has not been followed by the Corporation.

Admittedly, the sale in Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance)

Seetharaman, Madras and another, , took place very much subsequent to the decision rendered in Mahesh Chandra v. U.P. Financial Corporation

[1993] 78 Comp Cas 1 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 Mahesh

Chandra v. U.P. Financial Corporation [1993] 78 Comp Cas 1. 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 cases

including Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , observed in paragraphs 12 and 13 as follows (pages

117 and 118) :

It cannot, therefore, be said that a sale by inviting tenders is ipso facts 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 offer, but he has failed to do so.

53. A reading of the judgment 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 consonance with the other cases cited supra and in U.P. Financial Corporation v. Gem Cap

(India) Pvt. Ltd. [1993] 78 Comp Cas 408; AIR 1993 SC 1435, and Chairman and Managing Director, SIPCOT, and Madras and others Vs.

Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, The Supreme Court in paragraph 8 help as follows (page 724) :

It would this be seen that the respondent is only interested to delay the repayment 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 tactics defect the public and the court

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

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

held that the directions in Mahesh Chandra v. U.P. Financial Corporation [1993] 78 Comp Cas 1 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 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.

55. A Division Bench of this court, consisting of D. Raju and AR. Lakshmanan JJ., in Shri Kandavel Industries v. Tamil Nadu Industrial Investment

Corporation Ltd. Reported infra. [1995] WLT 281 (Mad) 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 the action taken by the

Corporation u/s 29 of the Act for recovering the amounts due to it. The Supreme Court has also observed in the various judgments cited supra that

the action of the financial corporation for recovering the debts cannot be interfered with in exercising powers under article 226 of the Constitution

of India unless there is a statutory failure on 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 financial 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.

56. 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.

57. In the result, the review application is allowed and the writ petition is dismissed. However, there will be no order as to costs.

58. [Further order passed on the memo dated February 6, 1977, filed by counsel for the writ petitioner] :

59. Counsel for the writ petitioner has filed a memo on the evening of February 6, 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 February 6, 1997, in R.A. No. 8 of 1995, and W.P. No. 7532 of 1992. Learned

counsel, Mr. K. T. Palpandian, who filed the memo, as also counsel for the petitioner in the review application/second respondent in the writ

petition, and the second respondent in the review application/first respondent in the writ petition were present. There was no mentioning

whatsoever in the 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 counsel, has been circulated to us.

2. In the memo it is claimed by counsel, who filed it that the review application was for re-hearing of the writ petition and arguments were confined

to that prayer only and even this court directed 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 April 7, 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 winded arguments on the 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, 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 sitting. 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 form 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 a detailed 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 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 per se incorrect and not the truth of what happened and we are only surprised that such statement could have been made by 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.

60. 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 order passed by us on circulation of the memo, shall also form an annexure to our order dated February 6, 1997, and be furnished to the parties along with the earlier order dated February 6, 1997.