

(2010) 03 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 3728 of 2002

Mama Dev Silk Mills Pvt. Ltd.

APPELLANT

Vs

Gujarat State Financial Corporation

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat State Financial Corporations Act, 1951 — Section 29

Citation : (2010) 4 BC 90 : (2010) 51 GLR 1023

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Tushar L. Sheth, for the Appellant; R.D. Dave, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case appears to be that the petitioner had applied for loan from respondent-Corporation for establishment of the industrial unit and as per the petitioner the loan was sanctioned for Rs. 4 crore. Thereafter, the respondent-Corporation intimated to the petitioner that the Regional Office had no power to sanction the loan exceeding Rs. 2.40 crore, and therefore, the loan was sanctioned for Rs. 2.40 crore in the year 2000. The respondent-Corporation thereafter sanctioned the additional term loan of Rs. 1.35 crore, and accordingly, the total term loan was sanctioned of Rs. 3.75 crore. As per the petitioner, the disbursements were made of the first and second instalments, but in the third instalment on 30-8-2001, the respondent-Corporation deducted the amount of interest due from the earlier disbursements and did not pay the full instalments. It is the case of the petitioner that as per the agreement of loan transaction, there was moratorium period of 24 months, therefore, the principal amount was not payable, in any case. On 5-11-2001, the officers of the respondent-Corporation came to the Unit and forcibly applied the seal and all the employees and the workmen of the petitioner-Company were asked to leave the premises without giving any prior opportunity of hearing or any prior notice for exercise of such power. On 6-11-2001, thereafter the petitioner received a demand notice for the first loan account towards the interest and there were

further correspondences. On 27-11-2001, the respondent-Corporation also applied seals on the shops belong to the petitioner and other two individuals, which were offered as collateral security. The Bank accounts of the petitioner were frozen, which became subject-matter of Criminal Revision Application No. 532 of 2001 before this Court. At that stage, the petitioner approached this Court by the present petition, seeking appropriate writ to quash and set aside the action of the respondent-Corporation in taking possession of the factory premise together with the Plant and Machinery of the petitioner-Company situated at Plot No. 356, Road No. 3, G.I.D.C, Surat as well as the action of the Corporation for sealing the shops bearing Nos. 1030 and 1031 situated at Shreeji Textile Market, Surat and Shop Nos. 128, 129 and 130 situated at Good Luck Textile Market, Ring Road, Surat and the petitioner prayed for directing the respondent-Corporation to hand over the possession of the Unit as well as the shops to the petitioner and the person concerned.

2. Heard Mr. Tushar L. Sheth, learned Counsel for the petitioner and Mr. R.D. Dave, learned Counsel for the respondent-Corporation for final disposal.

3. Before the contentions raised by the learned Counsel for the respective parties are considered, certain developments have arisen pending the petition by virtue of the orders passed by this Court at the interim stage as well as by conducts of the respective parties, which ultimately may be required to be taken into consideration and the same are as under:

(a) Pending the petition, it appears that the petitioner applied for One-Time Settlement (hereinafter referred to as "O.T.S." for short) scheme and the same also came to be considered by the respondent Board and as per the said scheme the petitioner had to pay up the amount of Rs. 269.78 lac vide letter dated 16th September, 2004 of the respondent-Corporation and the said amount was to be paid in two parts i.e. 25% of the amount was to be paid within one month and upon the payment of the said amount the possession of the assets of the primary security was to be restored and the balance amount of 75% was to be paid within three months by equal instalments payable on or before 25th of each month commencing from the month after the payment of the above referred 25% amount and no interest was to be charged during the said period of three months. However, if the time-limit was extended beyond the period of three months for the aforesaid 75% of the amount, but up to six months, the interest at the rate of 16% per annum on simple basis was payable from the date of acceptance of the statement i.e. 31-8-2004. The copy of the said letter is produced on page 18 Annexure-B in the record of Civil Application No. 10064 of 2009 of this Court, which has been disposed of vide order dated 3-12-2009.

(b) When the present petition came up for hearing on 4-11-2004 this Court (Coram: K.S. Jhaveri, J.) passed the following order:

Rule returnable on 20th January, 2005.

By way of interim relief, it is directed that the petitioner shall make a

representation to the respondent-Corporation with respect to the O.T.S. amount. According to Shri Dave learned Counsel for the respondent the amount payable is Rs. 269.78 lakhs, whereas as per the proposal of the petitioner, the petitioner seeks to settle the amounts outstanding at Rs. 2 crores and 25 lacs. On ascertaining the amount, the petitioner shall pay 10% of the amount ascertained by the respondent-Corporation after adjusting the amount already paid. On such payment being made, the respondent-Corporation shall give possession of the primary security and shall withhold the secondary securities which are already lying with the Corporation. The balance 90% of the ascertained amount shall be paid in 12 equal monthly instalments without interest.

In view of that, the respondent-Corporation shall consider the representation of the petitioner with respect to the proposed O.T.S. amount. At this stage, Mr. Thakkar learned Sr. Counsel for the petitioner states that the petitioner has already deposited 10% of the O.T.S. amount. In view of this, the respondent-Corporation shall proceed to settle the accounts and hand over the possession of the primary security to the petitioner. Liberty to apply in case of difficulty.

By virtue of the aforesaid order, this Court directed the petitioner to make representation to the respondent-Corporation once again for the proposed amount of O.T.S. of Rs. 225 lac as against the amount offered by the respondent-Corporation of Rs. 269.78 lac and the Court further directed that the respondent-Corporation shall proceed to settle the account and hand over the possession of the primary security to the petitioner. It appears that thereafter vide letter dated 13-6-2005, the respondent-Corporation intimated to the petitioner that the representation was considered by the Managing Director, however, if the relaxation is made in one case, without special reason, it would be a wrong precedent and would be unfair to those who have paid under the scheme, therefore, the representation was rejected for reducing the amount of O.T.S.

(c) The respondent-Corporation thereafter preferred Civil Application No. 11702 of 2005 in Spl.C.A. No. 3728 of 2002, seeking directions of this Court to recall the earlier order dated 4-11-2004 passed by this Court in the present petition, for directing to handing over of the possession. In the said Civil Application, this Court (Coram: K.S. Jhaveri, J.) on 9-12-2005 passed the following order:

1. Rule returnable on 23-12-2005. Mr. Navin Pahwa appearing for M/s. Thakkar Assoc, respondent waives service of rule for the respondent.
2. The petitioner will hand over the possession of the factory in presence of a Senior Officer of the District Court, Surat on 19-12-2005 at 12-00 p.m. at the factory premises of the respondent to the respondent and the respondent will hand over the Banker's Cheque of Rs. 50 lakhs to the petitioner corporation. The matter will be heard on 23-12-2005. S.O to 23-12-2005.

By virtue of the aforesaid order, the respondent-Corporation had to hand over the possession of the Unit and the petitioner had to tender the amount of Rs. 50 lac to the respondent-Corporation.

Thereafter, Civil Application No. 11702 of 2005 has been disposed of by the order dated 31-3-2006 passed by this Court (Coram: K.S. Jhaveri, J.).

(d) It appears that thereafter the petitioner herein preferred Civil Application No. 11645 of 2005 to direct the respondent-Corporation to comply with the direction issued by this Court vide order dated 4-11-2004 passed in the present petition contending, inter alia, that the possession has not been handed over. In the said proceedings, this Court (Coram: K.S. Jhaveri, J.) on 31-3-2006 ultimately passed the following order:

1. By way of this application, the applicant-Company has prayed to direct the respondent-Corporation to comply with the directions issued by this Court vide order dated 4-11-2004 passed in the main matter.

2. Heard learned Counsel for the parties. In view of the peculiar facts and circumstances of the case and considering the fact that possession has been handed over on 19-12-2005 and keeping in mind the condition of the assets involved, the order dated 4-11-2004 passed by this Court in Special Civil Application No. 3728 of 2002 is modified to the extent below. In the order dated 4-11-2004, the petitioner was directed that the balance 90% of the ascertained amount shall be paid in 12 equal monthly instalments without interest.

(i) It is hereby ordered that the payment of the said instalments shall now start from April, 2006 onward. The first instalment to be paid on or before 10th April, 2006. The balance eleven instalments to be paid on or before the 10th of every month.

(ii) So far as delay in making payment for the period from 1st January, 2005 to 31st March, 2006 is concerned, the applicant Company is directed to pay interest @ 11% per annum on the balance outstanding amount as was directed by this Court vide the impugned order on the first instalment itself.

3. However, it is made clear that if the applicant commits breach of any of the conditions referred to in the aforesaid order as well as in the order dated 4-11-2004, it shall be open to the respondent to move this Court for vacation of interim relief. The other conditions stated in the order dated 4-11-2004 shall remain as it is. With the above clarification, the application stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

In view of the aforesaid order, the remaining 90% of the amount was to be paid in 12 equal instalments as referred to hereinabove.

(e) It appears that the petitioner thereafter as per the above referred order did not deposit the amount with the respondent-Corporation, therefore, the respondent-Corporation filed Civil Application No. 11957 of 2007 for vacating the interim relief granted by this Court in the main petition. In the said proceedings, this Court (Coram: Jayant Patel, J.) on 23-7-2008 passed the following order:

1. The present application is for vacation of interim relief granted by this Court in

main Special Civil Application on 4-11-2004 in main Special Civil Application No. 3728 of 2002.

2. Upon hearing learned Counsel Mr. Nanavati with learned Advocate Mr. R.D. Dave on behalf of the applicant and Mr. Joshi, learned Advocate with Ms. Anushri Kapadia, learned Advocate for the opponent, it appears that it is an admitted position that out of amount of Rs. 2.69 lakhs with interest as was ordered by this Court at the rate of 11% per annum, the amount of Rs. 1.70 lakhs has been deposited and remaining amount has not been deposited.

3. Under these circumstances, the applicant-original respondent would be required to pay the said amount failing which the interim relief being enjoyed by the original petitioner cannot be continued.

4. However, Mr. Joshi, learned Advocate appearing for the original petitioner prayed that time may be granted to make payment of the outstanding amount and he submitted that since the huge amount is paid, the condition may not be imposed of vacation of interim relief and he also submitted that the interest for delay caused in making payment may be waived.

5. So far as the waiving of the interest is concerned, such cannot be considered more particularly in view of the order passed by this Court. Further, even if the aspect of delay is considered, the original petitioner would be required to pay the interest. As this Court, earlier quantified the interest at the rate of 11%, such may continue to accrue until the matter is finally disposed of, at least to the extent of delay, by way of an interim arrangement. Therefore, the contention for waiving of interest cannot be accepted once the original petitioner having accepted the interim order, has enjoyed the interim relief.

6. On behalf of original petitioner, it has also been submitted that some time may be granted and such has not been seriously opposed by the learned Advocate for the original respondent. Hence, the original petitioner can be granted time to clear all outstanding amount as per the O.T.S. scheme including the interest due from the default in making payment as was earlier ordered by this Court. The aforesaid shall be subject to the final outcome of the present proceedings.

7. Hence, earlier order for grant of interim relief passed in main Special Civil Application shall stand modified to the effect that such interim protection shall continue on condition that the opponent/original petitioner deposits the remaining outstanding amount with interest at the rate of 11% on the unpaid amount of instalment as had become due pursuant to the interim order passed by this Court until the amount is paid and such amount shall be paid within for months in five instalments. The first four instalments shall be of Rs. 40,00,000/- (forty lacs) and fifth instalment shall be of remaining amount. The first instalment shall become due on or before 30-8-2008 and subsequent instalments before last day of next month thereafter from time to time.

8. It is also observed that in the event, there is any failure on the part of the

original petitioner to pay the instalment, the applicant-original respondent-Corporation shall be at the liberty to move this Court for further direction to permit them to take over the possession.

9. Civil Application is disposed of accordingly.

In view of the aforesaid order, the earlier order passed in the main Spl.C.A. was modified to the effect that the interim protection shall continue on condition that the opponent/original petitioner deposits the remaining outstanding amount with interest at the rate 11% on the unpaid amount of instalment as it become due pursuant to the interim order passed by this Court until the amount is paid and such amount was to be paid within four months in five instalments.

(f) It appears that thereafter the amount was not paid as ordered by this Court. Therefore, Civil Application No. 13406 of 2008 in C.A. No. 11957 of 2007 was preferred by the respondent Corporation for vacating of the interim relief and in the said C.A., this Court (Coram: Jayant Patel, J.) passed the following order on 22-1-2009:

1. The present application is for vacating of the interim relief granted by this Court on 23-7-2008 in Civil Application No. 11957 of 2007. It is further prayed that the Corporation be permitted to take action for speedy recovery.

2. This Court on 1-12-2008 had passed the following order:

Ms. Kapadia for the opponent No. 1-original petitioner states that the petitioner is to tender two post-dated cheques; one dated 10-12-2008 and another dated 15-12-2008, total amount of Rs. 25,67,693/-.

Mr. N.D. Nanavati, learned Counsel for the applicant states that the said amount would not be in sufficient compliance with the earlier order passed by this Court.

Hence, S.O. to 18-12-2008. The amount realised shall be subject to further order of this Court. The petitioner shall tender the cheque as declared before this Court with an assurance that the cheque shall be honoured on the respective date as and when presented.

3. Thereafter, on 22-12-2008 following order was passed :

Both the sides shall calculate the amount as per the earlier order passed by this Court. The original petitioner - opponent herein has agreed to deposit the amount of Rs. 10,89,693/- on or before 12-1-2009. S.O. to 15-1-2009.

4. It has been stated by Mr. Dave learned Counsel appearing for the petitioner that as per the calculation made by the G.S.F.C., the balance amount outstanding towards interest pursuant to the earlier order is Rs. 42,85,831/-, which has been disputed by Ms. Kapadia learned Counsel appearing for the respondent, but she has stated lesser amount is outstanding. The facts remain that outstanding interest in any case is not cleared.

5. Ms. Kapadia learned Counsel appearing for the respondent has no instruction

from her client and it has been stated by her that she has tried to contact him, but he is not available.

6. Hence, it appears that declaration made pursuant to the orders of this Court including in the present application for depositing of the amount is not honoured by the original petitioner. Therefore, Corporation shall be at the liberty to apply seal over the premises by drawing proper panchnama. It would be open to the original petitioner-opponent herein to deposit the amount of Rs. 42,85,831/- with the G.S.F.C., and thereafter, to move an application for removal of the seal or otherwise. It will be open to the Corporation to move appropriate application after applying the seal.

As per the aforesaid order if the amount was not deposited, it was observed in the said order that the Corporation shall be at liberty to apply seal over the property by drawing panchnama and after deposit of the amount of Rs. 42,85,831/- with G.S.F.C., the petitioner may move application for removal of the seal or otherwise.

(g) It appears that thereafter the respondent-Corporation preferred Civil Application No. 10064 of 2009 in Spl.C.A. No. 3728 of 2002 for permitting the Corporation to proceed further with the recovery u/s 29 of the State Financial Corporation Act (hereinafter referred to as "S.F.C. Act" for short) by sale of the assets of the original petitioner, including the collateral security charged with the respondent-Corporation. In the said Civil Application, this Court (Coram: Jayant Patel, J.) passed the following order on 3-12-2009:

The present Civil Application has been preferred by the applicant seeking permission to proceed with the recovery of the amount u/s 29 of the Gujarat State Financial Corporation Act.

2. Heard Mr. R.D. Dave, learned Counsel for the applicant and Mr. P.C. Kavina, learned Senior Advocate with Mr. Sheth, learned Advocate for the opponents - original petitioners. It appears that there is chequered history pending the petition inasmuch as passing of the interim orders by this Court, and thereafter, part compliance by the opponent - original petitioner. Be that as it may. The fact remains that this Court on 22-1-2009 upon application preferred by the Gujarat State Financial Corporation being Civil Application No. 13406 of 2008 had passed the following order.

1. The present application is for vacating of the interim relief granted by this Court on 23-7-2008 in Civil Application No. 11957 of 2007. It is further prayed that the Corporation be permitted to take action for speedy recovery.

2. This Court on 1-12-2008 had passed the following order:

Ms. Kapadia for the opponent No. 1-original petitioner states that the petitioner is to tender two post-dated cheques; one dated 10-12-2008 and another dated 15-12-2008, total amount of Rs. 25,67,693/-.

Mr. N.D. Nanavati, learned Counsel for the applicant states that the said amount would not be in sufficient compliance with the earlier order passed by this Court.

Hence, S.O. to 18-12-2008. The amount realised shall be subject to further order of this Court. The petitioner shall tender the cheque as declared before this Court with an assurance that the cheque shall be honoured on the respective date as and when presented.

3. Thereafter, on 22-12-2008 following order was passed:

Both the sides shall calculate the amount as per the earlier order passed by this Court. The original petitioner - opponent herein has agreed to deposit the amount of Rs. 10,89,693/- on or before 12-1-2009. S.O. to 15-1-2009.

4. It has been stated by Mr. Dave learned Counsel appearing for the petitioner that as per the calculation made by the G.S.F.C, the balance amount outstanding towards interest pursuant to the earlier order is Rs. 42,85,831/-, which has been disputed by Ms. Kapadia learned Counsel appearing for the respondent, but she has stated lesser amount is outstanding. The facts remain that outstanding interest in any case is not cleared.

5. Ms. Kapadia learned Counsel appearing for the respondent has no instruction from her client and it has been stated by her that she has tried to contact him, but he is not available.

6. Hence, it appears that declaration made pursuant to the orders of this Court including in the present application for depositing of the amount is not honoured by the original petitioner. Therefore, Corporation shall be at the liberty to apply seal over the premises by drawing proper panchnama. It would be open to the original petitioner-opponent herein to deposit the amount of Rs. 42,85,831/-with the G.S.F.C, and thereafter, to move an application for removal of the seal or otherwise. It will be open to the Corporation to move appropriate application after applying the seal.

3. Aforesaid order shows that the Court observed that it would be open to the opponent - original petitioner to deposit the amount of Rs. 42,85,831/- with the G.S.F.C, and thereafter, to move an appropriate application in the event seals are applied. It also shows that earlier directions of depositing the amount was not respected by the original petitioner, and therefore, the Court had permitted sealing of the premises. As per the petitioner, thereafter the amount of Rs. 26,62,430/- has been deposited but he is not in capacity to deposit the remaining amount and learned Advocate Mr. Sheth contended that he has received instructions that the original petitioner is ready to deposit amount of about Rs. 7.6 Lakhs.

4. Under the circumstances, as the condition for availing protection of the interim order has not been complied with, liberty should be given to the G.S.F.C. to proceed for realisation of the money by sale of the property. At the same time, since pursuant to the interim orders passed by this Court the petitioner has

deposited amount of Rs. 2,96,55,842/-, said amount should be kept separately so that in the event the matter is to be finally adjudicated, appropriate orders can be passed. Hence, it is observed that the G.S.F.C. shall be at liberty to proceed for recovery of the amount including by sale of the property and the original petitioner shall be permitted to bring buyer who is desirous to offer higher amount and such offer shall also be taken into consideration by the G.S.F.C. Out of the amount that may be realised by the G.S.F.C. Amount of Rs. 2,96,55,842/-, said amount shall be kept in separate account subject to the further orders and the same shall not be appropriated and recovery of the remaining amount also shall be subject to further orders as may be passed in the main petition.

5. In view of the above observations and direction, Civil Application stands disposed of.

As per the aforesaid order, G.S.F.C. was permitted to proceed for realization of the money, but the amount of Rs. 2,96,55,842/- was to be kept separate and it was ordered not to appropriate and the remaining amount of the recovery was made subject to the further order, which may be passed in the petition.

It appears that in the meantime, the petitioner herein preferred Misc. Civil Application No. 2475 of 2006 for clarification in Civil Application No. 11645 of 2005 for substitution of the date as "1-1-2006" instead of "1-1-2005" as per Clause 2(h) of the above-referred order dated 31-3-2006 passed by this Court. In the said M.C.A., this Court (Coram: K.S. Jhaveri, J.) passed the following:

1. Heard learned Advocates for the respective parties.
2. It is clarified that on joint reading of order dated 4-11-2004 passed by this Court in Special Civil Application No. 3728 of 2002 and order dated 31-3-2006 passed by this Court and as per Clause (ii) of the order dated 31-3-2006, the applicant is required to make payment as directed by the Court from 1-1-2006 to 31-3-2006. However, Mr. Dave, learned Advocate for the respondent-G.S.F.C. states that interest is already paid. If it is so, it will be kept in a separate account.
3. With the above clarification, application stands disposed of.

As per the above referred order, the Court observed for payment to be made by the petitioner from 1-1-2006 to 31-3-2006, but as it was stated by the learned Counsel for the respondent-Corporation that the interest was already paid, the Court had observed for keeping it in a separate account.

(h) It appears that thereafter Civil Application No. 13131 of 2009 has been preferred by the petitioner herein to direct respondent Corporation to hand over the possession of the primary security as well as secondary security and to issue "No Due" certificate to the petitioner contending, inter alia, that the petitioner has paid the amount of Rs. 26,62,430/- in addition to the amount of Rs. 269.78 lac and the applicant is further ready to deposit an amount of Rs. 45,883/-, therefore, the prayer be granted. It may be recorded that when the application

came up for hearing, the learned Counsel appearing for both the sides agreed for final disposal of the main Special Civil Application, and accordingly, the main Special Civil Application is finally heard.

4. The learned Counsel for the petitioner contended that if the merits of the main Spl.C.A. are to be considered, without giving any opportunity of hearing or show-cause notice before exercise of the power u/s 29 of S.F.C. Act, the possession was taken over of the factory unit as well as the shops, which were charged as collateral security. He submitted that pending the petition, representation was made for O.T.S. and O.T.S. was granted for Rs. 2.69 crore. He submitted that this Court, vide interim order dated 4-11-2004 directed for handing over of the possession upon deposit of 10% of the amount and in view of the subsequent order passed by this Court, the remaining 90% was to be paid within a period of 12 months. However, there was delay on the part of the respondent-Corporation in handing over of the possession of the industrial unit to the petitioner. Therefore, as per the order passed by this Court (Coram: K.S. Jhaveri, J.) interest was not chargeable on such instillments, but as there was a delay in handing over of the possession by the Corporation, it could be said as default on the part of the Corporation, therefore, no interest for the period during which the possession was not handed over can be charged by the Corporation. He submitted that, in any event, this Court, by interim order, directed for charging of the interest at the rate of 11% only to which the petitioner has agreed to pay, but the period during which the possession was to be handed and was not handed over deserves to be excluded for liability of the interest. He submitted that the Corporation has received the full amount of O.T.S. of Rs. 2.69 crore as well as interest at the rate of 11% per annum for the delayed period (excluding the interest for the period during which the possession was to be handed over and was not handed over to the petitioner). Therefore, the respondent-Corporation should be directed to hand over the possession of the unit as well as the collateral security and the account should be declared as settled by the respondent-Corporation. He also submitted that as the payment is made and if the said amount is accepted by the Corporation as full and final settlement, the petitioner would not press the contention that no opportunity of hearing was given to the petitioner u/s 29 of S.F.C. Act before taking possession of the property of the petitioner or of the guarantor as collateral security of the loan transaction.

5. Whereas, the learned Counsel for the respondent-Corporation contended that as the documents were fake and forged and there was A.C.B. inquiry, Corporation has no option, but to immediately take over the possession of the unit and of the collateral security. He submitted that the respondent-Corporation had offered O.T.S. to the petitioner for Rs. 2.69 crore with the terms and conditions of O.T.S. If the petitioner has not complied with the terms and conditions of the O.T.S., he would not be entitled to the benefits of O.T.S. of the Corporation and the Corporation should be at liberty to realize the outstanding amount in accordance with law. He submitted that it is true that the interim

orders have been passed by this Court pending the petition pursuant to which the possession was handed over to the petitioner and the petitioner has also deposited the amount with the Corporation, and thereafter, as there was failure to deposit the amount by the petitioner, the Corporation is once again applied seal over the property, but in the contention of the learned Counsel, they are all pursuant to the interim order passed by this Court and it cannot be termed as final and if this Court on merits finds that the petitioner is not entitled to appropriate writ for receiving back the possession of the Unit or the collateral security, the amount deposited by the petitioner pursuant to the interim order may be permitted to be appropriated towards the recovery to be effected by the respondent-Corporation from the petitioner and for the remaining amount the respondent-Corporation should be at liberty to sell the property of the petitioner in accordance with law. Mr. Dave, learned Counsel for the respondent-Corporation contended that this Court, under Article 226 of the Constitution of India, cannot alter the terms and conditions of the settlement and in support of his contention he relied upon the decision of the Apex Court in the case of Punjab Financial Corporation v. Surya Auto Industries reported in 2010 (1) SCC 297 and more particularly the observations made at Paragraph 25 of the said decision.

6. Upon query put forward by the Court for response to the stand of the petitioner that the petitioner is ready to pay the amount of Rs. 2.69 crore with the interest at the rate of 11% p.a., for the unpaid amount on reducing balance method (excluding the period during which the possession was to be handed over and was not handed over by the respondent-Corporation pursuant to the interim order by this Court), it was submitted by the learned Counsel, Mr. Dave for the respondent-Corporation that the respondent-Corporation could be agreeable to settle the account if the petitioner is ready to pay the amount of Rs. 2.69 crore being the amount of O.T.S. with interest at the rate of 11% per annum on reducing balance method at simple rate from the date of O.T.S. offered to the petitioner till the amount is actually paid.

7. If the contention of the petitioner is to be considered against the exercise of the power u/s 29 of S.F.C. Act by the respondent-Corporation, it appears that it is an admitted position that no prior notice or opportunity of hearing has been given by the Corporation before exercise of the power u/s 29 of S.F.C. Act, neither for primary security, nor collateral security. It is true that the power u/s 29 of S.F.C. Act is read with the principles of natural justice, but there is a contention of the respondent-Corporation that it is on account of the forged and bogus documents the respondent-Corporation had under emergent circumstance to take action u/s 29 of S.F.C. Act. I would have further considered and examined the said contention as to whether the respondent Corporation was justified in exercising the power u/s 29 of S.F.C. Act by dispensing with the requirement of principles of natural justice in view of the alleged emergent situation or not, however, the learned Counsel for the petitioner declared before the Court that the petitioner is not pressing the said contention for the exercise of power u/s 29 of S.F.C. Act, therefore, I find it proper to leave the matter at

that stage, observing that the said contention would not arise further and keeping the said question open.

8. It is also true that in a matter of offering of O.T.S. the rights of the financial institution or the loanee would stand governed by the terms and conditions of the O.T.S. and if the conditions of O.T.S. are breached and there are enabling power with the financial institution to condone the same, in a given case, in its banking wisdom, it may do so for the re-schedule of the payment and this Court, in exercise of the power under Article 226 of the Constitution of India, in normal circumstances, would not alter the terms and conditions of O.T.S., more particularly for reduction of the chargeability of interest and it does appear that the learned Counsel for the respondent-Corporation is right in making the submission to that extent by relying upon the decision of the Apex Court in the case of Punjab Financial Corporation (supra). However, the matter does not end there. Had it been a case where there were no interim orders and the matter was at the stage of payment to be made as per O.T.S. offered or not, it may stand on a different footing, but in the present case, it appears that as per the above referred various interim orders passed by this Court, both the parties have altered their positions inasmuch as the petitioner has parted with huge amount and the Corporation has also parted with the property, save and except, that at present the seals are applied by the respondent-Corporation pursuant to the interim order being not complied with by the petitioner. It is also true that the interim order has the life until the final order and more particularly because the interim order is passed, the same cannot be termed as final adjudication of the rights of the parties, but in all circumstances, it can hardly be disputed that the interim order is subject to final order, which may be passed by the Court in the present proceedings. It appears to the Court that if either side of the proceedings has suffered or has altered the position or has enjoyed the position, it is within the power of this Court to modulate the relief with a view to render complete justice to the parties to the proceedings. It can hardly be disputed that the interim orders are mainly guided by the equitable considerations and the equity also demands that none should suffer on account of any orders passed by this Court, nor any party to the proceedings should be allowed to reap any undue benefits on account of the interim order passed or the benefits enjoyed therefrom. Therefore, it would be required for the Court to balance the rights of parties on equitable consideration and to pass appropriate final order.

9. If the facts of the present case are examined in light of the aforesaid, it is an admitted position that the petitioner has paid the amount of Rs. 2,95,62,430/- pursuant to the interim order passed by this Court. It is also true that pursuant to the interim order passed by this Court, the Corporation had to hand over the possession, and thereafter, as the petitioner did not deposit the amount as per the interim order well in time, the Corporation has applied the seal over the property and the Corporation thereafter was also permitted to proceed in accordance with law for recovery, but at that stage also, the amount of Rs. 2,96,55,842/- is ordered to be kept in a separate account and not be to

appropriated, and thereafter, before the Corporation proceeds for sale of the property, additional amount is also deposited by the petitioner with the Corporation.

10. Under these circumstances, if ultimately, at the final order, the respondent-Corporation is to be left with liberty to sell the property, primary security as well as collateral security, by resorting to the proceedings in accordance with law, the equity would demand that the respondent-Corporation would be required to refund the amount already deposited by the petitioner pursuant to the interim order passed by this Court. The attempt on the part of the respondent-Corporation to contend for the appropriation of the amount already deposited by the petitioner and also to permit the respondent-Corporation to sell the property of primary security as well as collateral security by dismissal of the petition on a mere ground that this Court has no power to alter the terms and conditions of O.T.S. in exercise of the power under Article 226 of the Constitution of India can hardly be countenanced. If this Court is not to grant the relief to the parties to the proceedings on the ground that the same is not falling within the purview of the exercise of the power under Article 226 of the Constitution of India, it may do so, but while doing so, this Court would balance the equity and would leave no room for allowing the respondent-Corporation to earn any undue benefits of the interim order passed in the present proceedings. If the respondent-Corporation is to maintain its rights for enforcement of the recovery u/s 29 of the Act against the primary security as well as collateral security, it may be permissible, but the amount so deposited by the petitioner pursuant to the interim order will be required to be refunded back by the respondent-Corporation to the petitioner before the action is taken for sale of the unit being primary security and collateral security in accordance with law.

11. The attempt to permit appropriation of the amount already deposited by the petitioner pursuant to the interim order and also to retain the unit for recovery of the balance amount cannot be countenanced. If the respondent-Corporation is to stand on its right to recover the outstanding amount as per law, it will be required for the Corporation to refund the amount to the petitioner, which is deposited by him pursuant to the interim order, and thereafter, only to proceed for recovery in accordance with law by sale of the unit or otherwise.

12. Had it been a case where both the parties to the proceedings were on agreement for alteration of the conditions of O.T.S. for acceptance of the amount of Rs. 2.69 crore with interest at the rate of 11% p.a, either by including the period during which the possession was to be handed over and was not handed over or by excluding the said period, the matter shall stand on a different footing. It appears that the Corporation as per the declaration made and recorded hereinabove is ready to accept the amount of Rs. 2.69 crore as O.T.S., but is insisting for the charging of interest at the rate of 11% per annum from the date of O.T.S. till the amount is paid on a reducing balance method, whereas the petitioner is not agreeable to pay the interest at the rate of 11% per annum

from the date of O.T.S. or is not agreeable to pay the interest at the rate of 11% p.a., for the period during which the possession was ordered to be handed over and was not handed over by the Corporation pursuant to the interim order, therefore, it is not possible for this Court to record the settlement and to pass the order based on the same.

13. Under these circumstances, it appears to the Court that the petitioner, if desirous, may move for appropriate proposal to the Corporation for settling of the amount of interest on the principal amount of Rs. 2.69 crore being O.T.S. and the Corporation may consider the said aspect in its wisdom as financial institution as to whether the interest for the period during which the possession was to be handed over and was not handed over should be recovered in full or in part or any relaxation be made available to the petitioner or not, keeping in view the amount already deposited by the petitioner with the respondent-Corporation and also keeping in view that if the Corporation is to maintain the rights in accordance with law for recovery of the amount by sale of the unit being primary security or collateral security, as the case may be, it will be required to refund the full amount deposited by the petitioner of Rs. 2.69 crore with interest already deposited and the same would result into parting with huge amount by the Corporation, which is at present available with the Corporation. No final observations deserve to be made on the said aspects, except leaving it to the financial wisdom of the Corporation.

14. In view of the aforesaid observations and discussions, the final order as under:

(A) The prayer of the petitioner for declaring the action of the respondent-Corporation in applying the seal and for taking over of the possession of the Unit prior to the filing of the petition as illegal is not required to be considered since the petitioner has not pressed the said contention.

(B) The prayer of the petitioner for directing the Corporation to hand over the possession of the primary security and collateral security is not granted, but at the same time it is directed that the Corporation will be required to refund the amount of Rs. 2.69 crore with interest, which has been deposited by the petitioner pursuant to the interim order passed in the present petition and it is only thereafter the Corporation shall be at liberty to realize the money by sale of the unit of primary security or collateral security, as the case may be, in accordance with law. Until the amount deposited by the petitioner is fully refunded, status-quo shall be maintained.

(C) After the amount of Rs. 2.69 crore within interest already deposited is refunded by the Corporation to the petitioner, if any action is taken by the Corporation for sale of the unit of primary security or collateral security, as the case may be, the rights and contentions both the sides shall remain open on the procedural aspects or on the accounting aspects, as the case may be.

(D) The earlier direction No. (B) and/or (C) above shall not operate as a bar to

the petitioner in making a representation to the Corporation for settling of the account of O.T.S. as Rs. 2.69 crore and interest at the rate of 11% per annum on the reducing balance method by excluding the period during which the possession was to be handed over and was not actually handed as per the interim order, nor the aforesaid direction No. (B) and/or (C) shall operate as a bar to the respondent-Corporation in considering the question of charging of the interest at the rate of 11% per annum on the principal amount of O.T.S. of Rs. 2.69 crore, keeping in view the interim order passed by this Court by charging interest at the rate of 11% per annum, by which the possession was to be handed over and was actually not handed over or for grant of relaxation for the chargeability of interest at the rate of 11% per annum on the principal amount of O.T.S. If the representation is made by the petitioner, or the Corporation decides upon the representation of the petitioner or considers the matter independently in view of the observations made hereinabove, the rights of the parties shall stand governed accordingly and the direction No. (B) and/or (C) above shall not operate as a bar in giving final effect to the said settlement, if any, may be arrived at between the petitioner and the respondent-Corporation.

15. The petition is disposed of in terms of the aforesaid directions. Rule made absolute accordingly. No order as to costs.