(1984) 09 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 38 of 1976

Man Singh APPELLANT

Vs

Punjab Financial Corporation and others RESPONDENT

Date of Decision : 20-09-1984

Acts Referred:
State Financial Corporations Act, 1951 — Section 31

Citation : (1984) 09 P&H CK 0085

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : R.P. Bali, for the Appellant; H.S. Sethi for the respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Nath Mittal, J.

1.This is an appeal against the judgment of the Additional District Judge, Ludhiana, dated 5th December, 1975, passed under the State Financial Corporation Act, 1951 (hereinafter referred as the Act).

2. Briefly the facts are that the Punjab Financial Corporation (hereinafter called ""the Corporation") sanctioned a loan of Rs. 1,46,000 in favour of Man Singh respondent No. 1 (now appellant) for purchasing a truck. He executed hypothecation deed on 16th December, 1970 in favour of the Corporation. Respondents Nos. 2 and 3 stood guarantors for repayment of the loan. Out of the sanctioned loan an amount of Rs. 1,44,647 was advanced as loan to Man Singh respondent No. 1 which was repayable in instalments in terms of the agreement. Respondent No. 1 failed to pay the instalments as agreed. Consequently the Corporation served a notice on the respondents for payment of the arrears with interest within a period of 30 days. After the expiry of the period of notice it filed a claim u/s 31 of the Act.

3. Respondent No. 1 contested the petition on various grounds. The Additional

District Judge accepted the petition and ordered that the hypothecated property be sold for recovery of Rs. 44,450.34 with future interest at the rate of per cent per annum with effect from 19th November, 1975. Respondent No. 1 has come up in appeal against the impugned judgment to this Court.

4. Mr. Bali, learned counsel for the appellant, has argued that the trial Court could not grant future interest and, therefore, the judgment requires modification to this extent. I have duly considered the argument but regret my inability to accept it. In order to determine the question it will be necessary to reproduce the relevant clause of the hypothecation deed which reads as follows:

(3) the borrower hereby convenants with the Corporation that the borrower shall repay to the Corporation at the Head Office of the Corporation or such other place as the Corporation may require, the said sum of Rs. 1,46,000.00 (Rupees one lakh and forty-six thousand only) hereinafter called, the said principal sum in 42 monthly instalments the first twenty of Rs. 3,450 each and the last twenty two of Rs. 3,500 each beginning from the 15th of February, 1971 with liberty to pay earlier than the due date any instalment or multiple thereof to-gether with interest on the said principal sum or the balance there of remaining unpaid, for the time being, at the rate of 9 (nine) percent per annum calculated on the basis of daily products, on the said principal sum of Rs. 1,46,000,00 (Rupees one lakh and forty-six thousand only) from the date of the execution of this indenture and payable half yearly on the 15th June and the 15th of December each year; the first of such payments of interest to be made on the 15th of June, 1971 and shall in case and so long as the said principal sum or any part thereof shall remain unpaid, pay to the Corporation interest on the said principal sum or on so much thereof as shall for the time being remain unpaid, at the rate and place afore-

said and in half-yearly instalments.....

From a reading of the clause 5 it is evident that the Corporation is entitled to interest on the outstanding amount till the principal sum is wholly paid.

5. Special provisions have been made in the Act so that the Corporation may recover the amounts of loans advanced to the industrial concerns expeditiously. Section 31 relates to the special provisions for enforcement of claim by Financial Corporation and section 32 to the procedure of the District Judge in respect of application u/s 31. The relevants parts of the sections are set out below:

31. (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise it fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance u/s 30 and the industrial concerns fails to make such repayment, then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 any officer of the Financial Corporation generally or specially authorized by the Board in this behalf, may apply to the District Judge within the limits of whose

jurisdiction the industrial concern carries on the whole or a substantial part of its buisness for one or more of the following reliefs namely :--

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad-interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extend of the liability of the industrial concern to the Financial Corporation the ground on which it is made and such other particulars as may be prescribed.

32. (1) When the application is for the relief mentioned in clauses (a) and (c) for sub-section (1) of section 31, the District Judge shall pass an ad-interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad-interim injunction restraining for industrial concern from transferring or removing its machinery, plant or equipment.

(2) ... ...

(3) ... ...

(4) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the industrial concern a notice accompanied by copies of the order the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the ad-interim order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub sections (2) and (4), the District Judge shall forthwith make the ad-interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the District Judge may--

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c), the District Judge may make such further orders as he thinks necessary to protect the interest of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as the practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment and sale of property in execution of a dacree as if the Financial Corporation were the decree-holder.

6. From a reading of sub-section (1) of section 31 it is evident that the Corporation can make an application for seeking three reliefs, which do not include passing of a decree for recovery of the amount. Under sub-section (2) the Corporation is required to mention the nature and extent of liability of the industrial concern in the application. Sub section (1) of section 32 authorises the District Judge to pass an ad-interim order attaching the property or part of the property. Sub-section (4) of section 32 empowers the District Judge to issue notice to the industrial concern calling upon it to show cause why the ad-interim order of attachment should not be made absolute. Under sub-section (5) the District Judge is entitled to make the ad-interim order absolute and direct the sale of the property, in case no cause is shown by the industrial concern and under sub-section (6) he is required to proceed to investigate the claim of the Corporation if cause is shown by the industrial concern. After making the investigation he can grant the reliefs under sub-section (7). From a reading of the aforesaid provisions it is apparent that the District Judge can go into correctness of the claim including that of the future interest to the extent that it is in terms of the agreement. He is not required to go into all the objections of the industrial concern as is done by a civil court, while deciding a suit of a mortgagee for recovery of mortgage amount. He is also not required to pass a decree as is done in civil suits. Section 34 of the Code has f no applicability to these proceedings. In the above observations I am fortified to some extent by a decision of the Supreme Court in The Gujarat State Financial Corporation Vs.

Natson Manufacturing Co. Pvt. Ltd. and Others, An argument was advanced in that case that if cause was shown by the industrial concern it was obligatory upon the District Judge to invesstigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure. Once an industrial concern showed cause and contested the application of the Corporation, there arose a lis between the parties which would include the investigation of the monetary claim of the Corporation and per se it would be a suit between the mortgagee and mortgagor in which the ultimate relief was sale of m mortgaged property for repayment of the mortgage money. The contention was repelled by their Lordships. The following observations may be read with advantage:--

Sub-section (6) of section 32 of the Act has to be read in the context in which it is placed. The claim of the Corporation is not the monetary claim to be investigated though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or instalment thereof and, therefore, the mortgaged property should be sold. It is not a money claim. The contest can be that the jurisdictional fact which enables the Corporation to seek the relief of sale of property-is not available to it or no case is made out for transfer of management of the industrial concern. Sub-section (7) of section 32 prescribes what reliefs can be given after investigation under sub-section (6) is made, and it clearly gives a clue to the nature of contest under sub-section (6). Sub-section (8) of section 32 only prescribes the mode and method for executing the order of attachment of sale of property as provided in the Civil P.C. Sub-sections (6), (7) and (8) of section 32 read together would give an opportunity to the industrial concern to appear and satisfy the District Judge that the situation invisaged by section 31(1) has not arisen and the relief should not be granted * * * The substantive relief is an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. We are unable to appreciate the view taken by the High Court that the proceedings is not in the nature of execution of a decree because the question of enforcement of the order of attachment or sale would only arise after the same is made absolute under sub-section (7).

7. The above case was followed by a Division Bench of the Himachal Pradesh High Court in Bhawani Parshad Kapur Vs. The Himachal Pradesh Financial Corporation, wherein the learned Bench observed.--

* * * all that the Financial Corporation is required to claim and prove is the existence of any of the three grounds enunciated above and which entitled it to the grant of the relief. The investigation within the contemplation of sub section (6) of S. 32 is, therefore, restricted to such claim of the Financial Corporation. The investigation of such claim of the Financial Corporation would, therefore,

involve an enquiry with respect to the terms and conditions on which the loan is advanced by the Financial Corporation to the industrial concern and whether there has been any breach in such terms by the industrial concern. The investigation may also relate to the fact whether the Financial Corporation had in accordance with the provisions of section 30 called upon the industrial concern to repay the loan and whether the industrial concern had failed to comply with such repayment. Only such pleas of the industrial concern could call for investigation which could directly influence the findings of the court on the above points

A contention was raised before the Bench that the Corporation was not entitled to charge compound interest at the agreed rate and the District Judge was bound to give a finding if such interest could be legally charged. The contention was rejected with the observation that a bare reading of section 31 would suggest that the law requires the industrial concern to repay the amount of loan as also the interest in accordance with the agreement between the industrial concern and the Corporation.

8. From the observations in the above two cases it emerges that the proceedings under sections 31 and 32 are in the nature of execution proceedings and not proceedings in a suit and the application u/s 31(1) is not to obtain a substantive relief of recovery of the amount by sale of the property. The investigation u/s 32(6) is to find out the terms and conditions on which loan was given by the Corporation to the industrial concern and whether the Corporation is entitled to the reliefs u/s 31(1) of the Act on account of breach of the te ms of the agreement. It is not the duty of the District Judge to investigate" all objections raised by the industrial concern. Therefore, in my view, the District Judge affirms the right to charge future interest as given in the agreement and does not grant future interest as is done in suits.

9. Mr. Bali made reference to an unreported decision of Himachal Pradesh High Court in The Himachal Pradesh Financial Corporation v. M/s. Himachal Printing Press F.A.O. 73/83, wherein it was observed that the Court has no jurisdiction to grant future interest. The above decision was given by the learned Bench while dismissing the appeal in limine. It appears that the scope of the aforesaid sections was not brought to the notice of the learned Bench. With great respect, I am unable to agree with the observations made therein.

10. After taking into consideration all the circumstances, I am of the, view that the Corporation is entitled to recover the amount of the balance loan alongwith future interest till the date of realisation as provided in, the hypothecated deed. Therefore, I do not find any substance in the contention of the counsel for the appellant.

11. Mr Bali then sought to urge that the insurance premium "paid by the Corporation to the Insurance Company was on higher amount than the priced of the truck after depreciation and, therefore, the appellant is not liable to pay the amount of insurance premium. I have considered the argument. No such plea

was taken in the written statement by the appellant and no contention was raised to that effect before the trial Court. Therefore, he cannot be allowed to raise that plea in appeal.

12. For the aforesaid reasons I do not find any merit in the appeal and dismiss the same with costs.

