(1984) 04 KL CK 0018

In the High Court Of Kerala

Case No : O.P. No. 1064 of 1984-K

Molly Jose APPELLANT

Vs

Kerala Financial Corporation and Others RESPONDENT

Date of Decision : 10-04-1984

Acts Referred:
Constitution of India, 1950 — Article 14
State Financial Corporations Act, 1951 — Section 31

Citation : AIR 1984 Ker 194

Hon'ble Judges : K. Bhaskaran, Acting C.J.;M.P. Menon, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, N. Subramanian and P. Krishnan, for the Appellant; Mathews P. Mathew, K.P. Vijayan and P.K. Alexander Vaidian, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, Ag. C. J.

1. The challenge in this writ petition is directed against the constitutional validity of Section 31 of the State Financial Corporations Act, 1951. That Section reads ;

"31. Special provisions for enforcement of claims by Financial Corporation.--

(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 in meeting its obligations in relation to any guarantee given by the Corporation or otherwise 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 concern fails to make such repayment then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the T. P. Act, 1882, any officer, or the Financial Corporation generally or specially authorised 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 the business 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; of

(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 extent 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."

The petitioner''s contention is that the provisions contained in Section 31 of the Act would be hit by the provisions of Article 14 of the Constitution, inasmuch as different methods for realisation of the amounts due to the Corporation are provided.

2. We have not been shown how the procedure u/s 31 of the Act is less favourable or more onerous to the petitioner. As a matter of fact, all the procedure contemplated under the CPC would be undergone in proceedings u/s 31 of the Act also. If at all, in our view, this is more advantageous and more liberal in favour of the debtor; and there is no substance in the argument that the debtor would be subjected to hostile discrimination by following the procedure u/s 31 of the Act. We find a similar decision having been taken by a Full Bench of the Orissa High Court in State Financial Corporation Ltd. Vs. Satpathy Brothers and Nanda Co. (P.) Ltd. and Others,

The result therefore is that the writ petition is dismissed. No. costs.

