
(1994) 09 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5830 of 1994

Moon Industries

APPELLANT

Vs

Punjab Financial Corporation

RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31

Citation : (1995) 111 PLR 126

Hon'ble Judges : N.K. Kapoor, J;A.L. Bahri, J

Bench : Division Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; A.K. Walia, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Petitioners have sought issuance of a writ of certiorary for quashing recovery certificate dated 06.10.1993 Annexure P-5 issued by respondent No. 2 at the instance of respondent No. 1 to hand over the land, building and machinery to the petitioner taken over u/s 29 of the State Financial Corporation Act, 1951.

2. M/s Moon Industries, a partnership firm, set up the business of manufacturing P.V.C. Pipes at village Kurki Khurd, Tehsil Balachaur, Dist. Hoshiarpur. On 28.05.1984 as per averments made in the petition, on this industrial unit the petitioners spent about Rs. 4 lacs to raise a building over an area measuring 5 Kanals 2 Marias. For short of funds petitioners raised a loan of Rs. 13,50,000/- from the Punjab Financial Corporation by mortgaging the industrial unit on 14.01.1985. Copy of the mortgage deed is Annexure P-1. It is the case of the petitioners that as per terms of the mortgage deed duly executed by them they had been paying interest as per schedule but later on could not adhere to it as the unit became sick for want of availability of raw material as well as on account of disturbed conditions in the State of Punjab. This way the principal amount as well as interest due thereupon went on increasing. Since the petitioner failed to

pay the instalments Punjab Financial Corporation -Respondent No. 1 took over the unit u/s 29 of the State Financial Corporation Act and has sold the same for a paltry sum of Rs. 8,80,000/- to Respondent No. 3. It is this action of the respondent which is being termed as illegal, arbitrary, against the principles of natural justice and unconstitutional and so prayed for setting aside the same.

3. This court while issuing notice of motion to the respondents restrained the respondents that auction proceedings be not finalised till further order.

4. Pursuance to the notice of motion issued by the Court, respondent No. 1 has put in appearance and filed written reply. By way of preliminary objection, it has been stated that the petitioner has defaulted in repayment of loan disbursed by the answering respondent and so is guilty of violating the specific and mutually agreed terms of the agreement. According to the respondents, as many as three opportunities were granted to the petitioners to pay the amount due but each time they could not even adhere to the reschedule payment, thus compelling the respondent to take over the unit and sell the same in the open market to recover its dues. As regards the contention of the petitioners that no notice was served upon them, it was stated that two registered notices were sent to the petitioner i.e. 17.11.1987 and 25.3.1988. Justifying the sale in favour of respondent No. 3 it was stated that wide Publicity was given for the proposed auction by making insertions in the newspapers for as many as five times. In fact earlier bid was not accepted for want of proper price and ultimately property was sold to respondent No. 3 in November 1989 for a sum of Rs. 8,80,000/- which was good amount at the time when the property was sold. Other material averments made in the petition have been controverted. According to the respondents, time and again opportunity had been granted to the petitioners to pay the instalments alongwith interest as is clear from Annexure R-1 to R-3. Vide Annexure R-2 dated 17.12.1986, the amount of the loan was rescheduled, yet the same was not adhered to. Later on request was made to pay the instalments as well as the interest due but the same also remained unanswered, ultimately compelling the answering respondent to take over the unit u/s 29 of the State Financial Corporation Act and sell the same to recover its dues. This way, the action of the respondent is in conformity with the terms and conditions of the mortgage deed and also in consonance with the provisions of the State Financial Corporation Act and so prayed that the petition be dismissed with cost.

5. Learned counsel for the petitioners in support of the case urged that the property has been sold at a throwaway price and that too without any notice to the petitioners. According to the petitioners, value of the land building and machinery is more than 20 lacs whereas the same has been sold for a paltry sum of Rs. 8,80,000/-and thus the action of respondent No. 1 cannot be termed either as bonafide or in good faith. Even otherwise, it was incumbent upon the Corporation to inform the petitioners about the auction price so that they could raise possible legal and factual objections. Petitioners learnt about the sale of the property only from the recovery certificate Annexure-5. Reliance has been placed

upon the decision of the apex Court in case reported as Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, for the view that it is incumbent upon the office of the Corporation to act reasonably and fairly in dealing with the property of the debtor, otherwise their action would be invalid. Power of the Corporation u/s 29 of the Act is very wide and has to be exercised in a fair and reasonable manner. Learned Counsel for the petitioners urged that as the property was of 20 lacs, but the same has been sold for a sum of Rs. 8,80,000/- such an action per se is invalid and so proceeding conducted are liable to be quashed.

6. We have heard learned counsel for the parties and perused the relevant document referred to by them during the course of arguments. Factual aspects are not in dispute i.e. a sum of Rs. 13,50,000/- was advanced by the Punjab Financial Corporation to be paid in instalments over a period of time along with agreed rate of interest. It is also not disputed by the petitioners that they could not adhere to the schedule of payment as agreed. With these broadly admitted facts, it has to be seen whether the action initiated by the Corporation is violative of the provisions of the State Financial Corporation Act in writ jurisdiction.

7. The action of the Corporation can be assailed if the same is against the statutory provisions or otherwise it is unfair or unreliable. As per documents on record, petitioners were intimated of the interest/instalment due as per Annexure R-1 dated 28.11.1986. Since there was no positive response, the Corporation agreed to reschedule/defer the instalments as per annexure R-2 dated 17.12.1986. The amount due along with interest was to be paid in eight six monthly instalments, each of one Rs. 1,68,000/-. As this schedule was also not adhered to, the petitioners were duly intimated in this regard vide communication dated 17.06.1987, Annexure R-3. It is on 30.05.1988 that the petitioners expressed their inability to make any payment on account of instalments as well as interest due as according to them, they had been bearing heavy losses and so were not in a position to make the necessary payment. Vide this letter, Annexure R-4, the petitioners made a request that their factory may be taken over as they were not in a position to pay loan instalments and interest. It bears the signatures of all the partners of the firm. With this background, there was no other course open to the Respondent No. 1 but to take over the possession of the factory in default of the payment of the amount due u/s 29 of the Act. The unit was taken over in June, 1988. With a view to recover the huge amount, the Respondents inserted five press advertisements and organised two public auctions in order to get best bid and ultimately sold the property for a sum of Rs. 8,80,000/- in favour of Respondent No. 3. The present Writ petition has been filed in 1994. Admittedly the petitioners did not take any step during all these five years. Petitioners' bald assertion that they had no knowledge of the sale of the property cannot be believed in the facts of the present case. Property has been sold by public auction and that too after giving due publicity by insertions in the newspapers. Thus, this plea is afterthought and so rejected.

8. We also find no merit in the plea of the counsel for the petitioners that the respondent No. 1 instead of resorting to Section 29 of the Act ought to have taken recourse u/s 31 of the Act. The apex Court in case reported as Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, examined this aspect of the matter and held that the corporation has the choice to initiate proceedings u/s 29 or Section 31 of the Act. Simply for the reason that resort has been made to Section 29 of the Act. there is no ground to hold that the same is unwarranted. The present action of the Corporation cannot be termed arbitrary or unreasonable. No doubt, the Corporation lends money to small and medium scale industries, amount so advanced is to be recovered so that the same amount is again advanced to another unit. Thus in case of default, the corporation is well within right to sell the same to recover its due. No illegality has been demonstrated that the property, in fact, was sold for a paltry amount of Rs. 8,80,000/- except for the bald assertion that that the factory and the building is worth Rs. 20,00,000/- now i.e. after a gap of five years from the time when the same was sold, is by itself no ground to hold that the auction was not conducted properly.

9. Resultantly, the writ petition is wholly devoid of merit and is consequently dismissed.