

(2005) 08 MP CK 0115

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1338 of 1999

Morena Re-rolling and Industrial Development Co. Pvt. Ltd.

APPELLANT

Vs

M.P. Financial Corporation and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29, 29(1), 29(4), 3, 31

Transfer of Property Act, 1882 — Section 69

Citation : AIR 2006 MP 118 : (2005) 4 MPLJ 494

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : R.D. Jain and D.P.S. Bhadoriya, for the Appellant; J.D. Suryavanshi, for Nos. 1, 2 and 3 and Vivek Jain, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

The question arises for consideration in this case is whether the Financial Corporations setup u/s 3 of the State Financial Corporation Act (hereinafter referred as "the Act") is entitled to take recourse to the remedy available to it u/s 29 of the Act even after having obtained an order or a decree after invoking the provisions of Section 31 of the Act. During the pendency of appeal filed by the petitioner against the order passed u/s 31 of the Act, but without executing that decree or order? and whether Madhya Pradesh Financial Corporation Limited (hereinafter "M. P. F. C.") acted in a bona fide manner in sale of the properties of the petitioner in exercising its right u/s 29 of the State Financial Corporations Act, 1951.

Petitioner M/s. Morena Re-rolling & Industrial Development Co. Pvt. Ltd. (hereinafter "borrower") borrowed a sum of Rs. 9.42 Lacs out of total sanctioned term loan of Rs. 9.52 Lacs as per sanction letter dated 30-1-1973. The loan amount was disbursed from time to time between 28-2-1973 to 24-10-1981. The

borrower accepted all the terms and conditions of the sanctioned letter vide its letter dated 16-2-1973 and had executed a mortgage deed in favour of M. P. F. C. on 26-2-1973. As per agreement the loan was payable in twenty half-yearly instalments commencing from 1-9-1975 to 1-3-1985 along with the interest at the rate of 9.25% per annum. The borrower committed defaults in payment of the instalments and up to 1-11-1984 only a sum of Rs. 4,91,195/- was paid. At the request of borrower repayment of instalments was extended. The M. P. F. C. extended the period of repayment of loan from time to time. But, the said loan amount was not paid. On 18-6-1984 M. P. F. C. issued a notice to the borrower and call upon to pay outstanding amount of Rs. 15,81,502.93. the payment was made, ultimately M. P. F. C. filed an application under Section, 31 of the Act before the District Judge, Morena on 23-4-1985 for recovery of total outstanding loan of Rs. 16,87,608.53. During pendency of the proceedings before the District Judge Morena the borrower deposited a sum of Rs. 9.42 Lacs in the loan account in order to arrive at a compromise as per special condition No. 37. Thereafter negotiations were held for payment of balance amount and interest. But, no final settlement could be arrived which is evident from the extract of recovery committee meeting dated 25-6-1990 (Annexure R/15), The M. P. F. C. decided to continue with the case. Final order was passed on 12-9-1997 in an application u/s 31 of the Act, by which the borrower was directed to pay the balance amount of Rs. 7,45,306/- (Rs. 16,87,306.00 - Rs. 9,42,000.00) to the M. P. F. C. with the interest at the rate of 15% per annum in terms of the order dated 12-9-1997 (Annexure P/3).

Borrower challenged the order dated 12-9-1997 by the filing Misc. Appeal No. 499/1997 in which this Court by interim order dated 28-11-1997 directed that the sale in pursuance of auction if held, shall not be confirmed. The borrower also did not clear the dues and, therefore, on 30-3-1999 M. P. F. C. took a decision to abandon the proceedings of section 31 of the Act and filed an application for dismissal of M. A. No. 499/1997 as having been rendered infructuous. On the same date i.e. on 30-3-1999 the M. P. F. C. had taken a decision for taking over the unit of the borrower u/s 29 of the Act and the possession of the unit was taken over and intimated the same to the borrower by letter dated 30-3-1999 (Annexure P.4). The M. P. F. C. after publishing a notice in the daily newspaper for sale of unit, disposed of the unit for a sum of Rs. 36 lacs to the respondent No. 4 (hereinafter purchaser) on 13-8-1999 (Ex. P. 1). On 14-8-1999 an agreement was executed between the purchaser and M. P. F. C. subject to final decision in Misc. Appeal No. 499/1987. By the said agreement purchased agreed for transfer of lease deed in their favour from MPAKVN/DIC at their own cost and expenses. The possession of the unit was handed over to the purchaser respondent No. 4 and panchnama to this effect was prepared on 14-8-1999 (Ex. P. 3.J).

In Misc. Appeal No. 499/1997 on application of M. P. F. C. for abandonment of the proceedings u/s 31 of the Act and dismissing the appeal as infructuous has been allowed by the Division Bench of this Court vide order dated 26-10-1999

(Annexure R/26-A). The relevant paras read as under:

10. Taking into consideration the facts and circumstances brought on record and further considering the nature of findings returned against the defendant/defaulter, we are of the opinion that there can be no impediment in the grant of permission to abandon the claim and abate the entire proceedings u/s 31 of the State Financial Corporation Act giving rise to this appeal as prayed for.

In the result, the permission sought for to abandon the proceedings u/s 31 of the State Financial Corporation Act, giving rise to the impugned order is granted and the entire proceedings culminating in the order impugned in the appeal shall stand abated.

The learned Counsel for the defendant /appellant has pointed out that the Corporation has already initiated proceeding u/s 29 of the Act for recovery of the alleged dues. Since the proceedings u/s 31 of the Act giving rise to the impugned order stand abated, it is needless to say that the defaulter /appellant can contest those proceedings in accordance with law and avail the remedy, in case of any grievance, by approaching the appropriate forum.

Borrower by notice dated 18-8-1999 (Annexure P/9) asked the M. P. F. C. to recall and cancel all the proceedings of sale and return the possession of the unit to them and proper opportunity may be given to them to submit the offer for-sale of the said unit. Borrower filed this petition on 30-8-1999 assailing the action of the M. P. F. C. on the ground that notice for inviting tenders was not properly published in the newspaper and that after receipt of tenders no notice was issued, nor before finalizing the sale and accepting the offer of the purchaser, opportunity was given to the borrower. It was contended that due to financial crises loan amount was not paid. In terms of special clause borrower after paying the amount of Rs. 9.42 lacs submitted its proposal. The M. P. F. C. should have waived penal interest, compound interest and other charges as had done for other units which were in financial crisis. The M. P. F. C. without following the guidelines of the Hon"ble Apex Court disposed of the unit in favour of the purchaser, without giving proper opportunity to the borrower and due to the said illegal action borrower, suffered irreparable injury and is seeking the relief of quashment of entire proceedings u/s 29 of the Act pertaining to take over of the unit/ property belonging to the borrower and that possession of the unit and other assets be restored back to the borrower. No specific relief for quashing the sale proceedings dated 13-8-1999 and 14-8-1999 has been made.

Respondent No. 1 to 3 M. P. F. C. in their return averred that term loan of Rs. 9.52 lacs was sanctioned for setting up of Re-rolling Mill of various items viz. Bars, Angles, Plates etc. having an installed capacity of 1000 Tone Per Month. Against which an amount of Rs. 9.42 lacs was disbursed to the borrower. Borrower accepted the terms and conditions of the loan sanctioned by the M. P. F. C. and also executed mortgage deed on 26-2-1973 (Annexure R/ 3) and mortgaged entire fixed assets of the unit. The borrower failed to repay the loan.

By notice dated 18-6-1984 (Annexure R/13) borrower was asked to pay Rs. 15,81,502.93 failing which action u/s 29 of the Act will be taken. The borrower was given ample time to repay the loan. But, he failed to repay the same. In the year of 1995 and 1997, the unit was inspected and it was found that all the plant and machineries of the unit were missing from the factory site. M. P. F. C. lodged F. I. R. (Annexure R/18) on 29-1-1997 against the Directors of the borrower company. After taking over of the unit no proposal was ever received from the borrower. On 12-6-1999 an advertisement was published in the newspaper for sale of unit. No offer was received from the borrower company. After negotiation highest offer of Rs. 36,00 Lacs was received from Purchaser (M/s. K. S. Oils Mills Ltd.) which was accepted and sale letter was issued on 13-8-1999 and possession of the unit was handed over to the purchaser on 14-8-1999. The action taken by the M. P. F. C. is in accordance with law and there is no violation of any of the statutory provisions.

The respondent No. 4 purchaser in its return averred that he purchased the shed from the M. P. F. C. The land belongs to M. P. A. K. V. N. and no assets like plant and machinery were there. After purchase of the unit land was transferred and allotted to him by the District Trade and Industries Centre, Morena vide allotment letter dated 27-9-1999 (Annexure R/4-2). The purchaser thereafter paid the premium and other charges amounting to Rs. 1.43.775/ vide challan Annexure R/4-3. The General Manager, District Trade and Industries Centre, Morena executed a lease deed on 28-9-1999 on payment of advance rent and lease rent. Purchaser company after purchasing the unit from the M. P. F. C., established Vanaspati Chee Plant by investing huge amounts on site. The total investment in the shape of plant and machinery, construction of building, furniture and fixture, electrical installations, Generator etc. as on 31-3-2004 is Rs. 16.63 crores. It was further averred by the purchaser that after the sale petitioner never filed any objection before the M. P. F. C. that sale is being finalized on a lower side nor he made any offer that he was willing to pay more than Rs. 36 Lacs to the M. P. F. C. The M. P. F. C. disposed of the unit in accordance with law.

Learned Counsel for the petitioner submits that during pendency of the proceedings u/s 31 of the Act in Misc. Appeal No. 499 of 1997 the M. P. F. C. had no right simultaneously to initiate the proceedings u/s 29 of the Act. M. P. F. C. without withdrawing the proceedings u/s 31 of the Act had taken a recourse to the provisions u/s 29 of the Act. The said recourse is not permitted under the Act. He placed reliance upon a decision of the Apex Court in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, .

Section 29 provides both the rights and the remedies as also the procedure for enforcement of the rights and is a complete code in itself. It is open to the Corporation to act u/s 29 to realise the dues from the defaulting concern by following the procedure prescribed thereunder. The Corporation does not require the assistance of the Court to enforce its rights while invoking the provisions of Section 29 to recover its dues from the defaulting concern. Section 31 has been

enacted also to take care of a situation where any industrial concern, in breach of any agreement, makes default in repayment of the loan or advance or any instalment thereof or the Corporation requires immediate repayment which the defaulting industrial concern fails to make. u/s 31 the property will be sold for repayment of the loan or advance taken by the industrial concern from the Corporation. On a conjoint reading of Sections 29 and 31, it appears that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has two remedies available to it against the defaulting industrial concern, one u/s 29 and another u/s 31. The Apex Court in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, (supra) has held that the Corporation has a right to make the choice whether to proceed u/s 29 of the Act or Section 31 of the Act, but its rights u/s 29 are not extinguished. If it decides to take recourse to the provisions of Section 31 of the Act, it can abandon the proceedings u/s 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings u/s 29 of the Act. A decree u/s 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, recourse to Section 31 cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order u/s 31 of the Act, in which event the order made u/s 31 of the Act would serve in aid of the relief available u/s 29 of the Act. What alone is not desirable or permitted by the Act is to pursue both the remedies simultaneously by the Corporation and not that it cannot withdraw or abandon the proceedings initiated u/s 31 at any stage and then take recourse to the provisions of Section 29 of the Act. The Apex Court has further observed that where the defaulting party fails to honour the order or decree of the Court made u/s 31 of the Act, it has neither any legal nor even a moral right to object to the Corporation from taking recourse to the provisions of Section 29 of the Act only on the ground that it has obtained a proper relief u/s 31 of the Act which relief it does not wish to pursue any further. Indeed, if the order of the Court issued u/s 31 of the Act has been fully complied and honoured with by the defaulting concern, no occasion would arise for the Corporation to invoke the provisions of Section 29 of the Act. However, to hold that since the Corporation has initially taken action u/s 31 of the Act and obtained an order/decreed from the Court, the Corporation is prohibited from invoking the provisions of Section 29 of the Act, notwithstanding the fact that the defaulting concern has not honoured the Court's order or decree made u/s 31 of the Act would, amount to putting premium on the activities of the defaulting concern aimed at frustrating the order /decree of the Court and depriving the Corporation of recovering its legitimate dues and thereby rendering the expression "without prejudice to right" occurring in Section 31 otiose. Since, the legislature enacted Sections 29 and 31 with a view to aid the Corporation to recover its legitimate dues etc. from the defaulting party, the saving clause in Section 31 of the Act, preserving the rights u/s 29 of the Act by giving up the pursuit u/s 31 at any stage of the proceedings is available to the Corporation.

The right vested in the Corporation u/s 29 of the Act is besides the right already possessed at common law to institute a suit or the right available to it u/s 31 of the Act. Since, the Corporation can withdraw from the Court its proceedings u/s 31 of the Act at any stage, it would imply that it has the right to withdraw from further proceedings under Sections 31 and 32 of the Act even after obtaining an order in its favour and take recourse to the proceedings u/s 29 of the Act without pursuing the proceedings u/s 31 of the Act any further. The Corporation cannot, indeed, execute the order u/s 31 of the Act and yet simultaneously take recourse to proceedings u/s 29 of the Act for the same relief. The Hon''ble Supreme Court has clearly laid down the rule that the option is entirely with the financial corporation and even if an action is taken u/s 31, the financial corporation may resort to Section 29 without executing an order u/s 31 and the doctrine of election will not apply. It is only when the claim made by the Corporation in proceedings u/s 31 is rejected by the Court and inter se rights of the parties are determined that it may be debarred from invoking its rights u/s 29. Otherwise, the Corporation can abandon the proceedings u/s 31 and take action in accordance with the provisions of Section 29.

In the case in hand the M. P. F. C. decided to withdraw/abandon the proceedings initiated u/s 31 of the Act and filed an application to that effect in Misc. Appeal No. 499/97 (Annexure P/6) and thereafter had taken possession of the unit in exercise of the powers conferred u/s 29 of the Act. Thereafter the Division Bench of this Court vide order dated 26-10-1999 allowed the application and granted permission to abandon the claim and abated the entire proceedings u/s 31 of the Act. The said action of the M. P. F. C. cannot be said to be illegal and the same has attained finality.

The next contention of the learned Counsel for the petitioner is that no notice was issued before taking proceedings u/s 29 of the Act. On the other hand learned Counsel for M. P. F. C. drew my attention to a letter dated 16-6-1984 (Annexure R/13) which is a notice issued u/s 29/under Section 31 of the Act. The second notice was issued on 30-3-1999 by the M. P. F. C. (Annexure P/4). The contention of the learned Counsel for the petitioner that Board of the M. P.F. C. has not taken any decision for taking over the possession of the unit u/s 29 of the Act is not correct from the extract of the Board meeting dated 31-5-1984 it is clear that Board in its meeting resolved that if the industrial concern fails to comply the demand notice, then legal action u/s 29 of the Act and /or u/s 31 of the Act be taken. Thus, the action to take over the possession of the unit is taken in compliance to the Board''s decision and as such arguments of the petitioner cannot be accepted.

Learned Counsel for the petitioner has urged that M. P. F. C. acted unreasonably and without any publication and without obtaining the valuation report disposed of the property to the purchaser. He drew my attention to the sale letter dated 13-8-1999, agreement dated 14-8-1999 and Panchnama by which the possession of the unit was delivered to purchaser. It is not disputed by the

petitioner that the notice for sale of unit was published in the daily newspaper (Dainik Bhaskar) and tenders were invited. On the other hand respondent has urged that as against the total outstanding dues petitioner submitted its offer on 19-2-1988 for settlement of his loan amount for a sum of Rs. 70,000/- only. Before this the petitioner had given an offer of Rs. 2.00 lacs in June, 1995. The respondent No. 1 M. P. F. C. rejected the said proposal and communicated the same to the petitioner on 29-7-1998 (Annexure R/23.). The letter dated 29-7-1988 reads as under:

Please refer to your proposal dated 19-2-1998 along with statement of X. X & Z wherein you have requested to settle the loan account at Rs. 0.70 lakh. The Corporation is surprised to see your proposal because earlier in June, 1995, you had proposed to settle the loan account at Rs. 2.00 lakhs which was not accepted by the Corporation.

Now we again inform you that the Corporation has not accepted your proposal dated 19-2-1998.

Thereafter M. P. F. C. never received any concrete proposals from the petitioner company nor borrower repaid the loan amount. The M. P. F. C. after taking over of the said unit waited for a reasonable time with a hope to get fresh proposal from the petitioner or any revival plan for repayment of loan. In absence of the same an advertisement was published in the daily newspaper for sale of the unit. In pursuance of the advertisement M.P.F.C. received three offers for purchasing the unit i) M/s. Awadh Oils for the sum of Rs. 12.50 lacs, ii) M/s. Parag bdible Oils lor the sum of Rs. 15,00 lacs and iii) M/s. K. S. Oil Mills for the sum of Rs. 19.00 lacs. All these offers were considered by the authorised Standing Committee of the M.P.F.C. in its meeting held on 3-8-1999. The offers received by the M.P.F.C. was in lower side and as such M.P.F.C. invited all of them for negotiations. On further negotiations on 13-8-1999 the Managing Director of M.P.F.C. accepted the offer of Rs. 36.00 lacs of purchaser on cash down payment. After receiving the payment sale letter was issued on 13-8-1999 (Annexure R/28) and on 14-8-1999 executed an agreement with the purchaser company and possession of the unit was delivered to him (Annexures R/29 and R/30). The borrower filed a writ petition on 30-8-1999. From 30-8-1999 till the date of arguments he never gave any offer or proposal before the M.P.F.C. or before this Court that he was ready for payment of loan amount or purchasing the unit.

Learned Counsel for the petitioner drew my attention to the decision of the Apex Court in the case of Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, , in which the issue was whether the Financial Corporation was wrong in rejecting the offer given by the borrower which, after proper evaluation, was considered lower than the offer made by the purchasers. In the instant no offer at all was made by the petitioner the Apex Court while upholding the action of the Financial Corporation has held that the guidelines contained in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, are in the nature of guidelines for the exercise of the

power u/s 29 of the Act and the action of the State Financial Corporation should not be interfered with if it has acted broadly in consonance with those guidelines. The Apex Court in Karnataka State Financial Corporation (supra) reiterated the law laid down in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, as regards the scope of judicial review in matters of sale by the State financial Corporation in exercise of the power conferred on it under S. 29 of the Act and held that the scope of judicial review is confined to two situations, namely (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e. unreasonably while exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation.

Learned Counsel for the petitioner has placed reliance on the decision of the Apex Court in the case of New Kenilworth Hotels (P) Ltd. Vs. Ashoka Industries Ltd. and Others, . The facts of this case are different and as such the same will not be applicable in the present facts and circumstances of the case. Learned Counsel for the petitioner placed reliance on the two decisions of the Apex Court in the case of Gajraj Jain Vs. State of Bihar and Others, and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, . In the case of Gajraj Jain (supra) the company took a term loan of Rs. 90 lakhs from BICICO, a State Financial Corporation within the meaning of the State Financial Corporation 1951 and a charge was registered in favour of BICICO. Central Bank of India, having advanced working capital of: Rs. 1.40 crores to the company had a second charge on the plant and machinery of the company. Central Bank of India instituted a case against the company and its Directors for recovery of its dues amounting to Rs. 1.47 crores and for enforcement of security. B1CICO issued notice under Ss. 29 and 30 of the Act and for recovery of its dues of Rs. 28.85 lakhs issued a sale notice on 22-2-2002 for auction of the flour mill. Last date for submitting tenders was 21 -3-2002 and the tenders were to be opened on 22-3-2002. On 21-3-2002, the borrower company submitted its tender on 21 -3-2002 and deposited Rs. 1 lakh as earnest money. On 22-3-2002, he paid Rs. 28.85 lakhs representing the entire dues of the Corporation. Despite payment of the full dues by the borrower company, on 28-4-2002, respondent No. 2 entered into an agreement of sale of assets in favour of respondent No. 4. The borrower company filed a writ petition challenging the validity of the agreement on the ground of collusion between Corporation and purchaser company. On the same day, Corporation returned the earnest money paid by the borrower company alleging that he had withdrawn his tender. In the above facts and circumstances of the case the Apex Court has observed that the conduct of the Corporation which was required to act in accordance with Section 29 of the Act and must not act unreasonably and under the public notice inviting tenders, the Corporation was obliged to call for tenders and the Corporation was obliged to call for matching offers from the Directors/promoters/guarantors. The Hon"ble Supreme Court has observed that the provisions of sub sections (1) and (4) of Section 29

of the State Financial Corporations Act are similar to Section 69 of the Transfer of Property Act. Section 29(1) contemplates a sale for distribution of sale proceeds and not a sale for distribution of property charged with the debt. It also implies that the first charge-holder must act in a manner which protects not only its own interest but also the interest of the subsequent charge-holder and the mortgagor. The first charge-holder is bound to obtain the best possible price for the mortgaged assets and the best possible price must, in the context, mean the fair market value. The Financial Corporation, in the matter of sale u/s 29, must act in accordance with the statute and must not act unreasonably. Reasonableness is to be tested against the dominant consideration to secure the best price. In *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, (supra) it was held that reasonableness of the action of the Financial Corporation u/s 29 of the Act should be tested against the dominant consideration to secure the best price.

On the other hand learned Counsel for the respondents placed reliance upon the decision of the Apex Court in the case of the Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and also placed reliance upon the decision of this Court in the cases of Manglam Minerals Processors v. Managing Director, M.P.F.C. reported in 1998 (1) MPWN SN 27 and Kochar Oil Mills Ltd. v. M.P.S.I.D.C. Ltd. reported in 2003 (1) MPLJ 171. In the State Financial Corporation and Anr. (supra) a three-Judge Bench, while overruling the decision in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, held that it was contrary to the letter and intent of Section 29 of the Act and observed that the views expressed in that case were too wide and did not take note of the ground realities and the intended objects of the statute and if the guidelines as indicated were to be strictly followed, it would be giving premium to a dishonest borrower. The views would not further the interest, of any Corporation and consequently of the industrial undertakings intending to avail financial assistance and would only provide an unwarranted opportunity to the defaulter, in most cases chronic and deliberate, to stall recovery proceedings. Further, the Court observed that:

It is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material.

The Apex Court found that the guidelines issued in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, placed unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. The Court felt that the procedure indicated in Mahesh Chandra would lead to further delay in realisation of the dues by the Financial Corporation by sale of assets. The Apex Court held that it was always expected that the Corporation would try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated

or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action u/s 29 of the Act is called for. The Court approved the view expressed in *Gem Cap* (AIR 1993 SC 1435) (supra) and found it to be more in line with the legislative intent behind enacting the Act.

In *Manglam Minerals Processers* (supra) this Court has held that several opportunities were given to debtor to make the payment of outstanding loan, but no offer was made backed with any money and action of Corporation in selling the unit was justified. In *Kochar Oil Mills Ltd.* (supra) "this Court has observed that the borrower made persistent defaults in repayment of loan in spite of notice u/s 29 by M.P. State Industrial Development Corporation Ltd. issued to the petitioner. No rehabilitation proposal for payment or resettlement was submitted by borrower nor any part of outstanding dues were paid. Unit taken over and sold and the action initiated u/s 29 of State Financial Corporation Act taking over unit and selling it, was just and proper.

In *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, the Hon'ble Supreme Court has held that it was not a matter for the Courts to decide as to whether the Financial Corporation should invest in the defaulting unit, to revive or to rehabilitate it and whether even after such investment the unit would be viable or whether the Financial Corporation should realise its loan from the sale of the assets of the company. The Apex Court observed that a Corporation being an independent autonomous statutory body having its own constitution and rules to abide by and functions and obligations to discharge. In the discharge of its functions, it is free to act according to its own right. The Hon'ble Supreme Court in the case of *Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others*, has held that in a matter between the Corporation and its debtor, a writ Court has no say except in two situations i.e. (a) where there is a statutory violation on the part of the Corporation, or (b) where the Corporation acts unfairly i.e. unreasonably. The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ Courts into appellate authorities over administrative authorities. Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however, more prudent, commercial or business like it may be, for the decision of the Financial Corporation.

After hearing the learned Counsel for the parties, in my opinion, the petitioner did not submit any proposal to the M.P.F.C. The petitioner company was informed that in exercise of powers conferred u/s 29 of the State Financial Corporation Act, the M.P.F.C. has taken over the charged securities i.e. mortgaged fixed assets of the unit on 30-3-1999 in order to recover its dues. The M.P.F.C. had invited tender for sale of mortgaged fixed assets in its possession. The M.P.F.C.

received three bids which have been negotiated before the Tender Committee meeting and it has been decided to confirm the sale of mortgaged fixed assets in favour of prospective buyer at a price of Rs. 36 lacs on cash down payment basis. The petitioner-company never submitted any proposal nor he submitted any proposal better than the proposal of purchaser along with the terms of payment. It seems that the petitioner-company was no more interested in purchasing the unit. The action taken by the M.P.F.C. is fair and reasonable and their action cannot be said to be unreasonable or arbitrary or mala fide calling for an interference. The loan was advanced long back. Petitioner did not care to deposit to show his bona fide and intention to pay the loan amount. Petitioner has not challenged the sale proceedings in this writ petition. Conduct of the petitioner appears to be any how delaying the recovery. Thus, the action u/s 29 of the Act was absolutely proper, just and reasonable in the facts and circumstances of the case.

Having regard to the facts of the case and the legal principles abovenoted, the action of the M.P.F.C. to sell the unit In favour of purchaser-respondent No. 4 was valid and legal. Petition has no merit and is accordingly dismissed with cost.