

(2013) 10 CHH CK 0032
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 101 of 2009

M.P. Financial Corporation (CGSIDC Ltd.)	APPELLANT
Vs	
Brijesh Kumar Pugalia (dead) thr. L.Rs. and Others	RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : AIR 2014 Chh 39 : (2014) 2 BC 646 : (2014) 1 CG.L.R.W. 39 : (2014) 1 CGLJ 402 : (2014) 1 MPHT 9 : (2014) 1 MPJR 20

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Anup Majumdar and Mr. Kashif Shakil, for the Appellant; Adhiraj Surana, for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.—The Madhya Pradesh Financial Corporation (now Chhattisgarh State Industrial Development Corporation Limited) has filed the instant appeal under Order 43 Rule 1(a) of the Code of Civil Procedure, 1908 (hereinafter called as "CPC") challenging the order dated 24-4-2003 passed by 6th Additional District Judge, Raipur in Miscellaneous Case No. 25/99, whereby an application filed by the non-applicants/respondents herein under Order 7 Rule 11, CPC has been granted and the original application filed by the applicant/appellant herein has been returned for presentation of the same before the Court of the competent jurisdiction. Brief facts, necessary for disposal of this appeal, are thus:--

1.1. The appellant/Madhya Pradesh Financial Corporation filed an application u/s 31 of the State Financial Corporations Act, 1951 (henceforth "the Act of 1951") before the Additional District Judge, Raipur praying that an amount of Rs. 1,02,98,685.13 along with interest @ 15% be directed to be paid by the non-applicants/respondents herein.

1.2. Upon being noticed, the non-applicants/respondents filed an application

under Order 7 Rule 11 read with Section 151, CPC stating inter alia that since the amount in dispute exceeds the sum of Rs. 10,00,000/- and as per provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (henceforth "the Act of 1993") the jurisdiction to pass an order of recovery of the amount in dispute is vested in the Debts Recovery Tribunal constituted under the Act of 1993, therefore, the application, as framed and filed by the applicant/appellant u/s 31 of the Act of 1951, being not maintainable, and it be dismissed.

1.3. The Trial Court, by the impugned order, granted the application filed by the non-applicants/respondents under Order 7 Rule 11, CPC holding inter alia that under the provisions of the Act of 1993, jurisdiction to recover the amount exceeding Rs. 10,00,000/- vests in the Debts Recovery Tribunal, and, therefore, the application filed by the applicant/appellant u/s 31 of the Act of 1951 is not maintainable. The Trial Court directed for return of the application u/s 31 of the Act of 1951 for filing the same in the Court of competent jurisdiction.

2. Shri Anup Majumdar and Shri Kashif Shakil, learned Counsel appearing for the appellant would submit that the Trial Court has committed grave illegality in holding that the Trial Court has no jurisdiction u/s 31 of the Act of 1951 to direct for repayment of the amount in dispute. They would further submit that by virtue of Section 34(2) of the Act of 1993, the provisions of the Act of 1993 shall be in addition to, and not in derogation of the Act of 1951 and application filed by the appellant was maintainable being saved by Section 34(2) of the Act of 1993.

3. Shri Adhiraj Surana, learned Counsel appearing for the respondents, while supporting the impugned order, would submit that the impugned order does not warrant any interference by this Court.

4. In order to understand the controversy, it would be profitable to quote Section 31 of the Act of 1951 as well as Section 34 of the Act of 1993, which run thus:--

Section 31 of the Act of 1951:

31. Special provisions for enforcement of claim 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 installment 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 Transfer of Property Act, 1882 (4 of 1882) any officer of 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 its 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 enforcing the liability of any surety; 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 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.

Section 34 of the Act of 1993:

34. Act to have overriding effect.--(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

5. Thus, a bare perusal of Section 34 of the Act of 1993 would show that it consists of two parts. Sub-section (1) deals with the overriding effect of the Act of 1993 notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act of 1993. Whereas sub-section (2) makes it clear that it is intended to be in addition to, and not in derogation of, certain statutes; one of which is the Act of 1951. In other words, a bank or a financial institution has the option or choice to proceed either under the Act of 1993 or under the modes of recovery permissible under the Act of 1951. In the present case, the appellant/ Financial Corporation has invoked Section 31 of the Act of 1951, which provides for special provision for enforcement of claim by the Financial Corporation by filing its application before the Trial Court, i.e., District Judge, Raipur.

6. In AIR 2003 SC 2103 , the Supreme Court, while considering whether the proceeding for recovery initiated by U.P. Financial Corporation under the U.P. Public Moneys (Recovery of Dues) Act, 1972 is maintainable in view of Section 34 of the Act of 1993, held as under:--

9. Section 34 of the Act consists of two parts. Sub-section (1) deals with the

overriding effect of the Act notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Sub-section (1) itself makes an exception as regards matters covered by sub-section (2). The U.P. Act is not mentioned therein. The mode of recovery of debt under the U.P. Act is not saved under the said provision, i.e., sub-section (2) which is of considerable importance so far as the present case is concerned. Even a bare reading therein makes it clear that it is intended to be in addition to and not in derogation of certain statutes; one of which is the Financial Act. In other words, a bank or a financial institution has the option or choice to proceed either under the Act or under the modes of recovery permissible under the Financial Act. To that extent, the High Court's conclusions quoted above were correct. Where the High Court went wrong is by holding that the proceedings under the U.P. Act were permissible. The U.P. Act deals with separate modes of recovery and such proceedings are not relatable to proceedings under the Financial Act.

7. The similar question also cropped-up before the Bombay High Court in Maharashtra State Financial Corporation and etc. Vs. Devidas K. Virkar and Others etc., as to whether the debt recovery proceeding by the Corporation u/s 31 of the Act of 1951 can be made in light of the provision contained in the Act of 1993? The Bombay High Court, while holding that the debt recovery proceeding by the Financial Corporation u/s 31 of the Act of 1951 is saved by Section 34(2) of the Act of 1993, held as under:--

10. I am of the view that there is no need to refer this matter to the Larger Bench, as Hon''ble Supreme Court has interpreted Section 34 of the Debts Act, 1993 and after considering the whole scheme of the Act, including Sections 17, 18, 19 and 13 of the Debts Act, 1993 held that the financial institutions like MSFC have remedies for recovery of their dues, under both the Acts. If these remedies are available under the respective Acts, and which are not prohibited and not disputed by any party, there is no reason not to proceed with these matters, as pending in this High Court. The parties are not seeking any application or moving any application for transfer of these proceedings to the DRT under Debts Act, 1993. In view of this, the Court cannot compel them to proceed or transfer these applications to any other Forum, suo motu.

8. The Karnataka High Court also, while dealing with similar situation in Karnataka State Financial Corporation Vs. Sun Canning (P.) Ltd. and others, as to whether recovery of debt by the Karnataka State Financial Corporation constituted under the Act of 1951 is permissible after coming into force of the Act of 1993, clearly held that the debt recovery proceeding is maintainable u/s 31 of the Act of 1951 as under:--

10. This saving clause provided u/s 34(2) makes it clear that a provision is made in the Debts Recovery Act in addition to the provisions provided in the five Acts mentioned therein. Therefore, the jurisdiction vested in the authorities named in the special statute, viz., the Industrial Financial Corporation Act, 1948, the State

Financial Corporations Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984 and the Sick Industrial Companies (Special Provisions) Act, 1985 can be invoked notwithstanding the jurisdiction vested in the Debts Recovery Tribunal u/s 19 of the Act.

9. Thus, Section 34(2) of the Act of 1993 clearly provides that provisions of the Act of 1993 are in addition to, and not in derogation of the Act of 1951 and the financial institutions, like Madhya Pradesh Financial Corporation/the appellant herein, constituted under the Act of 1951 have remedy for recovery of the dues under both, the Act of 1951 and the Act of 1993, and if the Financial Corporation has resorted to the remedy available u/s 31 of the Act of 1951 for recovery of its debts/dues, it cannot be said that the application u/s 31 of the Act of 1951 is not maintainable by virtue of the provisions of Section 1(3) of the Act of 1993.

10. Thus, in view of the aforementioned reasons; it is held that the application filed by the appellant/Financial Corporation invoking u/s 31 of the Act of 1951 for recovery of its dues is maintainable and it is not barred by Section 1(3) of the Act of 1993. Hence, the Trial Court has committed grave legal error in holding that the application u/s 31 of the Act of 1951 was not maintainable and also in directing for return of the said application. In the result, the appeal is allowed. The impugned order dated 24-4-2003 passed by 6th Additional District Judge, Raipur in Miscellaneous Case No. 25/99 is hereby set aside. The Trial Court is directed to hear and decide the application u/s 31 of the State Financial Corporations Act, 1951 in accordance with law expeditiously preferably within a period of six months from today. The parties are directed to appear before the Trial Court on 25-11-2013.