
(2011) 09 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 18666 of 2009 and M.P. No. 2 of 2009

M/S. Lambda Elcot Limited, by Mr. K.V.B. Prasad, Promoter/
Managing Director, Plot No. 174, Developed Plot, Industrial
Estate, Perungudi, Chennai-600 096 APPELLANT

Vs

State Industries Promotion Corporation of Tamilnadu Limited RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

State Financial Corporations Act, 1951 — Section 29, 3

Citation : (2011) 09 MAD CK 0113

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : B. Ravi Raja, for the Appellant; Narmadha Sampath for SIPCOT, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The Petitioner has come forward to challenge a notice issued by the respondent State Industries Promotion Corporation of Tamilnadu Limited (for short SIPCOT), dated 12.8.2009. By the aforesaid notice, the Respondent informed the Petitioner that the Petitioner's request for One Time Settlement (OTS) was examined as per the High Court's order dated 25.11.2008 and considered the waiver of interest on penal interest and additional interest to an extent of Rs. 131.64 lakhs. The Respondent agreed to release the document after the receipt of a sum of Rs. 85 lakhs which had been deposited in the High Court and that now the amount has been released by the High Court in favour of the SIPCOT. Therefore, no due certificate and other documents will be released subject to the Petitioner agreeing for the said proposal without making any counter claims.

2. The writ petition was admitted on 14.9.2009. Pending the writ petition, in the

application for an interim direction, only notice was ordered. In the other application in M.P. No. 2 of 2009 claiming working sheets, no order was passed. Subsequently, in M.P. No. 1 of 2009, this Court after recording that the Registry had released the amount of deposit of Rs. 85 lakhs in favour of the Respondent SIPCOT, they were directed to issue no due certificate. However, the Petitioner's counsel was informed by the Respondent SIPCOT by a communication, dated 12.3.2010 regarding the Respondent's stand on the interim order. In the last paragraph of the said communication, it was stated as follows:

The One Time Settlement proposal was approved by the Board of SIPCOT, subject to certain conditions. The direction issued by the Hon'ble High Court relates to the conditions stipulated by the Board of SIPCOT at the time of approval of OTS proposal. We are therefore, placing the order of the High Court before the Board of SIPCOT and after approval by the Board we will be in a position to take further action.

Even that letter was issued without prejudice to the legal rights of the SIPCOT.

3. On notice from this Court, the Respondent has filed a counter affidavit, dated 11.12.2009. Mr. B. Ravi Raja, Learned Counsel for the Petitioner also filed a statement of loan account and payment claiming that the Respondent SIPCOT should refund a sum of Rs. 1,31,54,300/- as per their statement of calculation.

4. It must be noted that it is the second round of litigation by the Petitioner. The Petitioner moved this court with W.P. No. 19070 of 2006 to prevent the Respondent SIPCOT from selling the assets of the Petitioner as per the newspaper advertisement, dated 11.6.2006 without examining the proposal for OTS. This Court had refused to entertain the writ petition on the basis of the division bench decision in Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millenium Business Solutions Pvt. Limited and Another, , wherein in paragraph No. 18, it was observed as follows:

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind.

5. However, this Court had granted the relief in its order dated 24.7.2006 which contained in paragraphs 6 and 7 and it reads as follows:

6. Hence, I am of the view that in the light of the reasoning given by the Division Bench about One Time Settlement offer made by the Petitioner, no relief could be

granted to the Petitioner except directing the Respondent to keep the confirmation of the auction conducted on 26.06.2006 stayed for further one week so as to enable the Petitioner to approach the Respondent and sort out the matter between themselves. If no settlement is arrived at by the parties within that time, it is open to the Respondent to proceed with the auction proceedings in accordance with law.

7. With the above direction, the writ petition is disposed of...

6. Not satisfied with this order, the Petitioner had preferred a writ appeal in W.A. No. 1044 of 2006. Pending the writ appeal, since the Petitioner sought for stay of the judgment made by the learned judge, in the counter affidavit it was contended that the Petitioner was sanctioned Rs. 85 lakhs on 24.2.1993 for setting up a unit at Perungudi Industrial Estate for manufacture of Electronic equipments. But he had availed Rs. 46.19 lakhs only. The balance amount got elapsed due to non completion of the project. The Petitioner though commenced the production in December, 1995, failed to repay the installments as agreed. Hence a show cause notice dated 27.7.1996 was issued. Thereafter, an opportunity was given to clear the interest outstanding of Rs. 7.73 lakhs as on 31.3.1996 so as to consider the re schedulement. But the Petitioner had failed to clear the dues. The Respondent SIPCOT in the Boar meeting on 25.2.1998 had concluded that it was not possible to give any further concession and had decided to foreclose and recall the dues. When an action was initiated u/s 29 of the State Financial Corporation Act, (SFC Act), dated 27.7.1998, the Petitioner filed a writ petition in W.P. No. 12427 of 1998 challenging the said notice. This Court had recorded the statement of the petitioner's counsel and had granted time for settlement. Thereafter, a joint meeting was held on 18.9.1998, wherein the Petitioner was supposed to submit his OTS, but he did not come forward with concrete proposal and that W.P. No. 12427 of 1998 was dismissed on 8.2.2000. The writ appeal filed by the Petitioner was also dismissed.

7. Thereafter, the Respondent SIPCOT took possession of the mortgaged assets on 18.1.2001 to recover the dues u/s 29 and an advertisement was made on 25.1.2003. Once again, it was challenged by the Petitioner in W.P. No. 4074 of 2003 and got a restraint orders against the SIPCOT from selling the mortgaged assets. That writ petition was disposed of on 92.2004 giving liberty to the Petitioner to work out his remedy before the State Consumer Forum. Once again, a sale advertisement was published on 6.3.2004 inviting tenders. One of the parties by name M/S. Mettupakkam Foundations had quoted a sum of Rs. 50,11,002/-. He was requested to improve his offer. Since in the earlier writ petition, the Petitioner was given liberty to work out his right before the Consumer Forum, the Respondent did not proceed with the offer till the Petitioner moved the Consumer Forum in O.P. No. 226 of 1998 and the same was pending. However, the consumer forum dismissed the O.P on 18.1.2005. The original offered had improved his offer only by offering Rs. 51 lakhs. But the Board of the SIPCOT had decided to obtain a fresh valuation of the property. A fresh valuation

was done and the valuer had assessed the value of the primary assets at Rs. 197 lakhs. The Petitioner had paid Rs. 11.55 lakhs and the proposal was sent for approval. Since the property was valued and there was no steep increase in the realizable value of the mortgaged property, the Board had called for fresh tenders and had declined to approve the offer given by the Petitioner for OTS. As per the Board's decision, tenders were invited through the advertisement in the newspapers on 11.6.2006 fixing the last date on 26.6.2006. It is at this stage, the Petitioner had filed the writ petition in W.P. No. 19070 of 2006 referred to above.

8. At that time the confirming of auction alone was stayed by this Court. Therefore, the highest offer that was received was Rs. 306 lakhs and the outstanding of loan amount as on 30.11.2005 was Rs. 199 lakhs. Therefore, it was stated that in view of the existing value of the property, the Petitioner was not liable for OTS and the Board had rejected the offer. The division bench after hearing the parties had passed an interim order dated 28.3.2007, which is as follows:

Heard both sides.

2. Mr. P.S. Raman, the learned Additional Advocate General appearing for the Respondent - SIPCOT stated that the total amount due from the Appellant is around Rs. 2,05,00,000/- out of which Rs. 1,09,84,000/- has been received by the SIPCOT and the balance is around Rs. 95,00,000/- apart from the other expenses incurred by SIPCOT for maintaining the property.

3. Learned Counsel for the Appellant stated that without prejudice to their rights and contentions, the Appellant is depositing in court a further sum of Rs. 85,00,000/- by way of cheque bearing No. 652453 dated 21.3.2007 drawn on Indian Overseas Bank, Indira Nagar Branch, Chennai 20. The Learned Counsel also undertakes to deposit the balance amount in the court, if so directed.

5. Having regard to the payments already made and the further deposit of Rs. 85,00,000/- the Respondent - SIPCOT is directed to return the documents pertaining to the collateral security to the Appellant and allow the Appellant - company to use the factory premises for its business. The Learned Counsel for the Appellant undertakes that the factory premises will not be transferred and no encumbrance will be created in respect thereof till further orders from the court.

9. Subsequently, the writ appeal was disposed of by a final order dated 7.11.2008 by the division bench presided by A.K. Ganguly, C.J. (as he then was) and in paragraphs 15 to 20, it was observed as follows:

15. Since the charging of interest on penal interest is stated to be not permissible, this Court can only observe that any attempt on the part of the Respondent in claiming such a component viz., interest on penal interest as against the Appellant cannot be permitted.

16. Even in that respect taking note of the statement produced before us where

interest on penal interest is stated to have been claimed by the Respondent in a sum of Rs. 32,08,996/-, we can only direct the Appellant to approach the Respondent for appropriate relief. It is not for this Court to go into the correctness or otherwise of any specific item if claim made by the Respondent towards the loan account of the Appellant. In this context, we are taking note of the subsequent development that had taken place after the filing of this writ appeal. The Appellant has now made substantial payments viz.a sum of Rs. 95,00,800/- on 02.01.2007, directly to the Respondent and deposited a sum of Rs. 8500,000/- on 28.3.2007 as per the order of this Court dated 21.3.2007.

17. Therefore, taking note of the submission made by the learned Additional Advocate General, while permitting the Appellant to continue to retain its possession of the premises as ordered by this Court dated 21.3.2007, we only direct the Respondent to hand over all the documents pertaining to the Appellant's manufacturing unit.

18. The Registry is also directed to pay a sum of Rs. 85,00,000/deposited to the account of this writ appeal to the Respondent and the accrued interest of Rs. 5,61,316/- or any other sum to be paid over to the Appellant.

19. The Appellant is also permitted to approach the Respondent by way of a representation as directed by the learned single judge. It is for the Appellant to seek for adjustment of any sum payable by it or for refund of any amount including its claim for refund or interest on penal interest, if any, appropriated by the Respondent. If any such representation is made by the Appellant within a period of Two weeks from the date of receipt of a copy of this order, the Respondent shall consider the same and pass appropriate orders expeditiously preferably within a period of four weeks from the date of filing of such representation.

20. The writ appeal is disposed of on the above terms...

10. Taking advantage of the liberty given to the Petitioner, the Petitioner sent a registered letter and asked for refund of difference in interest and also the deposit of Rs. 85 lakhs made by them to the credit of the writ appeal. It was also stated that the demand for refund of the amount was made without prejudice to their moving Supreme Court. Subsequently, the Special Leave to Appeal (Civil) No. 3034 of 2009 came to be disposed of by an order dated 16.02.2009 by the Supreme Court with the following observations:

It is stated at the Bar that the representation made by the Petitioner pursuant to the impugned judgment of the High Court has not been responded to by the Respondent herein.

We are sure that the Respondent, being a "State" within the meaning of Article 12 of the Constitution of India, shall comply with the directions issued by the High Court within a reasonable time, if not already complied with.

With the aforementioned observations, this SLP is disposed of.

11. The Respondent pursuant to the direction gave a reply by a communication, dated 24.3.2009. It is necessary to set out the entire reply which is as follows:

1. The request of your company has been placed before the Board of SIPCOT at its meeting held on 5.2.2009. The Board had perused the term loan account details of the company including remittances from your company. It was observed that the accounting procedures adopted in other cases were scrupulously followed in your Term Loan Account also

b. So far your company has remitted Rs. 152.78 lakhs on various dates apart from deposit of Rs. 85 lakhs in the Court.

c. The amounts remitted to SIPCOT have been properly accounted for and as per the OTS proposals involving in other cases, we have proposed the waiver of an amount of Rs. 131.64 lakhs which is inclusive of interest on penal interest amounting to Rs. 41.75 lakhs as per the order of the Hon"ble High Court. You may please note that the Hon"ble High Court has ordered the waiver of interest on penal interest alone amounting to Rs. 41.75 lakhs. However, on par with other OTS proposals we propose the waiver of an additional amount of Rs. 89.89 lakhs.

d. After the receipt of Rs. 85.00 lakhs you have deposited in the Court, we are agreeable to release the title deeds without any further claim from SIPCOT. No Due Certificate will be issued thereafter subject to your company agreeing for our proposal without any counter claims.

e. The interest accrued on the court deposit can also be realized from Court by your company. Only the deposit of Rs. 85 lakhs will be realized by SIPCOT.

If you are agreeable for this proposal, you may sign a copy of this letter in token of having accepted our terms and conditions within 15 days from the date of receipt of this letter.

12. Despite this, the Petitioner did not agree for the proposal and once again revived his demand for refund of interest along with the deposit. It is only in furtherance of such continued demand, the present impugned order came to be passed on 12.08.2009 which has become the subject matter of the present writ petition.

13. It can be seen from the above narration of the facts that the Petitioner has been continuously filing writ petition after writ petition preventing the Respondent from securing their loan by bringing the property which is a secured asset for sale towards realization of dues towards SIPCOT. The Petitioner has been given several opportunities by this Court. Yet they are persisting their claim on the basis of the old offer for OTS. The Petitioner has not made out any case for refunding the said amount. The terms and conditions of loan transactions are clearly covered by the agreement between the parties and that cannot be varied by the order of this Court.

14. It must be noted that the Respondent SIPCOT has been declared as a State

Financial Corporation under the SFC Act by the notification issued by the Government of India. Ms. Narmadha Sampath, learned Standing Counsel for SIPCOT placed reliance upon a judgment of the Supreme Court in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, for contending that the contract between the Petitioner and the SIPCOT is not a statutory contract. Therefore, this Court cannot deal with the contract and seek to improve the condition of contract in a writ petition under Article 226 of the Constitution. The learned counsel referred to the following passage found in paragraph 11 of the said judgment which reads as follows:

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the Appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

15. The learned Standing counsel further referred to a judgment of the Supreme Court in State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., with reference to the scope of jurisdiction under Article 226 in respect of breach of contract and in paragraph 7, it was observed as follows:

7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the Appellants would justify breach of contract by the Respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising

prerogative of issuing writs.

16. Further, the learned Standing Counsel referred to a judgment of the Supreme Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, for contending that it is only in case of statutory violation on the part of the SIPCOT or only when they had acted unfairly or unreasonably, the question of jurisdiction under Article 226 can be invoked. She also referred to the following passages found in paragraphs 3,12 and 10 from the said judgment which reads as follows:

3. With great respect to the learned judges who allowed the writ petition we feel constrained to say this: a reading of the judgment shows that they have not kept in mind the well-recognized limitations of their jurisdiction under Article 226 of the Constitution. The judgment reads as if they were sitting as an appellate authority over the Appellant-corporation. Not a single provision of law is said to have been violated...

12. While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the High Court while reviewing the administrative action is not that of an appellate court. The judgment under appeal precisely does that and for that reason is liable to be and is herewith set aside.

10. It is true that the Appellant-corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose - the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialization at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of facts shows that the Respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the corporation at bay. Approaching the courts through successive writ petitions are

but a part of this game. Another circumstance. These corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered - nay, determined, in the light of all these circumstances. Indeed, in a matter between the corporation and its debtor, a writ court has no say except in two situations: (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

17. The learned Standing Counsel also referred to a judgment of the Supreme Court in *Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others*, wherein all the previous case laws were set out and the norms for exercise the jurisdiction under Article 226 were laid down. Hence it is necessary to refer to the relevant passage found in paragraph 19, which reads as follows:

19. From the aforesaid, the legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution do 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.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) 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 businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

....

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

18. The learned Standing Counsel further referred to a judgment of the Supreme Court in Punjab Financial Corporation v. Surya Auto Industries reported in (2010) 1 SCC 297, wherein the Supreme Court had reviewed all the previous case laws and also held that the judgment in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, cannot be a good law and the principles set out therein will only lead further delay in realization of dues by the corporation in the sale of assets. To that effect, the learned standing counsel referred to the following passages found in paragraphs 20 to 22 of the said judgment, which reads as follows:

20. Commenting upon the judgment in Mahesh Chandra v. U.P. Financial Corpn.³, the three-Judge Bench observed: (Jagdamba Oil Mills case⁷, SCC pp. 507 & 508, paras 15 & 17-18)

15. The view in Mahesh Chandra case³ appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action u/s 29. Procedure to be followed, needless to say, has to be observed. 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. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in Gem Cap case⁴ appears to be more in line with the legislative intent. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. (emphasis supplied) As the facts in the present case show, not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight of by the courts below. 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. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in Mahesh Chandra case³ the matter has been decided.

* * *

17. The aforesaid guidelines issued in Mahesh Chandra case³ place unnecessary restrictions on the exercise of power by 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. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra case³ will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

18. The subsequent decisions of this Court in Gem Cap⁴, Naini Oxygen⁵ and Micro Cast Rubber⁶ run counter to the view expressed in Mahesh Chandra case³. In our opinion, the issuance of the said guidelines in Mahesh Chandra case³ is contrary to the letter and the intent of Section 29. In our view, the said observations in Mahesh Chandra case³ do not lay down the correct law and the said decision is overruled.

21. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established u/s 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit de hors the financial implications of such exercise. The Corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the Corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests.

22. The relationship between the Corporation and borrower is that of creditor and debtor. The Corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the Corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair. The court cannot sit as an appellate authority over the action of the Corporation and substitute its decision for the one taken by the Corporation.

19. Further, on the exercise of the power under Article 226, the Supreme Court has held that the power cannot be invoked just to enable a person to receive the loan facilities by thwarting the recovery proceedings. It is necessary to refer to a judgment of the Supreme Court in Orissa State Financial Corporation v. Umesh Chandra Dani, (2001) 10 SCC 522 . The following passage found in paragraph 4 may be usefully extracted below:

4. In a number of cases this Court has laid down that the powers of the High Court under Article 226 of the Constitution of India in the matter of recovery of

the dues by the State Financial Corporation under the provisions of the Act are limited to considering whether there is any statutory violation on the part of the State Financial Corporation or whether the Financial Corporation has not acted fairly and reasonably. The power under Article 226 is not to be invoked just to enable the person who has received loan facilities to thwart the recovery proceedings. In the present case we find that the High Court has not recorded any finding that the action of the Financial Corporation, in recalling the loan, is in violation of the provisions of the Act or it suffers from the vice of arbitrariness or is unreasonable. In these circumstances, we are unable to uphold the impugned judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside...

20. In the light of the above, there is no case made out to entertain the writ petition. The impugned order does not suffer from any vices of arbitrariness. Hence the writ petition will stand dismissed. However, under the facts and circumstances of the case, there will be no order as to costs. Consequently connected miscellaneous petition stands closed.