

(1969) 09 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 155 of 1968

M/S Rajdhani Enterprises

APPELLANT

Vs

Haryana Financial Corporation and another

RESPONDENT

Date of Decision : 12-09-1969

Acts Referred:

State Financial Corporations Act, 1951 — Section 31

Citation : (1969) 09 P&H CK 0038

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Advocate : V.P. Gandhi, for the Appellant; K.L. Kapur, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—This first appeal is directed against the order, dated 21st June, 1968, of the learned District judge, Gurgaon, by which he rejected an application made by the Appellant for setting aside an ex parte order, dated 2nd May, 1968. It arises out of the following facts:

2. The Respondent (Haryana Financial Corporation) made an application, claiming to recover a certain amount from Messrs Rajdhani Enterprises Ltd., u/s 31 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). The Defendants contested the claim. The evidence of the parties was concluded and the case was fixed for final arguments before the District Judge on 16th April, 1968. Counsel for the judgment-debtors requested for an adjournment stating that the case would be compromised by the next date. This request was acceded to and the case was fixed for arguments on 27th April, 1968. On this adjourned date, the judgment-debtors or their counsel failed to appear. The District Judge heard the arguments of the Appellant's counsel and adjourned the case to 2nd May, 1968 for announcement of orders. On that day he passed an ex-parte order in favour of the Petitioner. On 1st June, 1968 the Petitioner ("decree holder") took out execution of the order. On the same day, the "judgment-debtors" made an application for setting aside the ex-parte order

on the ground that there was sufficient cause for non-appearance of the Appellants and their counsel. The District Judge has rejected that application on the ground that the case was decided on merits and it was no use re-hearing the arguments of the judgment-debtors. Hence this appeal by the "judgment-debtors".

3. A preliminary objection been has taken by Mr. K.L. Kapur, learned Counsel for the Respondent, that this appeal is time-barred. My attention has been drawn to Sub-section (9) of Section 32 of the Act, which prescribes 33 days" limitation for filing an appeal to the High Court against an order made under Sub-section (5) or Sub-section (7) of Section 32. Viewed in this manner, maintains Mr. Kapur, the appeal is time barred by 23 days.

4. In reply, Mr. V.P. Gandhi, learned Counsel for the Appellant maintains that the order appealed against does not fall under Sub-section (5) or Sub-section (7) of Section 32 of the Act, but this is an order made under Order 9, Rule 13, CPC Code, and, as such, was appealable and the period of limitation prescribed for such an appeal is 90 days from the date of the order. Looked at from this angle, says Mr. Gandhi, the appeal was fully within time. He has also stressed that no objection was taken by the other side with regard to the competency of the application made by him under Order 9, Rule 13, CPC Code, for setting aside the ex parte order. It is therefore, says the counsel, now too late in the day for the Respondent to say that this appeal is filed under Sub-section (9) of Section 32 of the Act and, as such, is time-barred.

5. The material part of Section 32 of the Act reads as follows:- "32. Procedure of District Judge in respect of applications under

Section 31.

(1) When the application is for the reliefs mentioned in Clauses (a) and (c) of Sub-section (1) of Section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2).....

(3).....

(4) At the same time as he passes an order under Sub-section (1), the District Judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under Sub-sections (2) and (4), the District Judge shall forthwith make an ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (Act v. of 1908), in so far as such provisions may be applied thereto.

(7) After making an investigation under Sub-section (6), the District Judge may-

(a) confirm the order of attachment and direct the sale of the attached property ;

(b).....

(c).....

(d).....

(8).....

(9) Any party aggrieved by an order under Sub-section (5) or Sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereof as it thinks proper.

(10).....

(11).....

It will be clear from a study of Sub-section (6) quoted above, that the District Judge has to apply the provisions of the CPC only in so far as the investigation of the claim of the Financial Corporation is concerned. Once the investigation is completed in accordance with the Code of Civil Procedure, the order of adjudication thereon is to follow under any of the clauses of Sub-section (7) of Section 32 of the Act. That is to say, even if the investigation made by the District Judge in accordance with the provisions of the Code of Civil Procedure, culminates in an ex-parte adjudication on merits, the order will still be an order under the aforesaid Sub-section (7). It will not be a "decree" as defined in Section 2 of the Code, because (i) it is not an adjudication given in a suit but in special proceedings commenced by an application under the Act; and (ii) it is in adjudication from which an appeal lies u/s 32 (9) of the Act, as an appeal from an order. No application therefore, under Order 9, Rule 13 CPC Code, was competent, the ex parte order not being an ex-parte decree. For the same reason, the order rejecting the application to set aside the ex-parte order was not appealable under Order 48, Rule 1(d), of the Code. A right of appeal is not a mere matter of procedure. It is a substantive right, which can be conferred only by the express and clear words of a statute of rules framed thereunder. If the right is the creature of a special statute, its scope must be determined by

reference to the provisions of that statute only. The Act confers a special jurisdiction on the District Judge. Section 32(6) of the Act permits the application of the provisions of the CPC for a limited purpose only, viz.. the investigation of the claim of the Financial Corporation. The District Judge is not required to give his adjudication under the Act as an ordinary Civil Court with all the incidents of that jurisdiction, including the right of appeal. Thus considered, it is clear that the only remedy available to the aggrieved party was to file an appeal u/s 329) of the Act against the ex parte order within the prescribed period of 30 days from the date of the order.

7 However, this appeal could be treated as an appeal under Sub-section (9) of Section 32 from the ex parte order whereby the claim of the Corporation was adjudicated. That order was passed by the District Judge on 21st June, 1968. Application for obtaining copies of the orders was made on 26th July, 1968. The copies were ready and delivered on 1st August, 1968. The appeal was presented in this Court on 13th August, 1968. After deducting the time taken for obtaining copies of the orders, it will be seen that the appeal is time-barred by 23 days. Thus, the appeal is liable to be dismissed on this preliminary ground alone

8. On merits also. I do not find any force in this appeal. The case was fixed for final arguments on April 27, 1968, at the request of the judgment debtor. It was first called for hearing at 11 A.M. When the counsel for the Financial Corporation was present but that of the Respondent judgment debtor was absent. It was then adjourned to 2-30 P.M. in the hope that the Respondent or his counsel would turn up. At 2:30 P.M. also, the Respondent and his counsel were absent. Thereupon, the Court heard the counsel for the decree holder and postponed the announcement of the orders to 2nd May, 1968. At 18-05 P.M., an ordinary telegram was sent from Delhi on behalf of the counsel for the judgment debtor that he was ill. This telegram was received by the District Judge after Court hours at 7-18 P.M. It is significant to note that thereafter also the "judgment-debtor" slept over the matter. It was only on 1st May, 1968 when the Corporation took out execution of the order that the judgment-debtor filed the application for setting aside the ex parte decision. The conduct of the judgment debtor prior to the decision during the investigation of the claim, also, shows that every attempt was made to delay matters. Notice of the claim-petition was given to the judgment-debtor for 9th June, 1967. He filed the written statement on 26th August, 1967. The case was set down for 1st October, 1967. The replication was filed on 18th November, 1967. It was then adjourned at the Appellant's request to 12th December, 1967. The issues were framed. The case was then adjourned to 24th February, 1968 for evidence. It was then adjourned to 2nd April, 1968 for Appellant's evidence. Appellant was absent on that day also, Ex parte proceedings were taken. The case was then fixed for arguments on 16th April, 1968. On this day, the Appellant's counsel appeared and requested for an adjournment on the ground that the case would be compromised by the next date. The request was granted and the case was adjourned to 27th April, 1968 for arguments. On this date, the Appellant again absented himself. His counsel

also did not turn up. It was for the Appellant to make arrangements for informing the Court about the illness of their counsel or for the appearance of another counsel on the date fixed. In the circumstances, the Court was justified in not putting further premium on this procrastination, delay and laxity on the part of the Appellant. In other words, there was no sufficient cause for setting aside the ex-parte decision.

9. For the foregoing reasons, I would dismiss this appeal with costs. Counsel's fee: Rs. 50/-.