
(1973) 08 KAR CK 0024

In the Karnataka High Court

Case No : Civil Pevn. Petition No. 1247 of 1973

Mysore State Financial Corporation

APPELLANT

Vs

Kshetrapala Rice and Flour Mills and another

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Citation : AIR 1974 Kar 26

Hon'ble Judges : Jagannatha Shetty, J

Bench : Single Bench

Advocate : P. Subramanyam and R.V. Vasantha Kumar, for the Appellant; P. Raghavendra Rao and S.V. Shama Rao, for the Respondent

Judgement

Jagannatha Shetty, J.—This revision petition raises a short but not very easy point on the State Financial Corporations Act, 1951 (called shortly the Act").

2. The facts leading to this petition are: The Mysore State Financial Corporation ("the Corporation") filed an application under Cl. (a) of sub-section (1) of Section 31 of the Act for the sale of the properties belonging to the respondents who are the owners of Sri Kshetrapala Rice and Flour Mills. Saligrama. The said properties were hypo the cated in favour of the Corporation. The Corporation further filed an interlocutory application under sub-section (1) of Section 32 along with an affidavit for an ad interim order of attachment of the hypothecated properties. The learned District Judge on 14-12-1972 passed an ad interim order of attachment. Then notice was taken to the respondents. They filed objections, inter alia, contending that the learned District Judge has no jurisdiction to pass an ad interim order attaching the security as the application of the Corporation was filed under Cl. (a) of sub-section (1) of Section 31 and not under Cls. (a) and (c) of sub-section (1) of Section 31. Those objections were upheld and I.A. I was dismissed by the order dated 27-3-1973 which is impugned in this revision petition.

3. The learned Judge was of the opinion that the interim order of attachment

could not be made unless the main application of the Corporation was made for the reliefs both under Cls. (a) and (c) of sub-section (1) of Section 31, as Section 32 states that "when the application is for the reliefs mentioned in Cls. (a) and (c) of sub-section (1) of Section 31, the District Judge shall pass an ad interim order attaching the security".

4. The correctness of this decision is seriously challenged before me. Section 31 so far as it is relevant provides:

31. (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof 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 any officer of the Financial Corporation, generally or specially authorised by the Board in its 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 transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction re-straining 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) * * *?

Section 32 so far as it is relevant provides:

32 (1). Where the application is for the reliefs mentioned in Cls. (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 passed 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 the 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, 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) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in its behalf :

Provided that when making an order under Cl. (e), the District Judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit :

Provided further that unless the Financial Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.--

5. u/s 31 the Corporation, whenever there is a breach of any agreement by an industrial concern; may apply to the District Judge, for one or more of the reliefs provided under Cls. (a) to (c) of the said section. It may either apply for an order for sale of the property pledged, mortgaged, hypothecated or for transferring the management of the industrial concern to the Corporation or 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, where such removal is apprehended. It is seen therefore, that the Corporation can ask for any one of the three different reliefs. Section 32 provides for the procedure to be followed by the District Judge whenever any application is made

u/s 31. The District Judge has no discretion to refuse to make an interim order. If the application of the Corporation is made for the relief under Cl. (b) of Section 31 (1), the District Judge shall grant an ad interim injunction under sub-section (2) of Section 32, *cetera* why its management should not be transferred to the Corporation. Here, there is no question of making an order of attachment. Such an order of attachment shall be made under sub-section (1) of Section 32. It is true that subsection (1) of Section 32 refers to the application of the Corporation made for the two reliefs provided in Cls. (a) and (c) of Section 31 (1). The relief under Cl. (c) is not ancillary to the relief under Cl. (a). It is an independent relief and also distinct and different. The relief under Cl. (a) is for the sale of the security whereas the relief under Cl. (c) is for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or equipment, where such removal is apprehended. If the Corporation has no such apprehension, it need not make an application under Cl. (c). It may make an application only for the relief under Cl. (a). Can it be said in such a case that the District Judge has no jurisdiction to pass an order of ad interim attachment? A bare reading of Section 32 (1) may lead to an answer that the District Judge has no jurisdiction unless the application of the Corporation was made for both the reliefs under Cls. (a) and (c) of Section, 31 (1).

6. The argument in favour of such a construction hangs on the frail peg of unskilful draftsmanship. But considering the nature, scope and effect of Sections 31 and 32, I entertain no doubt whatever, that the intention of the Parliament is to read the word "and" as "or" in Section 32 (1) of the Act. It is a well-known canon of construction of statutes. In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the Legislature it may be necessary to read "and" in place of the conjunction "or", and vice versa. (See Maxwell on Interpretation of Statutes, 12th Edition, page 232).

7. For the confirmation of my view, I may refer in a little more detail to the provisions of Section 32. That section confers no discretion on the District Judge in the matter of making an order of attachment. After making an ad interim order of attachment of the security, the District Judge shall issue notice to the industrial concern calling upon it to show cause why the ad interim order of attachment should not be made absolute. (See Section 32 (4)). If no cause is shown on or before the date specified in the notice, the District Judge shall forthwith make the ad interim order absolute and direct the sale of the attached property. (See Section 32 (5)). It is therefore obvious that the property to be sold must be under an attachment. If the industrial concern shows cause against the attachment then the District Judge shall proceed to investigate its claim under subsection (7) of Section 32. He may confirm the order of attachment and direct the sale of the attached property or vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property. He may even release the property from attachment in which case, there cannot be an order for sale of the property. In view of these provisions, it cannot reasonably be contended that the property

could be sold without there being an order for its attachment under sub-section (1) of Section 32. Even if the application is only for the sale of the property of the industrial concern, the District Judge shall pass an ad interim order attaching the security and proceed thereafter to investigate the claims, if any. from the industrial concern and sale of the security under the provisions of sub-sections (4) to (7) of Section 32. Therefore, I have perforce to read the beginning of Section 32 (1), "when the application is for the reliefs mentioned in Cls. (a) and (c) of sub-section (1) of Section 31" as "when the application is for the reliefs mentioned in Cl. (a) or (c) of sub-section (1) of Section 31....."

8. The view taken by the District Judge is clearly erroneous and calls for Interference in my revisional jurisdiction.

9. In the result this revision petition is allowed, the order impugned is set aside and the ad interim order dated 14-12-1972 attaching the security is restored with a direction to the learned District Judge to proceed in accordance with the provisions of sub-sections (5) (6) and (7) of Section 32 of the Act and dispose of the matter in accordance with law.

10. In the circumstances of the case, I make no order as to costs.