

(2003) 03 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 37209 and 37907 of 2000, 24452 of 2001 and 13354 and 16614 of 2002

N. Narasimhaiah

APPELLANT

Vs

Karnataka State Financial Corporation and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Constitution of India, 1950 — Article 300A

Contract Act, 1872 — Section 128

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

Citation : (2003) 5 KarLJ 164

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : L.M. Chidanandayya, in W.P. Nos. 37209 and 37907 of 2000, A.G. Shivanna, in W.P. No. 24452 of 2001, B.S. Srikantaiah and B.S. Radhanandan, in W.P. No. 13354 of 2002, M.C. Jayakirthi appaji and H.S. Sathish Kumar, in W.P. No. 16614 of 2002, for the Appellant; K. Gopala Hegde, for Respondent-1 in W.P. Nos. 37209 and 37907 of 2000, 24452 of 2001, 13354 and 16614 of 2002, B.N. Jayadeva, for Respondent-2 to 4 in W.P. No. 37209 of 2000, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—These cases involving a common question of law are heard together by consent. The facts of each of these cases are given below briefly.

Re: W.P. NOS. 37209 and 37907 of 2000

1.1 An industrial concern by name A.P. Rocks Private Limited borrowed certain amount from the Karnataka State Financial Corporation, the first respondent ("KSFC" for short). The petitioners in these two petitions viz., N. Narasimhaiah and K. Rajan offered their respective properties bearing No. 59 (old No. 55), Annammadevi Temple Extension, Division No. 22, Subedar Chatram Road, Bangalore and House No. 49, House list Khata No. 100A, Mannarayana Palya, Cholanayakanahalli Village, Kasaba Hobli, Bangalore North Taluk, as collateral security in favour of KSFC, as guarantors for repayment of the amounts

advanced to A.P. Rocks Private Limited. As the borrower committed default, KSFC passed an order dated 20-11-2000 u/s 29 of the State Financial Corporations Act, 1951 (for short, "SFC Act") directing that possession of the said two properties belonging to the petitioners be taken over. Feeling aggrieved, the petitioners have filed these petitions praying that the said order dated 20-11-2000 be quashed and seeking a direction to KSFC (first respondent in W.P. No. 37209 of 2000 and sole respondent in W.P. No. 37907 of 2000) not to take possession of the said properties.

Re: W.P. No. 24452 of 2001

1.2 M/s. Rockwave Exports (Private) Limited, the second respondent in the petition, secured financial assistance from KSFC (first respondent) in the form of subscription to non-convertible privately placed debentures issued by second respondent. The petitioner-Veerarwamy was one of the sureties for repayment and he mortgaged his property bearing No. 288/38, Khata No. 312/273, Malavagappa Village, Nidige Hobli, Shimoga District in favour of KSFC, as collateral security. When the borrower committed default by failing to redeem the debentures issued, KSFC issued a notice dated 15/16-5-2001 to the borrower and all sureties stating that it has decided to take action (possession of property) u/s 29 of the SFC Act. Petitioner has filed this petition for quashing the said communication dated 15/16-5-2001 and seeking a declaration that KSFC has no power to proceed against a guarantor or the property given as security for the dues of principal debtor u/s 29 of the SFC Act.

Re: W.P. Nos. 13354 and 16614 of 2002

1.3 M/s. Eagle Constructions (second respondent in W.P. No. 16614 of 2002) is a borrower from KSFC (first respondent in both the petitions). B.S. Ramanna (petitioner in W.P. No. 16614 of 2002 and second respondent in W.P. No. 13354 of 2002) mortgaged his property bearing No. 86 (Katha No. 747), K.R. Puram, Bangalore South Taluk mortgaged the said property in favour of KSFC as security for the repayment of the amount advanced to Eagle Constructions. By order dated 25-2-2002 passed u/s 29 of the SFC Act, KSFC has directed that the possession of the said property be taken over for recovery of the amount due by Eagle Constructions, as the borrower had committed default in paying the amounts due by it. Thereafter, KSFC informed B.S. Ramanna by letter dated 26/28-2-2002 about the seizure order dated 25-2-2002 and stated that KSFC will take further action for recovery. The petitioner in W.P. No. 13354 of 2002 has sought quashing of the seizure order dated 25-2-2002 passed by KSFC u/s 29 of the SFC Act authorizing its officers to take possession of the said property.

1.4 Petitioner and respondents 3 to 5 in W.P. No. 13354 of 2002 are the sons of B.S. Ramanna. The petitioner in W.P. No. 13354 of 2002 has alleged that the said property is the ancestral property of B.S. Ramanna and his four sons (petitioner and respondents 3 to 5) and B.S. Ramanna has only a one-fifth share therein; that B.S. Ramanna created an equitable mortgage over the said property in

favour of KSFC without their consent and such mortgage cannot bind the right, title, share and interest of the petitioner and respondents 3 to 5, and that a partition suit filed by the petitioner in regard to the joint family properties including the mortgaged property. The petitioner has sought quashing of the letter dated 26/28-2-2002 threatening further action.

Contentions of petitioners

2. The petitioners have raised the following three contentions, to challenge the action of KSFC.--

(i) Section 29 of the SFC Act gives the right to a State Financial Corporation, (a) to take over management and/or possession of the borrower industrial concern, and (b) to transfer by way of lease or sale and realize the property pledged, hypothecated or assigned to it. Section 29 does not empower a State Financial Corporation ("SFC" for short) to take possession or management of the property of the surety. Therefore, a State Financial Corporation has no power to take possession" of a mortgaged by the surety in its favour.

(ii) In respect of a loan advanced to an industrial concern, repayment of which has been guaranteed by a surety, the State Financial Corporation should first proceed against the borrower (industrial concern) and only when it is unable to recover the dues from the industrial concern, it can enforce the liability of the surety.

(iii) The power given to a State Financial Corporation to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned is only with reference to the property of the industrial concern (borrower) and not in respect of a property of the surety. Therefore, the State Financial Corporation cannot lease or sell the property secured by the surety u/s 29 without intervening of the Court. It can enforce the liability of the surety or proceed against any property secured by the surety only by approaching the Civil Court or by initiating action u/s 31 of the SFC Act.

Contentions of KSFC

3. On the other hand, KSFC seeks to justify its action against the sureties u/s 29 of the SFC Act, by controverting the petitioners" contentions in the following manner:

(i) Section 29 of the SFC Act should be read and interpreted as empowering SFCs not only to take over the management and possession of the borrower industrial concern, but also to take over the management and possession of the property of the surety. Alternatively, the right to take the management and/or possession of the property secured by the surety should be read as incidental and adjunct to the power given to SFCs to realise the secured property by leasing or selling the same. Therefore, State Financial Corporation is entitled to take possession of the property mortgaged by the surety, in exercise of power u/s 29.

(ii) The liability of a principal debtor and surety being coextensive, there is no need to exhaust the remedies against the principal debtor before enforcing the liability of the surety. Therefore, the State Financial Corporation can enforce the liability of the surety, either simultaneously while enforcing the liability of the principal debtor, or even before or without taking action for recovery against the principal debtor.

(iii) The right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned in its favour, is given to SFCs, u/s 29. There is nothing in Section 29 to restrict such right only to the property of the borrower industrial concern. Therefore, the power to sell or lease, can be exercised over any property mortgaged or hypothecated or secured, either by the borrower or by the surety.

Statutory provisions

4. A reference to the relevant provisions is necessary before considering the rival contentions.

4.1 The object of the Act is to enable State Government to set up Corporations similar to Industrial Financial Corporation, to provide medium and long-term credit to industrial concerns (which may fall outside the normal activities of commercial Banks). The Act also confers special privileges on the SFCs in the matter of enforcement of claims against borrowers. Sections 29 to 32-G relate to recovery of the amounts due to a Financial Corporation.

4.2 Section 29 enables to recover the amounts by direct action without intervention of Courts. Sub-sections (1) and (4) of Section 29 of the SFC Act, which are relevant are exhausted below:

"29. Rights of Financial Corporation in case of default.--(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment 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, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

xxx xxx xxx(4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the

person entitled thereto",

4.3 Section 31 of the SFC Act provides for a speedy remedy for recovery against the industrial concern and the sureties, by approaching the District Judge. The said section is extracted below:

"31. Special provisions for enforcement of claims 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 instalment 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, 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

(aa) for enforcing the liability of any surety,

(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 32 of the Act prescribes the procedure of the District Judge in respect of applications u/s 31. Sub-section (1-A) of Section 32 provides that when the application is for the relief mentioned in Clause (aa) of Section 31(1), the District Judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced. Sub-section (4-A) provides if no cause is shown by the surety, on or before the date specified in the notice under Sub-section (1-A), the District Judge shall forthwith order the enforcement of the liability of the surety.

4.4 The term "industrial concern" used in Sections 29 and 31 refers to an industrial concern which is a "borrower" from SFC, or "principal debtor" of a SFC. Having regard to the provisions of Section 25 read with Section 2(c), an

"industrial concern" may become a debtor of a SFC either on account of (a) SFC lending any amount to the industrial concern, or (b) SFC guaranteeing any loans obtained by an industrial concern and making payment to the creditors of the industrial concern on its default, or (c) SFC subscribing to the Bonds or debentures of an industrial concern, or (d) SFC rendering any services to an industrial concern.

4.5 Section 32G enables the recovery of amount due to the Financial Corporation, as an arrear of Land Revenue.

Re: First contention

5. Section 29 of the SFC Act spells out the rights of State Financial Corporations to realise its dues without the intervention of Courts, when the borrower industrial concern commits default or breach. The intention is to save public money from unscrupulous or recalcitrant entrepreneurs/industrial concerns. There is no reference to the surety, anywhere in Section 29. The rights conferred on SFCs u/s 29 are:

"To take over the management or possession or both of the industrial concern as well as to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation".

Section 29 clearly states that the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern. It does not refer to taking over of management or possession of the property belonging to the surety, which has been secured in favour of Financial Corporation. The Legislature has been careful in conferring such power, only against the industrial concern and not against the surety. In the absence of an express statutory provision, the power to take over the property of another, without intervention of Court, cannot be matter of inference. Any attempt by a SFC to take possession of a surety's property, even if mortgaged, in the absence of a specific authority by law, will fall foul of Article 300A of the Constitution of India.

6. The next question is whether Section 29 can be read as also conferring power in regard to the property of the surety. If the language and words of the statute are plain and unambiguous, full effect must be given to them as they stand. The words "of a statute" should be understood in their natural, ordinary or popular sense and phrases should be construed according to their grammatical meaning, unless that leads to absurdity or unless there is something in the context, or in the objects of the statute, to suggest to the contrary (vide *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, . It is impermissible to add or subtract words from any provision of the statute in the garb of finding out the intention of the Legislature. A statutory provision should be construed in a manner which will subserve and advance the purpose of the enactment and does not defeat the purpose, nor in a manner so as to render any part of it surplus or otiose (vide *Maharashtra State Financial Corporation Vs. Jaycee Drugs*

and Pharmaceuticals Pvt. Ltd. and Others,).

7. In P.K. Unni Vs. Nirmala Industries and others [OVERRULED], the Supreme Court cautioned that the Courts must, while interpreting a statutory provision, proceed on the assumption that the Legislature did not make a mistake and that it intended to say what it said; that even assuming that there is a defect or omission in the words used by the Legislature, the Court would not go to its aid to correct or make up the deficiency, and that the Courts cannot add words to a statute or read words into it, which are not there, especially when the literal meaning of the words used produces intelligible result. Even if there is an omission by mistake, that cannot be corrected. The Supreme Court observed:

" "No case can be found to authorise any Court to alter a word so as to produce a casus omissus": per Lord Halsbury, *Mersey Docks and Harbour Board v. Henderson Brothers* (1888) 13 App. Cas. 595 : 4 TLR 703. "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there": *Crawford v. Spooner*, (1846) 6 Moo PC 1 : 4 MIA 179.

Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the Legislature. In doing so "a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases": Per Denning, L.J., as he then was, *Seaford Court Estates Limited v. Asher* (1949) 2 All ER 155".

8. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , a Constitution Bench of the Supreme Court stated the principles relating to interpretation of statutes thus, when considering Section 6(1) of the Land Acquisition Act, 1894:

"It is well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said.

In *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, , it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process

of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. The legislative *casus omissus* cannot be supplied by judicial interpretative process language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it".

9. We will now apply the aforesaid principles of interpretation to Section 29 of the SFC Act. The section specifically provides that the Financial Corporation shall have right to take over the management or possession or both of the industrial concern. The words are clear and unambiguous. If they are read literally or normally, they do not lead to any absurd result nor contradict the object of the Act. There is no defect in legislative drafting. There is no reference to surety's properties. The right to take over the management or possession or both is conferred only in regard to the industrial concern and not conferred in respect of the security offered by the surety. Therefore, it is not permissible to add words to Section 29 and read the section as authorising the Financial Corporation to take over the management or possession of the property of the sureties also. The first contention of petitioners is therefore upheld.

10. Section 31 was amended by Amendment Act No. 43 of 1985, by including in the list of reliefs that could be sought in an application before the District Judge, the relief of "enforcing the liability of any surety". If the Legislature had intended that the power to take possession of the surety's property should also be given to Financial Corporations, without the intervention of the Court, Section 29 would have also been amended to add the words "and the property of the surety" after the words "the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern". As Section 29 stands, the right conferred on the Financial Corporation, to take over the management or possession or both of the industrial concern, cannot be extended by any interpretative process, to take the possession of the property mortgaged by the surety.

11. The learned Counsel for the Corporation however relied on two decisions one of the Orissa High Court and the other of the Punjab and Haryana High Court, to contend that the Corporation can take possession of the property of the surety also u/s 29.

11.1 The first is the decision in *Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others*, , where the question whether the right conferred on a Financial Corporation u/s 29 extends over the property mortgaged by a guarantor, arose for consideration. The petitioner therein (surety) contended that the Corporation can only take possession of the property of the borrower and not the property of the surety. While rejecting the contention, the Orissa High Court held thus:

"A bare reading of the aforesaid provision makes it abundantly clear that the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by

way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. There is nothing in the aforesaid provision to indicate that the right u/s 29 of the Act is only in respect of the property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act. There cannot be any fetter on the power of the Corporation u/s 29 to take possession of the property of the surety also".

(emphasis supplied)

11.2 The second is the decision of the Punjab and Haryana High Court in *Jasbir Kaur and Another Vs. Punjab State Industrial Development Corporation Ltd., Chandigarh and Another*, wherein while repelling a contention that Section 29 cannot be invoked against the guarantor, it was held as follows:

"The basic purpose of Section 29 is to ensure a speedy recovery of the public dues. In order to achieve this objective the Corporation has been given the power to take over the industrial unit as also the property which is pledged/mortgaged or hypothecated etc. The provision is not restricted to the property belonging to the industrial concern. Any, property which has been mortgaged or pledged can also be taken over. Keeping in view the plain language and the dominant purpose of the provision, we find no reason to give it a restricted meaning. An interpretation which may defeat the object has to be avoided".

(emphasis supplied)

11.3 It is no doubt true that the said two decisions have held that the power to take possession u/s 29 is not restricted to the property belong to the industrial concern, but also extends to the property mortgaged by surety. But, both the decisions have ignored the specific wording of Section 29 which confers power to take possession or management only of the industrial concern. With great respect to the learned Judges, we dissent from the view expressed in those decisions.

Re: Contention No. (ii)

12. Section 128 of the Indian Contract Act provides that the liability of the sureties is coextensive with the liability of the principal debtor unless it is otherwise provided by the contract. It is not necessary for a creditor, before proceeding against the surety to demand payment from the principal debtor or sue the principal debtor, unless it is expressly stipulated for. The surety may be proceeded against, without first proceeding against the principal debtor. In *The Hukumchand Insurance Co. Ltd. Vs. The Bank of Baroda and Others*, a Division Bench of this Court held as follows:

"The question as to the liability of the surety, its extent and the manner of its enforcement have to be decided on first principles as to the nature and incidents of suretyship. The liability of a principal debtor and the liability of a surety which is coextensive with that of the former are really separate liabilities, although

arising out of the same transaction. Notwithstanding the fact that they may stem from, the same transaction, the two liabilities are distinct. The liability of the surety does not also, in all cases, arise simultaneously".

13. In the case of Bank of Bihar Ltd. Vs. Dr. Damodar Prasad and Another, , the Supreme Court held as follows:

"Under Section 128, save as provided in the contract, the liability of the surety is coextensive with that of the principal debtor. The surety thus becomes liable to pay the entire amount. His liability is immediate. It is not deferred until the creditor exhausts his remedies against the principal debtor".

14. The decision in Bank of Bihar Limited's case, supra, was followed in State Bank of India Vs. Messrs. Indexport Registered and others, . The Supreme Court held that the guarantor alone could be sued without suing the principal debtor so long as the creditor satisfies the Court that the principal debtor is in default. The Supreme Court further observed that if on principle a guarantor could be sued without suing the principal debtor, there is no reason, even if the decretal amount is covered by a mortgage decree, to force the decree-holder to proceed against the mortgaged property first and then to proceed against the guarantor.

15. In view of the above position, the second contention of the petitioners that the State Financial Corporation should first proceed against the industrial concern [borrower] and only if it is not able to recover the amount from the principal debtor, the creditor can proceed against the sureties has no merit, and is liable to be rejected.

Re: Contention No. (iii)

16. Learned Counsel for the KSFC submitted that applying the very principles of interpretation which were applied while dealing with contention No. (i), the latter part of Section 29 should also be interpreted literally, without reading any restrictions in to it. It is pointed out that Section 29 gives the right to the Financial Corporation to transfer by way of lease or sale and realize the property pledged, hypothecated or assigned to the Financial Corporation, without restricting such right only in respect of the property of the industrial concern/borrower. In the absence of any restrictive words, it is contended that the words "right to transfer by way of lease or sale and realize the property pledged, hypothecated or assigned to the Financial Corporation" would apply not only to the properties of the industrial concern/borrower, but any property pledged, hypothecated or assigned to the Financial Corporation, including that of a surety. It is submitted that if the right to transfer by way of lease or sale and realize the property pledged, hypothecated or assigned to the Financial Corporation, is to be read as referring only to the properties of the industrial concern/borrower and not to the properties secured by the surety/guarantor, it would amount to supplying the words "by the industrial concern" at the end of the section and that is not permissible.

17. On the other hand, learned Counsel for the petitioners contended that the power to transfer the secured assets by way of lease or sale, conferred on the Financial Corporation under Sub-section (1) of Section 29, when read with Sub-sections (4) and (5) of Section 29 and provisions of Section 31 of the Act, would make it clear that the power of sale and lease u/s 29(1), is intended to be exercised only in regard to the assets of the industrial concern and cannot be exercised in regard to the surety's property. The petitioners contended that exercising any right of sale or lease in regard to the property of a surety secured in favour of SFC would amount to enforcing the liability of surety, that enforcing the liability on the surety is contemplated and permissible u/s 31 of the Act, and not u/s 29, and that a reading Sections 29 and 31 in their proper perspective, would show that Section 29 is intended to vest certain, rights in the Financial Corporations to take direct action for recovery of dues insofar as the borrower [industrial concern], whereas, Section 31 is intended to provide for remedies that may be enforced by the Financial Corporations by having recourse to an application to the District Judge either against the industrial concern or against the surety. It is also pointed out that even if the intention of the Act is providing speedy recovery of public monies due to State Financial Corporations, that object can be achieved not only by having recourse to Section 29, but also by having recourse to Section 31; and the procedure to be followed in regard to an application u/s 31, set out in Section 32, makes it clear that the remedy u/s 31 is also an equally speedy remedy. Reliance is placed on the oft quoted passage from the decision of the House of Lords in Attorney General v. Milne (1914) All ER 1061, that if the language used, "has a natural meaning we cannot depart from that meaning unless, reading the statute as a whole, the content directs us to do so".

18. It is well-settled that every clause of a statute should be construed with reference to the context and other provisions of the Act, so as to make a consistent enactment of the whole statute relating to the subject-matter. To ascertain the meaning of a clause in a statute, the Court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. The interpretation of the words will be by looking at the context, the collocation of the words and the objects of the words relating to the matter. The words are to be viewed in relation to the whole context (vide the decision of the Constitution Bench in Gammon India Ltd. and Others Vs. Union of India (UOI) and Others,). In State of West Bengal Vs. Union of India, , the Supreme Court observed:

"The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs".

In AIR 2003 SC 2103 , the Supreme Court observed:

"all the parts of a statute or section must be construed together and every clause

of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature".

19. Section 29, as noticed above, deals with the rights of Financial Corporation in case of default by the industrial concern/borrower. Sub-section (4) deals with the consequences of action taken under Sub-section (1), that is recovery of all costs, charges and expenses incurred by the Financial Corporation for such action. Sub-section (4) very significantly uses the words "where an action has been taken against an industrial concern under the provisions of Sub-section (1)" and does not refer to any action taken against a surety under Sub-section (1). This gives a clear indication that the action that can be taken by the Financial Corporation u/s 29(1) is only against the industrial concern and not its sureties.

20. If the words "right to transfer by way of lease or sale and realize the property pledged, hypothecated or assigned to the Financial Corporation" are intended to apply to the property of the surety, possession of which continues to be with the surety, it will lead to anomalous results. If a movable property is hypothecated in favour of the Financial Corporation, the possession of such property would continue with the surety. The normal remedy of the creditor/hypothecated would be to cause the hypothecated property to be seized and sold and seek a direction for the proceeds of such sale to be applied in payment of the debt. If the Financial Corporation is only a hypothecatee without possession of the hypothecated movables, the Financial Corporation cannot obviously exercise the power of "lease" or "sale" in regard to such property. A transfer of movable property by way of "lease" or "sale" in such a situation would presuppose that the transferor will be able to deliver the actual possession of the property leased to the transferee to enable the transferee to enjoy the property. It is not in dispute that the Financial Corporations do not take physical possession of the security while sanctioning or disbursing the loan. Therefore, the power of sale or lease will necessarily be in the context of the assets of the industrial concern, possession of which the Financial Corporation is entitled to take u/s 29(1).

21. Another indication in Sub-section (1) of Section 29 that the right of sale and lease conferred under that sub-section relates only to the properties of the industrial concern and not that of the surety, is the use of words "as well as" between the first part, which enables the Financial Corporation to take over the management or possession or both of the industrial concern, and the second part which enables the Financial Corporation to transfer by way of lease or sale and realize the property that is secured in its favour. The use of the term "as well as" would indicate that the right conferred by the words succeeding it, is in regard to the subject-matter of the words preceding it. To put it differently, the use of the term "as well as" would show that the right to transfer by way of lease or sale

and realize the property secured in favour of the Financial Corporation is with reference to the property, the management and/or possession of which has been taken over by the Corporation. It, therefore, necessarily follows that if the right to take the management and/or possession is with reference to the property of the industrial concern, and not that of the surety, then the right to transfer by way of lease or sale and realize the property, is also with reference to the property of the industrial concern and not with reference to the property of the surety. To read the first part of the right conferred upon the Financial Corporations as being with reference to the property of the industrial concern and to read the second part of the right conferred as being with reference to the properties of the industrial concern and its surety is therefore impermissible. We therefore hold that Section 29(1) of the Act does not empower a Financial Corporation of sell or lease the property secured by a surety in its favour.

22. We are fortified in our view by the decision of the Supreme Court in Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, . The following observation? therein give an indication that power u/s 29 can be used only against the principal debtor and consequently no part of Section 29 can be used against sureties:

"An analysis of Section 29 of the Act reveals that where any industrial concern which is under an obligation and a liability to the Corporation under on agreement makes a default in repayment of the loan or advance or any instalment thereof or otherwise commits breach of any of the terms of the agreement, the Corporation has the right to take over the management or possession or both of the defaulting industrial concern. It also has the right to transfer by way of lease or sale and realise the property pledged, mortgaged or hypothecated or assigned to the Corporation as security for the loan. Any transfer of property of the defaulter thereafter made by the Corporation shall vest in the transferee all rights in or to the property transferred by virtue of Section 29(2) of the Act. Section 29 of the Act, therefore, deals with not only the rights of the Corporation in cases of default by the industrial concern, but also provides for a remedy to take over the management of the defaulting industrial concern with or without possession as well as the right to transfer by way of lease or sale of the hypothecated property to realise its dues. Since Section 29 of the Act 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 of the Act to realise the dues from the defaulting concern by following the procedure prescribed u/s 29 of the Act. The Corporation does not require the assistance of the Court to enforce its rights while invoking the provisions of Section 29 of the Act to recover its dues from the defaulting concern.

(emphasis supplied)

The decision makes it clear that the rights exercisable by the Corporation u/s 29 is only against the defaulting industrial concern and not any one else.

23. We should, however, at this stage refer to two decisions relied on by the learned Counsel for KSFC which according to him, take a view contrary to what we have just now concluded.

23.1 The first is the decision in Thressiamma Varghese Vs. Kerala State Financial Corporation and Others, . The observations relied on by the Corporation are as follows:

"The Legislature has taken great care to ensure speedy recovery of the loans. The scheme is provided in Sections 29 to 32 of the Act. Operation of Section 29 is attracted whenever there is default by a borrowing industrial concern. The Corporation shall have the right (a) to take over management or possession or both of the industrial concern; and (b) to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Corporation. Power conferred u/s 29 is of widest possible amplitude and has dual aspects. There is nothing in any of the provisions of the Act indicating that only property or assets of the industrial concern can be mortgaged or hypothecated. It should be possible for the industrial concern to arrange to secure hypothecation or mortgage of assets belonging to well-wishers who are prepared to assist the concern. That is why the provision (Section 25) does not indicate that assets mortgaged or hypothecated must belong to the industrial concern. Section 29 does not make any distinction between assets of the industrial concern and assets not belonging to the industrial concern but nevertheless mortgaged to the Corporation. Both kinds of assets can be proceeded against u/s 29. It is not possible for us to read into Section 29 a restriction to the effect that the right conferred on the Corporation thereunder is restricted to the right to proceed only against property belonging to the industrial concern and mortgaged to the Corporation. The provision would apply to property not belonging to the industrial concern but nevertheless mortgaged by the owner's of the assets to the Corporation, as guarantee or security".

(emphasis supplied)

But, the above observations are purely in the nature of obiter. The question that arose for consideration in that case did not relate to Section 29 at all. In that case, the Financial Corporation filed an application u/s 31 of the Act, before the District Judge. The question for consideration was whether the properties of a surety can be proceeded against, in a proceedings initiated u/s 31. The Division Bench of Kerala High Court held that the Corporation can proceed against a mortgaged property (that is, property not belonging to the industrial concern but belonging to a third party surety) in an application presented u/s 31. The appellant before the Kerala High Court did not raise any contention in regard to Section 29. Further, the petitioners before us do not dispute the position that KSFC can proceed against the sureties and their properties u/s 31, particularly in view of the amendment inserting Clause (aa) in Section 31(1) by Amendment Act 43 of 1985. Therefore, the said decision is of no assistance.

23.2 The next decision is the Full Bench decision of the Allahabad High Court in *Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another*, wherein it is held that:

"Section 29, no doubt, defines the rights of the Financial Corporation to take over the management of the industrial concern or realise the mortgaged property by way of lease or sale. As we have already mentioned the right given to the Corporation u/s will extend to the property of surety also".

Here again, the effect and purport of Section 29 did not arise for consideration and the above observation is purely an obiter. In that case, the Corporation filed a petition u/s 31 of the Act before the District Court seeking an order for sale of the properties mortgaged by the surety. The petition was allowed and that was challenged by the surety before the High Court. The question that was referred to the Full Bench was whether the Corporation can proceed against the surety before the District Judge u/s 31 of the SFC Act. The Full Bench answered the reference by holding that the Corporation could not proceed against the surety u/s 31 (in fact, this decision ultimately brought about the amendment to Section 31 by insertion of Clause (aa) in Section 31(1) by Act 43 of 1985). The scope of Section 29 never arose for consideration in this decision, and therefore this decision is also of no assistance to the Corporation.

24. The only other decision which considers the position of a surety vis-a-vis the Financial Corporation is *Maharashtra State Financial Corporation's case*, supra. This decision considers only the effect of Section 31(1)(aa) and holds that the words "any surety occurring in that section will include not only a surety who has given some security but also one who has given only a personal guarantee. The Supreme Court did not consider whether the power u/s 29 could be used against a surety's property.

Conclusion:

25. It, therefore, follows that insofar as the property of the surety which is secured in favour of the State Financial Corporation, the remedy of the Corporation lies either u/s 31 of the Act or by having recourse to Civil Court and not by recourse to Section 29 of the Act. The remedy available to Financial Corporations against sureties, u/s 31 of the SFC Act is also speedy and efficacious remedy. Therefore, non-application of Section 29 to the properties of surety will in no way prejudice the rights of the Financial Corporation against sureties. The Corporation can neither take over the possession and/or management of the property of the surety secured in favour of the Corporation, nor directly sell or lease the property of the surety mortgaged/hypothecated to the Corporation by exercising the power u/s 29.

26. In view of the above, we allow these petitions as follows:

(i) The impugned orders passed by the Karnataka State Financial Corporation u/s 29 of the State Financial Corporations Act authorising its officers to take

possession of the properties of petitioners are quashed.

(ii) The Karnataka State Financial Corporation is directed not to proceed against the property of the surety, mortgaged/hypothecated in its favour, u/s 29 of the State Financial Corporations Act.

(iii) Parties to bear their respective costs.