

(2008) 09 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 10176 of 2008

Narayanbhai Raichanddas Patel

APPELLANT

Vs

Managing Director and Others

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2008) 09 GUJ CK 0039

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Hasmukh C. Patel, for the Appellant; Sandeep N. Bhatt, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Bhatt learned Counsel waives service of notice of rule for respondent Nos. 1,2 and 3.

2. With the consent of the learned Counsel appearing for both the sides, matter is finally heard.

3. The petitioner by this petition has prayed for the relief inter alia to direct respondent authority to provide the details of the actual amount due and payable in the loan account of the partnership firm of M/s. Krishna Petrochemicals. The petitioner has also prayed to declare that the action of the respondent corporation in demanding amount from the petitioner as arbitrary. The petitioner has also prayed to quash and set aside the letter dated 25.7.2008 Annexure-G, issued by the respondent corporation for demanding amount. The petitioner has also prayed to direct respondent corporation from the proceeding with the auction of the property u/s 29 of the State Financial Corporation Act and to restrain corporation to dispossess the petitioner of the property in question.

4. Heard Mr. Patel learned Counsel appearing for the petitioner and Mr. Bhatt learned Counsel appearing for the respondent corporation.

5. Upon hearing learned Counsel appearing for both the sides, it appears that it is an admitted position that the petitioner stood as a guarantor for the transaction of the loan with M/s. Krishna Petrochemicals by the respondent corporation. It is also an admitted position that the property of the petitioner was given as a collateral security to the respondent corporation, in capacity as the guarantor/surety of the loan amount. However, the respondent corporation in purported exercise of the power u/s 29 of the State Financial Corporation Act (hereinafter referred to as the "Act") called upon the petitioner to make payment, failing which the action u/s 29 of the Act. It is also an admitted position that prior to the filing of the petition u/s 29 of the Act, respondent corporation has taken over the possession of plot No. 4 at Manglam Society, Detroj Road, Kadi, District Mehsana. However, so far as the residential property is concerned at 28, Manglam Society, the possession is not taken over by the respondent corporation and at that stage matter arise for consideration before this Court, on the aspect as to whether the respondent corporation can exercise the power u/s 29 of the Act, qua the property of the guarantor, which is given as a collateral security or not.

6. Similar question was considered by this Court in Special Civil Application No. 15898 of 2007 and allied matters decided on 11.9.2008 and it was inter alia observed by this Court as under:

3. The only question to be considered in the present petitions is as to whether it is open to the respondent No. 1 Corporation to invoke power u/s 29 of the State Financial Corporation Act against the property of the guarantor or not.

4 Heard Ms. Mehta learned Counsel for the petitioner and Mr. Munshaw learned Counsel for the respondent.

5. As such the issue is covered by the decision of the Apex Court in case of Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, . Wherein the conclusion inter alia recorded at paragraph No. 37 as under:

37. The legislative intent, in our opinion, is manifest. The intentions of Parliament in enacting Section 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern, Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of Section 31 of the Act and not u/s 29 thereof.

6 The aforesaid shows that the highest Court of land has observed that power u/s 29 of the Act is not available to the State Financial Corporation against the property of the guarantor, and if it is desirous to take possession of the property of the guarantor, it has to resort proceedings u/s 31 of the Act and only by intervention of the Court, the possession can be taken.

7. In view of the aforesaid, answer to the question has to be negated, and the powers u/s 29 of the Act are not available to the respondent Corporation against the property of the petitioner, who are admittedly guarantor.

8. As in the impugned notice the respondent Corporation has also threatened for action u/s 29 of the Act, such would not be available to the respondent.

7. Same will be the situation, so far as the action u/s 29 of the Act, for taking over the possession of the plot is concerned, inasmuch as the action u/s 29 of the Act for taking over the possession of the property of the guarantor cannot be sustained in the eye of law. Therefore, such action deserves to be declared as illegal and without authority.

8. However, it appears that prior to the pronouncement of the decision of the Apex Court in case of Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, possession has already taken over of one of the property, namely of commercial plot No. 4 at Manglam Society, since, the decision of the Apex Court is in March 2008. Therefore, in view of the pronouncement of the Apex Court's decision of Karnataka State Financial Corporation (supra), action u/s 29 of the Act for taking over of the possession of commercial plot belonging to the petitioner, can be said as without authority of law, but at the same time as per the above referred decision of the Apex Court corporation has the remedy of approaching before the District Court u/s 31 of the Act for taking over the possession and for realisation of the amount from the property of the guarantor/surety. As in the present case, corporation also proceeded under the bonafide belief that it has power u/s 29 of the Act, and has taken over the possession of the commercial plot, even if, the possession is restored to the petitioner of the property in question, some time deserves to be granted to the corporation to approach before the District Court u/s 31 of the Act.

9. Learned Counsel appearing for the petitioner submitted that after possession was taken over, the amount of Rs. 14 lacs is paid by the petitioner, so as to get the plot released, but the same has not been released.

10. In my view, such can be agitated by the petitioner at the relevant point of time in the event, if any, application is made by the corporation before the District Court for taking over the possession of the property and for realisation of the amount and at that stage the corporation may also pursue the rights as may be permissible in law and the District Court shall appropriately decide the same. Therefore, no final conclusion deserves to be recorded on the said aspect.

11. So far as the supplying of the record of the outstanding amount and the other details are concerned, the Corporation should not have any objection in supplying details of the outstanding amount of loan, in which the petitioner stood as a guarantor and such direction can be given. Even otherwise also as the petitioner is to be affected by the outstanding amount, in case, if it is not recovered from the borrower in capacity, as the guarantor of the loan transaction, it would be required for the corporation to supply the details of the

account of the borrower, so as to not only by way of information, but also in the event the petitioner is desirous to be discharged from the liability on payment of the outstanding amount or otherwise.

12. In view of the aforesaid the impugned action on the part of the respondent corporation of taking over possession of plot No. 4 at commercial plot No. 4 at Manglam Society u/s 29 of the Act and the action in contemplating to take possession of residential premises at 28 Manglam Society are declared as illegal and without authority. Consequently, the respondent corporation shall be required to return the possession of the commercial plot No. 4 to the petitioner and shall not be in a position to take possession of residential property at 28, Manglam Society u/s 29 of the Act. The possession shall be returned to the petitioner of the commercial plot by respondent corporation within a period of four weeks from the receipt of the order of this Court.

13. It is further observed that it would be open to the respondent corporation to move appropriate proceedings u/s 31 of the Act, before the appropriate Court for taking over the possession of the property of the guarantor. At that stage the petitioner may raise contention including the payment made and the rights and contentions of both the sides, shall remain open. Such proceedings if respondent corporation is desirous to move, may be moved within a period of two months from the receipt of the order. It is also observed that the petitioner shall maintain status-quo qua title and possession of the property of the commercial plot No. 4 for a period of two months from the date of handing over the same by respondent corporation.

14. The respondent corporation within a period of two weeks from the receipt of the order shall supply the account position and the details of the amount of the loan transaction with M/s. Krishna Petrochemicals and such details shall be sent to the petitioner by the respondent corporation through R.P.A.D. Post.

15. The petition is allowed to the aforesaid extent. Considering the facts and circumstances, no order as to cost. Direct service is permitted.