
(2010) 09 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 900 of 1996

Narendra Kumar and Others

APPELLANT

Vs

R.F.C. and Another

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

State Financial Corporations Act, 1951 — Section 31, 31(1), 32

Citation : (2011) 2 BC 274 : (2011) 2 RLW 1738

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—Challenge in the instant Civil Misc. Appeal is made to the order dated 16.12.1994 whereby the learned District Judge, Sawaimadhopur decreed the application of recovery for the sum of Rs. 3,94,512/- in favour of the Respondents and against the Appellants, with interest @ 15% per annum. It was also directed that the Truck which had been hypothecated in favour of the Respondent, shall be auctioned for the recovery of the decretal amount and if the amount so recovered fell short, the rest shall be recovered from the movable and immovable property of the Appellants.

2. The nub of the Appellants' story is that the Appellant-non-applicant No. 1 Narendra Kumar filed an application for raising loan to purchase a truck for transportation of goods. The Respondents applicants sanctioned a loan of Rs. 1,87,000/- to him, which Narendra Kumar duly received from the Rajasthan Financial Corporation. The Appellant No. 1 had to deposit each installment of Rs. 5,200/- per month, to repay the amount of loan. Appellants No. 2 and 3 furnished guarantee against this loan. It is alleged that the Appellant No. 1 did not pay the instalment in time and the loan amount along with the interest increased. The non-Appellants requested to clear the amount of loan, but the Appellants failed to repay the same. The Respondents-applicants filed an application u/s 31 of State Financial Corporation Act for the recovery of the aforesaid amount. The learned District judge, after conclusion of the

proceedings, decided the application and passed a decree, as indicated hereinabove.

3. Heard the learned Counsel for the parties and carefully perused the relevant material on record, including the impugned order.

4. Learned Counsel for the Appellants canvassed that the learned trial Court hurriedly concluded the proceedings and buried the justice. The application was fixed-on 16.12.1994 for recording the statements of Respondents-applicants' witnesses. On that day, the counsel for the Appellants could not reach in the Court from Gangapur City, hence, the learned District Judge, Sawaimadhopur hurriedly recorded the statements of AW/1 K.R. Meena. The learned Court also closed the evidence of the Respondents-applicants. The same day be closed the evidence of the Appellants non-applicants also, heard he arguments and decided the application on the same day. Neither the learned District Judge waited for the arrival of the learned Counsel for the Appellants nor after recording the evidence of Respondents applicants, adjourned the case for recording the evidence of Appellants. Instead, the learned District Judge closed the evidence of Appellants non-applicants and having decided the application filed u/s 31 of S.F.C. Act, decreed an amount of Rs. 3,94,512/- in favour of the Respondents applicants and against the Appellants non-applicants.

5. The second thrust of argument advanced by the learned Counsel for the Appellants is that the learned District Judge passed the decree for a sum of Rs. 3,94,512/- in favour of the Respondents applicants and against the Appellants non-applicants. He contended that it was not the money suit and the proceedings being drawn u/s 31 of S.F.C. Act are of different nature than the proceedings of a suit for recovery of money. He further contended that on an application u/s 31 of S.F.C. Act, 1951 a decree of money cannot be passed because the reliefs which can be granted u/s 32 are against the property, whereas the money decree is to be passed by the Civil Court against the concerned person i.e. the judgment debtor. He has cited the case of O.K. Gaur and Company v. Rajasthan Finance Corporation reported in 2000 (3) WLC (Raj.) 736 : RLW 2001 (1) Raj. 556 in support thereof. Learned Counsel has cited one more judgment in the case of M/ s. Amar Cold Storage and Ice Factory and another Vs. Punjab Financial Corporation, wherein the scope of Section 31 of the State Financial Corporation Act has been defined. Learned Counsel implored that in view of the above judgments, the impugned order deserves to be set aside.

6. E-converso, the learned Counsel for the Respondents defended the impugned judgment stating the same to be just and proper and contended that it warrants no intervention.

7. Learned Counsel further contended that the, scope of Section 31 of the State Financial Corporation Act is well defined and the learned District Judge had power to pass an order for enforcing the liability of any surety under Sub-section 1(aa) of Section 31 of the Act.

8. Having reflected over the submissions made at the bar and carefully scanned the relevant material on record, it is noticed that the learned District Judge concluded the entire proceedings of the case only in one day, albeit it is recorded in the order-sheet dated 15.1.1994 of the file of the Court below that the .last opportunity to the applicant was given to produce the evidence and thereafter on five dates of hearing the Presiding Officer was not present in the Court on account of he having been transferred from there. On 16.12.1994, the learned District Judge commenced the proceedings in the case. The counsel for the Appellants/non-applicants was not present. His counsel used to come from Gangapur City. Sans waiting for the counsel for the Appellants, the learned District Judge recorded the statements of AW/1 K.R. Meena and not only closed the Respondents-applicants" evidence but without fixing the case for recording the statement of Appellant non-applicants, closed the evidence of the Appellants also. He heard the arguments and rendered the decision decreeing for a sum of Rs. 3,94,512/- in favour of the Respondents applicants and against the Appellants non-applicants on the same day. Undeniably, the manner in which the proceedings were drawn by the learned District Judge are found to be against the principles of natural justice. If the counsel for the Appellants was not present in the Court, at the most, the learned District Judge could record the evidence of the Respondents applicants in his absence but he ought to have given an opportunity to the Appellants non-applicants to lead the evidence., but no opportunity was granted to the Appellants. It is also not made out from the order-sheet dated 16.12.1994 recorded by the learned Presiding Officer that he ever gave any opportunity of being heard to the Appellants. The order-sheet simply reveals that the arguments of the Respondents applicants only were heard. Thus the manner in which the trial of the case was conducted by the learned District Judge, Sawaimadhopur, sans respecting the principles of natural justice is highly deprecated.

9. Now advertng to the legal aspect of the case, it is found that the learned District Judge passed a decree for the sum of Rs. 3,94,512/- in favour of the Respondents and against the Appellants. In the case of Amar Cold Storage & Ice Factory v. Punjab Financial Corporation reported in AIR 1994 Punjab & Haryana 235, it was held that the scope of enquiry under Sections 31 and 32 of the Act is very limited and it is in the nature of an application for attachment of property in execution of a decree before a judgment.

In the case of The Maharashtra State Financial Corporation Vs. M/s. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others, it was held "that the amendment made in Sections 31 and 32 by the Amendment Act of 1985 have expanded the scope of the proceedings u/s 31 read with Section 32 of the Act. The said amendments have not resulted in converting the said proceedings in which reliefs are prayed u/s 31(1)(aa) into fulfilledged money suits for enforcing pecuniary claims of the Corporation as against sureties and even after the said amendments the Corporation u/s 31 read with Section 32 cannot obtain any relief personally against the principal debtor and the remedies under these

provisions are still against the properties mortgaged by sale or by way of taking over management or by obtaining temporary injunction, and it is not possible to contemplate that by effecting amendments in Sections 31 and 32, the Parliament intended to enlarge the scope of enquiry.

10. Relying upon the aforesaid two judgments, this Court in the case of O.K. Gaur & Company (supra) held thus:

It can be said without hesitation that on an application u/s 31 of the State Financial Corporation Act, 1951, a decree for money cannot be passed because the reliefs which can be granted u/s 32 are against the property whereas a money decree is to be passed by the Civil Court against the concerned persons i.e., the judgment debtor.

11. Learned Counsel for the Respondents has not cited any decision to the contrary, before the Court.

12. In the facts and circumstances of the case, the impugned judgment and decree dated 16.12.1994 deserves to be quashed and set aside and it stands quashed and set aside accordingly and the application filed by the Respondents is hereby remitted to the learned District Judge, Sawaimadhopur with the direction that it should be disposed of in accordance with the law. The learned District Judge is also directed to expedite and decide the case within a period of three months from the date of receipt of copy of this order positively.

13. The Civil Misc. Appeal stands disposed of, accordingly.