(1997) 10 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 7456 Of 1997

Orissa State Financial Corporation and Others	APPELLANT
Vs	
Umesh Chandra Dani	RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Citation : (1997) 11 SCC 686

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.C. Agrawal and; G.T. Nanavati, JJ.-Special leave granted.

2. The respondent has not appeared in spite of being duly served with the notice that the matter will be finally disposed of at the notice stage.

3. The respondent had been sanctioned a term loan of Rs 3.39 lakhs by the Orissa State Financial Corporation, Appellant 1 herein (hereinafter referred to as "the Financial Corporation") for the purchase of a truck. The said loan was to be repaid in 56 monthly instalments starting from 7-9-1993 till 7-4-1998. It appears that the respondent committed default in repayment of the dues and a demand notice was issued by the Financial Corporation on 6-8-1996. The respondent did not respond to the said notice and thereupon a show-cause notice dated 29-11-1996 was issued requiring the respondent to settle the defaulted dues. Since the respondent failed to make any efforts in the matter of payment of the dues, a notice for recalling the loan was issued by the Financial Corporation on 1-1-1997, wherein the respondent was called upon to settle the entire outstanding amount of Rs 4,52,903.10 paise as on 31-12-1996 by 16-1-1997 failing which the Financial Corporation would take over the vehicle under Section 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). The respondent filed a writ petition in the High Court of Orissa which has been disposed of by the High Court by the impugned judgment dated 4-2-1997.

By the said judgment the High Court has directed the respondent to pay a sum of Rs 50,000 by the 2nd week of March 1997 and after such payment the respondent has been directed to approach the Financial Corporation for rescheduling the repayment of the loan and has further directed that a notice under Section 30 which was issued by the Financial Corporation shall not be operative till the amount is deposited by the respondent. Feeling aggrieved by the said order passed by the High Court, the Financial Corporation has filed this appeal by special leave.

4. In a number of cases this Court has laid down that the powers of the High Court under Article 226 of the Constitution of India in the matter of recovery of the dues by the State Financial Corporation under the provisions of the Act are limited to considering whether there is any statutory violation on the part of the State Financial Corporation or whether the Financial Corporation has not acted fairly and reasonably. The power under Article 226 is not to be invoked just to enable the person who has received loan facilities to thwart the recovery proceedings. In the present case we find that the High Court has not recorded any finding that the action of the Financial Corporation, in recalling the loan, is in violation of the provisions of the Act or it suffers from the vice of arbitrariness or is unreasonable. In these circumstances, we are unable to uphold the impugned judgment of the High Court. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside. The setting aside of the impugned judgment will, however, not preclude the respondent from making an offer for settling the dues and if such an offer is made, the same shall be given due consideration by the Financial Corporation. No costs.

