(1995) 03 OHC CK 0019

In the Orissa High Court

Case No : Civil Revision No. 167 of 1990

Orissa State Financial Corporation APPELLANT

Vs

Desari Adinarayana RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Court Fees Act, 1870 — Section 7
Limitation Act, 1963 — Article 136 , 137
State Financial Corporations Act, 1951 — Section 31(1), 32

Citation : (1995) 2 OLR 12

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : B.M. Mohanty and D.P. Mohanty, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The only point that arises for consideration in this application u/s 115 of the Code of Civil Procedure, 1908 (in-short the ''Code''), is whether the learned District Judge, Koraput, Jeypore was justified in his view that the petition presented by the petitioner, Orissa State Financial Corporation (hereinafter referred to as the ''Corporation'') u/s 31 of the State Financial Corporation Act, 1951 (in short, the ''Act'') was not maintainable having been filed beyond the prescribed time.

2. The background facts as presented by the petitioner are as follows :

On 12-9-1979 Desari Adinarayana, the opp. party herein (referred to hereafter as the ''borrower'') applied to the Corporation for sanction of a term loan of Rs. 6,250/- for establishment of a wet grinder industry. On 10-5-1980 he applied for seed capital. On 29-1-1980 the petitioner sanctioned term loan to the limit of Rs. 5,400/-, and on 10-6-1980 the borrower''s prayer for seed capital to the limit of Rs. 856/- was allowed. A hypothecation bond was executed and after observance of necessary formalities the Corporation disbursed a sum of Rs. 5,275/- towards the term loan in two instaiments, i. e., on 9-6-1980 and 11-6-1980. The borrower also received Rs. 836/- on account of seed capital loan on 11-6-1980. The term loan was repayable in eight instaiments of Rs. 675/- each, starting from 8-2-1981 and ending on 8-8-1984. The borrower was to pay Rs. 145/- on 10-12-1985 towards first instalment of the seed capital loan and Rs. 142/- thereafter in five instalments commencing from 10-6-1986 and ending on 10-6-1988. The borrower was required to pay usual interest as agreed upon. Since the borrower defaulted in making repayment, the entire loan amount was recalled by notice dated 14-2-1989. On that date, the due on account of term loan was Rs. 5,918.57 and an account of seed capital loan was Rs. 1480.15. Notwithstanding the demand, the borrower failed to pay the amount. Corporation moved learned District Judge, Koraput u/s 31 of the Act for sale of the hypothecated goods, for a prohibitory order restraining the borrower from transferring or removing the hypothecated goods and for a personal decree in case any part of the dues remains unsatisfied after sale of the hypothecated goods. The application was filed on 31-3-1989. It was dismissed on 22-12-1989 on the ground of being barred by time having been filed after time prescribed in Article 137 of the Limitation Act.

3. In support of the application the petitioner''s learned counsel submitted that the proceeding u/s 31(1) of the Act is neither a suit nor an application to establish a claim, and is in the nature of one for attachment of properties in execution of a decree, and therefore Article 136 was applicable, and not Article 137 as held by the learned District Judge. It was further submitted that the term loan and the seed capital loan constitute a composite transaction secured by the same hypothecation, and since the last instalment was payable on 10-6-1988, it should have been held that petition u/s 31 of the Act was within time, even assuming that Article 137 was applicable. There is no appearance on behalf of the borrower in spite of notice.

4. It is necessary to consider the import of Section 31 of the Act. Section 31 reads as follows :

"31. Special provision for enforcement of claims by Financial Corporations-

(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 the 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 repayments then, without prejudice to the provisions 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 ; or

(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."

An application u/s 31(1) of the Act is neither a plaint as contemplated by Article 7 of the Court-fees Act, 1870. The special procedure contained in Section 31(1) is not even something akin to a suit of a mortgagee to recover mortgage money by sale of mortgaged property. Even if the Corporation-applicant so chooses, it cannot pray for a preliminary decree for accounts or final decree for payment of money nor can it seek any personal liability. The Corporation cannot pray for a decree of its outstanding dues. The reliefs contemplated by Section 31(1) on being granted do not result in a money decree or decree for recovery of outstanding loans or advance. A substantive relief is an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree and such relief cannot be valued in terms of the monetary gain or prevention of monetary loss. This position has been settled by the apex Court in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, , Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, and Maganlal Vs. Jaiswal Industries, Neemach and Others,

5. Section 32 deals with procedure in respect of an application u/s 31. The purpose of enacting Sections 31 and 32 of the Act is apparently to provide for a speedy remedy for recovery of the dues of the Corporation and these sections have the effect of cutting across and dispensing with the provisions of the Code from the stage of filing a suit to the stage of obtaining a decree in execution whereof such properties as are referred to in Clause (a) of Sub-section (1) of Section 31 could be sold. As observed in Maganlal''s case (supra) an application u/s 31(1) of the Act cannot be put on par to a suit for enforcement of a mortgage nor the order passed thereon u/s 32 of the Act be put on par as if it was an order in a suit between a mortgagee and the mortgagor for sale of mortgaged property. On the other hand the substantive relief in an application u/ s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. The view in Maganlal''s case (supra) was reiterated by the apex Court in The Maharashtra

State Financial Corporation v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Ors. : JT 1991 (1) SC 524.

6. In view of aforesaid position in law, conclusion is inevitable that the period prescribed under Article 130 of the Limitation Act and not Article 137 thereof is applicable to an application u/s 31(1) of the Act. The order passed by the learned District Judge is set aside.

The application is allowed. No costs.

