(1996) 09 OHC CK 0019

In the Orissa High Court

Case No : Miscellaneous Appeal No. 414 of 1994

Orissa State Financial Corporation APPELLANT

Vs

Shri Sailendra Narayan Patnaik and Another RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:
Limitation Act, 1963 — Article 137
Orissa State Financial Corporation Act, 1951 — Section 31 , 31(1)

Citation : (1997) 2 OLR 259

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : S.S. Mohanty and P.K. Das, for the Appellant; P. Mohanty, I.C. Dash and D.N. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Pradipta Ray, J.—Orissa State Financial Corporation (hereinafter referred to as the ''Corporation'') has filed this appeal u/s 32(9) of the State Financial Corporation Act (hereinafter referred Jo as the ''Act.'') against the Judgment and order passed by the learned District Judge, Cuttack dismissing an application filed by the Corporation u/s 31(aa) of the Act.

2. The relevant facts as pleaded by the appellant-plaintiff are stated herein below :

a) Respondent No. 1 Sailendra Narayan Patnaik, took a total loan of Rs. 1,55,800/- for purchase of a truck. His father Kailash Chandra Patnaik respondent No.2 stood surety and executed necessary deed of guarantee. The vehicle was also hypothecated to the Corporation under deeds of hypothecation. As the borrower defaulted in payment of the debt. Corporation invoked its power u/s 29 of the Act and seized the hypothecated vehicle. After seizure of the vehicle advertisements were published in News Papers for sale of the said vehicle and ultimately on March 11, 1983 the vehicle was sold to one Sisir Kumar Rout for a total consideration of Rs. 1,40,000/-. After adjustment of accounts, it was found that principal amount of Rs. 67,277.82 Paise still remained outstanding. By a letter dated April 18, 1983 (Ext. 6) respondent No.1 was informed about the sale of the vehicle and terms and conditions thereof. On November 16, 1989 respondent No.1 was informed that as on June 20, 1989 outstanding amount including interest was Rs. 1,26,999.94 P. and he was asked to pay the said amount by November 15, 1989. A copy of the said notice was also sent to respondent No.2. Subsequently another notice dated November 19, 1990 was issued to respondent No.1 with a copy to respondent No.2 calling upon them to pay the dues as stood on November 20,1990, (Rs. 1,48,645.66 P.). As no amount was paid, the Corporation on January 22, 1991 filed an application u/s 31(1)(aa) of the Act in the Court of the District Judge. Cuttack for enforcement of personal liability against respondents 1 and 2 for an amount of Rs.1,50,783.18 P. and interest thereon.

3. Respondents land 2 contested the said application by filing a joint written objection. They denied receipt of any notice before auction of the hypothecated vehicle or after. They also raised disputes regarding the amount claimed and legality of invocation of the power u/s 31 of the Act. A question was also raised that as the Corporation parted with security without giving any notice to the surety, the respondent No.2, guarantor, stood discharged from his liability as surety.

4. The trial Court upheld contention of the respondents that the surety stood discharged because of Corporation''s action of selling the vehicle without giving any notice to the surety. The trial Court also made certain comments about the delay in raising the demand due to which the outstanding amount became more than double. The trial Court dismissed the application of the Corporation.

5. In this appeal, an application under Order 41, Rule 27, C:P.C.has been filed by the Corporation'' including the advertisements published in the News Paper before sale of the Vehicle and Copies of two letters dated January 18, 1983 and February 9, 1983 sent to respondent No.1 .

6. In support of the appeal Mr. S. S. Mohanty, learned counsel raised many interesting questions while assailing the impugned Judgment. However, during hearing one primary question cropped up whether the application was barred by limitation.

7. An application u/s 31 of the Act lies to the District Judge which is no doubt, a Court. Supreme Court in Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Ors. reported in JT 1991(1) SC 524 has already held that District Judge exercising jurisdiction under Sections 31 and 32 of the Act functions as a Court of Ordinary Civil Jurisdiction. Thus, although no period of limitation has been prescribed for an application u/s 31 of the Act, the same will be governed by Article 137 of the Limitation Act. It is now settled that Article 137 of the Limitation Act is applicable to all applications before a Court (vide The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma,). Mr.

Mohanty appearing for the Corporation also does not dispute that Article 1 37 of the Limitation Act is applicable.

8. Mr. Mohanty has urged that right to apply u/s 31 of the Act accrued only after issuance of notice dated November 16, 1989 and as such this application which was filed on January 22, 1991 was within the period prescribed by Article 137.

9. Mr. I. C. Dash appearing for respondents 1 and 2 has submitted that right to apply u/s 31 of the Act accrued immediately after insertion of Clause (aa) to Section 31(1) on August 21, 1985 and running of time for limitation would not be suspended because of the Corporation''s delay in sending any demand.

10. Article 137 of the Limitation Act has prescribed a period of 3 years from the date when the right to apply accrues. Section 31 of the Act has been enacted to enable the Corporation to obtain quicker remedies from the highest Court of Original Civil Jurisdiction in the locality. An application u/s 31 of the Act can he filed even before exercise of power u/s 29 of the Act or Section 69 of the Transfer of Property Act. It has already been held by a Full Bench of this Court in State Financial Corporation Ltd. Vs. Satpathy Brothers and Nanda Co. (P.) Ltd. and Others, that the special provisions have been made as step in advance of the adjudication made in the Civil Courts.

11. Clause (aa) was added to Sub-section (1) of Section 31 of the Act by Act 43 of 1985 with affect from August 21, 1985. Before insertion of the said clause Financial Corporation could proceed only against the property pledged/ mortgaged/hypothecated or assigned as security for the loan advanced or for transferring the management of the industrial concern to the Corporation. It has already been settled that under provisions of Section 31 of the Act no money decree can be passed against the principal debtor u/s 31(1) of the Act. When the vehicle was sold on March 11, 1983 leaving an outstanding amount unrealised, only remedy available to the Corporation was to institute a suit for enforcement of personal liability of the principal debtor and the surety. It appears that Corporation did not choose to file any suit and simply sat silent for almost eight years.

12. Nature of the relief as contemplated by Section 31(1)(aa) of the Act has been explained by the Supreme Court in Maharashtra State Financial Corporation''s case (supra), It has been observed in that, case :-

In our opinion on the same principle even in a case where the relief claimed in the application u/s 31(1) of the Act is for enforcing the liability of a surety who has given only a personal guarantee, Sub-section(4-A) of Section 32 where no cause is shown and Clause (da) of Sub-section (7) wher cause is shown contemplate cutting across and dispensing with the provisions of the Code from the state of filing a suit to the state of obtaining a decree against the surety, the passing of an order which can straightaway be executed as if it were a decree against the surety which may be passed, in the event of a suit being filed.

Thus, it appears that Corporation cannot be permitted to avail of the special remedies provided for in Sub-section (1) of Section 31 of the Act, if the Corporation allows its remedy of filing suit extinguished before invocation of jurisdiction under the said special provision.

13. As already stated, in the present case Corporation did not file any suit for about eight years. It also did not choose to file application u/s 31(1) of the Act even within three years from the date of insertion of Clause (aa) in Sub-section (1) of Section 31 of the Act.

14. Corporation''s right Jo file application u/s 31(1) of the Act accrued as soon as Clause (aa) was inserted. Corporation''s right to apply was not dependant upon making any demand. There is no provision necessitating any prior demand for making an application u/s 31(1)(aa) of the Act. Section 32 of the Act makes it clear that no prior notice or demand is necessary for making an application under any of the clauses of Section 31(1) of the Act. Opportunity to resist the application or to file show cause is provided in Section 32 of the Act. In this case limitation under Article 137 of the Limitation Act started from August 21, 1985, the date of insertion of Clause (aa) to Section 31(1) of the Act.

15. Accordingly, Corporation''s application u/s 31(1)(aa) of the Act was barred by limitation because of operation of Article 137 of the Limitation Act.

16. In view of the aforesaid findings that the application u/s 31(1)(aa) of she Act was barred by limitation and accordingly not maintainable, it is not necessary to consider the other questions raised on behalf of the applicant. However, it is kept on record that Mr. Mohanty, learned counsel for the appellant has raised substantial and important points about the correctness of the impugned Judgment. The points raised by Mr. Mohanty are left open for being considered in an appropriate case and dismissal of this appeal should not be construed as affirmance of the reasons recorded and observations made in the Judgment of the Court below.

17. For the foregoing reasons, the appeal is dismissed. No order as to costs.

