
(2003) 06 AP CK 0011
In the Andhra Pradesh High Court
Case No : CMA No. 1066 of 2003

P. Mohan Reddy	Vs	APPELLANT
General Manager, A.P. State Financial Corporation and Others		RESPONDENT

Date of Decision : 11-06-2003

Acts Referred:

Andhra Pradesh State Financial Corporations Act, 1951 — Section 29
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2003) 6 ALD 363 : (2003) 5 ALT 773

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Venugopal Rao Pasnoori, for the Appellant; Y.N. Lohita, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The appellant had preferred the present Civil Miscellaneous Appeal aggrieved by the order dated 20-2-2003 made in I.A. No. 156/2003 in O.S. No. 227/2003 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad.

2. The appellant herein/petitioner/ plaintiff instituted the suit O.S. No. 227/2003 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad praying for the relief of declaration that the demand made by the 3rd defendant towards loan account of P. Sathi Reddy relating to which the appellant/petitioner/plaintiff is surety is illegal and against law and for permanent injunction restraining defendants 2 and 3 from selling the suit schedule property in open auction till the disposal of the suit and for such other appropriate reliefs.

3. The appellant/petitioner/plaintiff also moved an application I.A. No. 156/2003 in the said suit under Order 39 Rules 1 and 2 the CPC praying for temporary injunction restraining respondents 2 and 3 from auctioning and selling the petition schedule property pending disposal of the suit. Exs.P-1 to P7 and Exs.R-1 to R-15 were marked on behalf of the respective parties. The learned IV

Senior Civil Judge, City Civil Court, Hyderabad by the order dated 20-2-2003 on consideration of the respective contentions of the parties and also the documentary evidence had arrived at a conclusion that the appellant/petitioner had not made out a prima facie case nor balance of convenience is in his favour and ultimately had dismissed the said application negating the relief of temporary injunction prayed for by him. Aggrieved by the same, the present Civil Miscellaneous Appeal is preferred.

4. Sri Venugopal Rao Pasnoori, Counsel representing the appellant, with all vehemence had contended that there is no dispute that the father of the appellant i.e., late Sri P. Sathi Reddy had applied for the loan and the appellant stood only as surety or as a guarantor. The learned Counsel also had taken me thoroughly through the respective pleadings of the parties and had contended that as far as Sathi Reddy and appellant are concerned, the transaction was closed on 31-3-1999 by selling the rig to the 4th respondent Sri B. Narasimha Reddy and in view of the same, in the light of the peculiar facts and circumstances, the property of the appellant, a surety or a guarantor simpliciter, cannot be brought to sale. The learned Counsel also submitted that may be that in usual course the A.P. State Financial Corporation, hereinafter referred to as "Corporation" in short for the purpose of convenience, may take recourse to Section 29 of the A.P. State Financial Corporations Act, 1951, in short hereinafter referred to as "Act", by taking possession of the unit for realization of the debts. But here is a case where a third party had intervened and in the light of the changed situation, the Corporation cannot further proceed with the auction or selling of the petition schedule property. The learned Counsel also had pointed out Several of the undisputed facts and had referred to the contents of Exs.R-12 reply notice dated 4-10-2001. The learned Counsel further pointed out that in view of these facts it is clear that the appellant had made out a strong prima facie case and balance of convenience also is in his favour and if during the pendency of the suit, the Corporation further proceeds with the auction or sale of the property, the appellant will be put to serious loss. The learned Counsel also made elaborate submissions about the rights of the Corporation vis-a-vis the liability of the principal debtor and the liability of the surety or the guarantor in this regard.

5. Per contra Sri Y.N. Lohita, the Standing Counsel representing the Corporation had made the following submissions. The learned Counsel in all fairness submitted that no doubt there was an attempt to bring in Narasimha Reddy, but the same was not finalized and hence at any stretch of imagination it cannot be said that the loan transaction with Sri P. Sathi Reddy came to an end and hence equally it cannot be contended that the Corporation cannot proceed as against the present appellant-surety/guarantor, or the property which had been given as security. The learned Counsel further contended that the relief which is prayed for in this application for temporary injunction is virtually a restraint order as against the Corporation from auctioning and selling the petition schedule property. The said relief definitely cannot be granted especially in the light of the

Wide powers conferred u/s 29 of the Act on the Corporation to take possession or to seize the unit in case of default. The learned Counsel also had taken me through the findings recorded by the learned IV Senior Civil Judge, City Civil Court, Hyderabad and also the correspondence between the parties and had concluded that inasmuch as the appellant had not made out a prima facie case and since there is no balance of convenience in his favour, the learned IV Senior Civil Judge, City Civil Court, Hyderabad is well justified in making the order negating the relief of temporary injunction.

6. Heard both the Counsel at length and perused the material available on record.

7. The facts in nutshell for the purpose of disposal of the present Civil Miscellaneous Appeal are as hereunder:

8. The father of the appellant one P. Sathi Reddy who is no more applied for a loan of Rs. 18,85,000/-, being 65% of loan and contributed 35% of the loan, comprising of Rs. 10,15,000/- to the 2nd respondent on 5-9-1984 and the same was sanctioned in the year 1985 and the vehicle was delivered on 28-6-1985. Inasmuch as during a particular period the vehicle was not functioning well and the season also came to an end, his father was unable to pay the remaining instalments and consequently the vehicle was seized by the 2nd respondent and it was with the Corporation till June, 1986. It was further stated that the father of the appellant paid Rs. 1 lakh on 7-6-1986 and the vehicle was released and due to their misfortune the season ended and rains had started and the vehicle became idle. It is further stated that in December, 1996, again Rs. 50,000/- was paid and the vehicle was running till October, 1997 and subsequent thereto the 2nd respondent again seized the vehicle and on payment of yet another instalment it was again released. It is further stated that the appellant gave property of land comprising of 19-05 guntas at Kothapet in Uppal Mandal, Ranga Reddy District in S.No. 172/2 as surety. It is further stated that the transaction was closed on 31-3-1999 by selling the rig to 4th respondent one B. Narasimha Reddy by the Corporation and the said property i.e., the rig was delivered to him and instead of further making a demand, leaving the 4th respondent, the Corporation is further demanding the appellant to make the payment. Consequently the said property is being brought to sale by virtue of the notification dated 18-1-2002 and in such circumstances the suit referred to supra was instituted and the relief of temporary injunction was prayed for in the interlocutory application.

9. The respondents 1 to 3 filed a counter-affidavit stating that the Corporation in the case of default of payment is definitely entitled to take possession of the unit for realization of debt from the borrower and can further transfer the unit too. It was further stated that the Corporation is not like an ordinary money lender or a Bank which lends money and it is lender with the purpose of promoting small and medium industries and the Corporation is not supposed to give loans once and go out of business. The Corporation also has to recover the loans advanced so that it can give fresh loans to others. It is no doubt a fact that the Corporation

had sanctioned a term loan of Rs. 17.74 lakhs on 21-11-1994 to P. Sathi Reddy who promoted M/s. Karshak Hydraulic Drills for acquisition of AP 28T 7592 and for digging the bore-wells. The non-functioning of the bore well at certain intervals is not known to respondents 1 to 3. However it was specifically stated that inasmuch as instalments were not paid regularly and the amount was mounting up, the Corporation is definitely entitled to recall the entire loan outstanding and it is empowered u/s 29 of the Act to seize and auction the hypothecated/ mortgaged properties. It was admitted that no doubt the father of the appellant brought the 4th respondent for purchasing the bore rig vehicle and agreed to purchase the same for a sum of Rs. 18,18,495/- and also paid a sum of Rs. 6 lakhs. The appellant approached the Corporation through Sri P. Sathi Reddy and the 4th respondent to takeover the loan and Sri P. Sathi Reddy had submitted his willingness on 24-1-1999 to transfer his vehicle and liability to the 4th defendant and submitted a letter dated 24-1-1999 requesting the respondent to transfer the liability to the 4th respondent and also to transfer the vehicle on inter se basis. The Corporation had agreed to accept inter se proposal on 3-1-2000 and stipulated the terms and conditions. The 4th respondent had not complied with the terms and conditions of inter se transfer and in turn had filed a suit O.S.No. 1151/2002 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad for recovery of money and damages which is pending. It was specifically stated that the vehicle was never delivered to the 4th respondent and at any rate not by the Corporation and hence the name of the 4 respondent is not effected in the R.C. book of the said vehicle. Thus the specific stand taken by the Corporation is that it is in no way responsible for the transaction between the father of the appellant and the 4th respondent in relation to the delivery of the vehicle especially in the light of the non-compliance of the terms and conditions. It was also stated that the Corporation had agreed for inter se transfer and the total inter se consideration was Rs. 18,18,495/- and the same was intimated through its letter dated 3-1-2000. As per clause No. 1 of the letter, the 4th respondent was supposed to pay Rs. 6,00,000/- as initial down payment and the balance amount of Rs. 12,18,495/- after allowing waiver of penal interest of Rs. 2,23,671/- was to be treated as loan being sanctioned to the 4th respondent. The 4th respondent was directed to give collateral security of Rs. 12,18,495/- covering 100% of the proposed term loan of Rs. 12,18,495/- and further the 4th respondent has to give collateral security of immovable property of urban area within 45 days from 3-1-2000 failing which the approval for transfer shall stand cancelled and the amount paid by the 4th respondent shall be forfeited. As a token of his acceptance, the 4th respondent had signed the sanction letter and returned the copy of sanctioned letter dated 3-1-2000. Ultimately, the 4th respondent had requested the Corporation to accept house property of the 4th respondent at Toopran and Gundapally Villages of Medak District, vide his letter dated 25-8-2000. The officials of the Corporation had valued the property at Rs. 4.93 as per the norms of the Corporation. The 4th respondent was advised vide letter dated 2-9-2000 to furnish the balance collateral security worth Rs. 7,25,495/-, but the 4th respondent had failed to comply the conditions till to day

and had instituted the suit as aforesaid.

10. Ex.P-1 is the paper notification. Ex.P-2 is the statement of account. Ex.P-3 is the letter of confirmation. Ex.P-4 is confirmation of loan account. Exs.P-5, P-6 and P-7 are letters dated 5-12-2002, 18-10-2002 and 2-9-2002. Likewise, Ex.R-1 is special terms and conditions of the sanction. Ex.R-2 is the Xerox copy of the representation dated 27-11-2002. Exs.R-3 and R-4 are the Xerox copies of the plaint and written statements in O.S. No. 1151/2002. Exs.R-5 to R-8 are the letters. Ex.R-9 is the Bio-data of B. Narsimha Reddy. Ex.R-10 is the Xerox copy of the letter and Ex.R-11 is a copy of legal notice dated 24-9-2001. Ex.R-12 is the reply notice dated 4-10-2001 and Exs.R-13 and R-14 are the postal acknowledgments. Ex.R-15 is the statement of account issued by the Corporation.

11. As can be seen from the documentary evidence, it is no doubt true that an attempt was made to bring in the 4th respondent in relation to this transaction but unfortunately the said attempt had not reached its logical end and hence it can be said that the Corporation is in no way responsible for the non-finalisation of the said intervention of the 4th respondent in relation to the transaction. No doubt strong reliance was placed on State Bank of India Vs. Praveen Tanneries and Another, and also Punjab National Bank Vs. Yariapadda Venkata Krishnaiah, , in relation to the rights of a guarantor and the enforceability of the liability as against the guarantor.

12. In the present case, it is not in dispute at all that the appellant/son stood as surety/ guarantor in relation to the loan of his father Sri P. Sathi Reddy. As per the admitted facts, it is also not in dispute that whatever may be the reasons, the instalments could not be paid in time and there was default and at that juncture no doubt an attempt was made to introduce the 4th respondent, but the said attempt did not materialize for obvious reasons referred to above. The relief prayed for in the present application by the appellant/surety/ guarantor as against the Corporation is to restrain the Corporation from selling or auctioning the property given as surety in favour of the Corporation in relation to the loan. As already referred to supra, default had been committed in payment of the said loan. Section 29 of the Act reads as hereunder:

Rights of Financial Corporation in case of default:--(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in 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, the Financial Corporation shall have the right to takeover the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under Sub-section (1), shall vest in the transferee all rights in or to the

property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern.

In *Jasbir Kaur and Another Vs. Punjab State Industrial Development Corporation Ltd., Chandigarh and Another*, a Division Bench of the Punjab and Haryana High Court while dealing with the rights of the Corporation in case of default held that the property of the industrial concern as well as that of the surety or guarantor can be taken over by the Corporation by invoking Section 29 of the Act. In *Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills* 2002 (2) ALD 89 (SC) : 2002 (1) Supreme 402, the Apex Court while dealing with the power of the Corporation u/s 29 of the Act held that the Corporation has power to sell the unit seized for default in payment of loan and the decision of the Corporation to sell the same cannot be reviewed as an appellate Court. In *Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another*, , the Apex Court while dealing with recovery of loan amount and the disposal of the property u/s 29 of the Act held that the sale by inviting tenders is not ipso facto invalid and its validity may have to be considered in the light of the facts and circumstances. In *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.* AIR 1993 SC 1435, while dealing with the powers u/s 29 of the Act in relation to recovery of loan, it was held that the High Court cannot review the decision of the Corporation to initiate recovery proceedings against its debtor, as an appellate authority.

13. Be that as it may, here is a case where the deceased Sathi Reddy had committed default and the appellant/ guarantor/surety is none other than the son of the deceased Sathi Reddy. The present disputed property was given as guarantee to the Corporation in relation to the aforesaid loan transaction. No doubt an argument was advanced on the ground that certain terms and

conditions in between Sathi Reddy and the Corporation are unknown to the guarantor. This aspect by way of oral assertion cannot be accepted at this stage. In *M/s. Tirputi Plywood Product (P) Ltd. and another Vs. The Pradeshik Industrial Investment Corporation of Uttar Pradesh Ltd. and others*, , a Division Bench of the Lucknow Bench of Allahabad High Court while dealing with the liability of surety in case of recovery of loan u/s 29 of the Act held that where Company is the principal debtor and had failed to repay the loan and the Corporation had taken over possession of the unit, petition by guarantor, a Director of the Company, seeking realization of outstanding amount from the principal debtor first and proceeding thereafter against the guarantors, was held to be not maintainable. In *Pawan Kumar Jain Vs. Pradeshiya Industrial and Investment Corporation of U.P. Limited and Others*, , where money was borrowed from Financial Corporation and guarantee bond was executed by petitioner and default was committed in payment, it was held that recovery proceedings initiated only against the guarantor cannot be said to be illegal. In *Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others*, , a Division Bench of the Orissa High Court while considering the default in payment by loanee of the loan and powers of the Corporation u/s 29 of the Act held that the Corporation has right to takeover the management or possession of both the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation and that there is nothing in the provision to indicate that the right u/s 29 is only in respect of the property of loanee mortgaged with the Corporation and on the other hand all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act and hence the Corporation can take possession of the property mortgaged by the guarantor. In *Hindustan Engineering Corporation, Jaipur Vs. Rajasthan Financial Corporation and Another*, it was held that temporary injunction cannot be granted restraining Financial Corporation from recovering loan and from taking the management of its property mortgaged for realization of the loan u/s 29 of the Act. In *N.V. Chowdary Vs. Hindustan Steel Works Construction Ltd., Visakhapatnam*, , a Division Bench of this Court, at page 128, had laid down the following guidelines for granting interim injunction:

(1) Whether the person seeking temporary injunction has made out a prima facie case. This is sine qua non.

(2) Whether the balance of convenience is in his favour, that is, whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience which the other side would be put to if the injunction is granted. As to that, the governing principle is whether the party seeking injunction could be adequately compensated by awarding damages and the defendant would be in a financial position to pay them.

(3) Whether the person seeking temporary injunction would suffer irreparable injury. It is, however, not necessary that all the three conditions must obtain.

With the first condition as sine quo non at least two conditions should be satisfied by the petitioner conjunctively and a mere proof of one of the three conditions does not entitle a person to obtain temporary injunction.

14. In view of the aforesaid legal position, at any stretch of imagination it cannot be said that the appellant herein has made out a prima facie case or the appellant has balance of convenience in his favour for the purpose of getting the relief of temporary injunction prayed for by him. Moreover, the temporary injunction of this nature cannot be granted since the Corporation is pursuing its lawful remedy for recovery of the loan amount due to the default committed by the loanee. Hence, viewed from any angle, I do not see any legal infirmity in the order made by the learned IV Senior Civil Judge, City Civil Court, Hyderabad.

15. Hence, the Civil Miscellaneous Appeal is devoid of merits and accordingly the same is dismissed, with costs.