(2001) 12 GAU CK 0019

In the Gauhati High Court

Case No : F.A.O. No. 6 of 2001

Parag Saikia and Others — APPELLANT

Vs

Assam Financial Corporation — RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

State Financial Corporations Act, 1951 — Section 31

Citation : (2001) 3 GLT 581

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This appeal has been filed against the judgment and order dated 2.1.2001 passed by the learned Additional District Judge, Dibrugarh in Misc Case No. 53/98. That was a judgment and order passed by the learned Addl. District Judge, Dibrugarh u/s 31 of the State Financial Corporation Act, 1951. By the impugned judgment, the learned Judge allowed the petition and passed the following order:

"In the result the petition is allowed. The applicant is allowed to realise the sum of Rs. 9,22,967.95 ps. As on 1.4.1997 with pendentelite interest @ 6% P.A. till the date of recovery of the said amount. The applicant shall first take the step to realise the amount by attaching hypothecated vehicle and then by the sale of mortgage property shown in the schedule of the petition. If the aforesaid properties do not satisfy the entire claim of the applicant, then the applicant shall be entitled to realise the claim from the personal properties of the Opp. Parties."

2. Before the learned Judge, a question was raised that whether the case is barred by limitation and that is covered by Issue No. 2. The learned Judge relying on a decision of this Court in Civil Revision No. 237/90, Shri Bani Barua and Ors. v. The Assam Financial Corporation, Guwahati-5, held that Limitation Act shall not apply to an application u/s 31 of the aforesaid Act. It is the legality

and validity of this judgment and order which is challenged in this appeal.

3. We have heard Shri M.K. Choudhury, the learned Advocate for the appellants and Mr. B.K. Goswami, the learned Advocate for the respondent.

4. Shri M.K. Choudhury, in support of his contention that Limitation Act applies to other applications, relies on the following decisions :

''(i) The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, wherein relied on the paragraphs 20 and 22 the Supreme Court pointed out as follows:

"20. In the Telegraph Act there is nothing in the context to suggest that the reference to the District Judge is not intended as a reference to the District Court which seems to be the meaning implied by the definition applicable thereto. The District Judge under the Telegraph Act acts as a civil court in dealing with applications u/s 16 of the Telegraph Act.".

And thereafter in paragraph-21 considered the following :

"The changed definition of the words ''applicant'' and ''application'' contained is Section 2(a) and 2(b) of the 1963 Limitation Act.".

And thereafter in paragraph-22 laid down the law as follows :

"22. The conclusion we reach is that Article 137 of the 1963 . Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act".

(ii) The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others, That was a case under the Land Acquisition Act and there, the Supreme Court pointed out as follows:

"There is no period of limitation prescribed in Sub-section (3)(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no article expressly prescribed the limitation to make such application, the residuary article under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that In the absence of any specific period of limitation prescribed by Clause (b) of Sub-section (3) of Section 18 of the Act. the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e. the date on which cause of action had accrued to the respondent-claimant. Since the applications had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Municipal Council which has stood overruled, the order of the High Court Is unsustainable. The appeals are accordingly allowed, and the application made to the Court by the respondent stands rejected."

(iii) S. Rajan Vs. State of Kerala and another, That was a case under the Arbitration Act of 1940 and in Paragraph-8, the Supreme Court pointed out as follows :

"8. So far as the applicability of Limitation to an application u/s 20 of the Arbitration Act is concerned, it is no longer res-integra. In Inder Singh Rekhi v. Delhi Development Authority it has been held by this Court that Article 137 of the Limitation Act, 1963 applied to an application u/s 20 of the Arbitration Act. It was so held following the decision in Kerala State Electricity Board v. T.P.K.K. Amsom which overruled the earlier decision of this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Court. It is true that under the Limitation Act, 1908, it was held that Article 181 of that Act does not govern an application u/s 20 of the Arbitration Act makes a difference to the position. By virtue of the definitions of the words ''applicant'' and ''application'' contained in Sections 2(a) and 2(b) of the Limitation Act, 1963, the new Act, it was held, governs all petitions and the applications under the special laws so long as they are filed in a civil court. It was this principal which was followed in Inder Singh and it was held that Article 137 governs the applications u/s 20. In this view of the matter, we cannot agree with Sri Poti that no period of limitation is prescribed for making an application u/s 20."

5. On the other hand, Shri B.K. Goswami, places reliance on the following decisions:

(i) The Gujarat Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, which was relied on in the earlier judgment of this Court referred to above. That it is not a suit by the mortgagee for recovery of mortgage money by Sale of mortgaged property u/s 31 of the Act.

(ii) Everest Industrial Corporation and Others Vs. Gujarat State Financial Corporation, wherein the Supreme Court pointed that an order passed u/s 31 is not a decree and the question of limitation in such a situation will not arise. In paragraph-5, the Supreme Court pointed out as follows :

"5. But this Court after analysing the provisions of the Act held that an application for any of the reliefs that can be granted under the Act was not certainly a plaint in a suit for recovery of mortgage loan and that it was not even something akin to a suit by a mortgagee to recover mortgage money by sale of the mortgage property. The Court held that the applicant in such a case could not pray for a preliminary decree for sale of the property or a find degree for the payment of the money nor it could seek to enforce any personal liability even if such a liability had been incurred under the contract of mortgage as the law stood then."

To the same effect there is a decision of a learned Single Judge of this Court reported in Nirmal Chandra Goswami and Ors. v. Assam Financial Corporation (1992) 2 GLR 347 wherein this Court pointed out as follows :

"9. It must follow that the application which a Corporation is required to file u/s 31 is not a plaint, the proceeding is not a suit and the order confirming the order of attachment and directing sale is not a decree. There is no provision in Section 32 which requires the Corporation, after the order of sale is passed by the District Judge, to file an application to execute that order. The provision in Rule 10 Order 21, C.P.C. specifically mandates the decree holder to apply to the court for execution. But this provision is not attracted in the case of an order u/s 32 of the Act."

6. That being the position, we do not find any merit in this appeal and the same shall stand dismissed.

