(2011) 07 DEL CK 0169

In the Delhi High Court

Case No : Writ Petition (C) 2950 of 2008

Pradeep Tyagi APPELLANT

Vs

Delhi Financial Corporation and Others RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51
Delhi Land Revenue Act, 1954 — Section 2
Penal Code, 1860 (IPC) — Section 406
State Financial Corporations Act, 1951 — Section 29, 32G

Citation : (2011) 07 DEL CK 0169

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashim Vachher and Aman Shanker, for the Appellant; V. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the action of the Respondent No. 1 Delhi Financial Corporation (DFC) of having got issued, in exercise of powers u/s 32G of the State Financial Corporations (SFC) Act, 1951, to the Respondent No. 3 Collector, Ghaziabad, a certificate for recovery as arrears of land revenue, the dues of Rs. 16,47,320/- owed by the Petitioner to the Respondent No. 1 DFC; the petition further seeks to restrain the Respondents from, in pursuance to the said certificate, causing arrest of the Petitioner. Notice of the petition was issued and vide order dated 11th April, 2008 which continues to be in force, arrest of the Petitioner was stayed.

2. It is the case of the Petitioner that the Respondent No. 1 DFC had in August, 1996 sanctioned a loan of Rs. 10 lacs in favour of the Petitioner; however only a sum of Rs. 9,31,000/- was disbursed to the Petitioner; that even though the Petitioner had by October, 1998 re-paid a sum of Rs. 4,20,212/- to the Respondent No. 1 DFC but the loan was illegally re-called vide notice dated 25th September, 1998 and the balance amount then due of Rs. 8,48,201/- demanded

from the Petitioner; that the action of the Respondent No. 1 DFC was illegal in as much as the entire sanctioned loan also had not been disbursed to the Petitioner causing loss to the Petitioner; that in November, 1999 the Respondent No. 1 DFC issued notice u/s 29 of the SFC Act then demanding a sum of Rs. 9,13,303.10 from the Petitioner; that the Petitioner thereafter issued four cheques in favour of the Respondent No. 1 DFC but of which only two were presented and the remaining two not even presented; that the Petitioner owing to ill health and bad phase in business could not re-pay the entire amount; that in February, 2001 another notice u/s 29 of the SFC Act was issued then demanding a sum of Rs. 4,78,000/- from the Petitioner; that the Petitioner deposited a further sum of Rs. 2,04,000/- with the Respondent No. 1 DFC but could not pay the balance amount owing to closure of his business premises under directions of the Supreme Court on account of a "non-conforming user"; that the Petitioner thereafter shifted his business to Sahibabad, Uttar Pradesh but remained unable to re-pay the entire amount due to the Respondent No. 1 DFC; that the Respondent No. 1 DFC thereafter in April, 2002 issued notice u/s 406 of the Indian Penal Code; that owing to failure of the efforts of the Petitioner to revive his unit, he could not re-pay the amount due to the Respondent No. 1 DFC; though the Petitioner applied under the OTS Proposal scheme but the same was not accepted; that in March, 2007 the Respondent No. 1 DFC filed an application u/s 32G of the SFC Act before the Competent Authority (Respondent No. 2) for issuance of Recovery Certificate for an amount of Rs. 16,47,320/- without disclosing as to how the said amount was due; that the Competent Authority issued notice dated 30th May, 2007 to the Petitioner of the said application of the Respondent No. 1 DFC; that the Petitioner filed his reply before the Competent Authority but the Competent Authority nevertheless issued Recovery Certificate for Rs. 16,47,320/- and since the Petitioner was residing at Ghaziabad, forwarded the same to the Respondent No. 3 Collector, Ghaziabad for implementation. The Petitioner impugns the said action by contending:

i. that the Respondent No. 1 DFC having availed the remedy u/s 29 is not entitled to proceed u/s 32G of the SFC Act;

ii. because Punjab Land Revenue Act, 1887 under which the Respondent No. 3 is exercising the powers of detention is not applicable to National Capital Territory of Delhi;

iii. that the National Capital Territory of Delhi is governed by the Delhi Land Revenue Act, 1954 (sic for Delhi Land Reforms Act, 1954), Section 2 whereof repeals the inconsistent provisions of Punjab Land Revenue Act, 1887;

iv. because action for detention against a defaulter can be taken only if it will compel payment of whole or substantial part of the arrears. Reliance in this regard is placed on Ram Narayan Agarwal and Others Vs. State of Uttar Pradesh and Others, ;

v. Rule 251 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 requires an inquiry into the question whether the detention of the defaulter would compel him to pay the arrears;

vi. the calculation of the amount due of Rs. 16,47,320/- is challenged;

vii. it is contended that no action of detention can be taken without enforcing the guarantee furnished for the grant of loan.

3. The Respondent No. 1 DFC in its counter affidavit has pleaded that as on that date a sum of Rs. 21,43,760/- was recoverable from the Petitioner; that though the loan of Rs. 10 lac was sanctioned, a sum of Rs. 9,31,000/- only was disbursed in reference to the terms and conditions of Mortgage Deed/ Deed of Hypothecation executed by the Petitioner; that the loan was re-called on account of default of the terms and conditions of re-payment by the Petitioner; that of the four cheques issued by the Petitioner two could not be presented/realized through the bank; that the amount of Rs. 4,78,000/- demanded in the second notice u/s 29 of the SFC Act did not represent the entire amount due but only the amount due on that date; that the Petitioner inspite of sufficient opportunities defaulted in payment and inspection of the unit of the Petitioner also showed part of the machinery hypothecated missing and/or dismantled; that the balance machinery of which possession was taken could fetch Rs. 2 lac only of which credit has been given to the Petitioner; that the Petitioner himself did not accept the OTS Proposal; the computation of the amount due has been given in the counter affidavit; that the Petitioner had defrauded the Respondent No. 1 DFC in the matter of furnishing of guarantee also; the property of which guarantee was given had already been sold prior to the execution of the Bond of Guarantee.

4. The Petitioner has filed a rejoinder controverting the contents of the counter affidavit.

5. The counsel for the Petitioner has placed reliance on:

a) Jolly George Varghese and Another Vs. The Bank of Cochin,

b) judgment dated 8th January, 2010 of this Court in W.P. (C) 199/2004 titled Suresh Jindal v. Delhi Financial Corporation & ;

c) Ram Narayan Agarwal (supra).

6. Though notice as aforesaid was issued to the Respondent No. 3 Collector, Ghaziabad also but the Petitioner did not take steps for service of the Respondent No. 3; a perusal of the order sheet shows that the same appears to have escaped the attention of the Court also and the matter was being listed for the last several dates, for hearing. Though the Respondent No. 1 DFC has not taken any objection as to the maintainability of the writ petition in this High Court with respect to the action of the Respondent No. 3 i.e. the Collector, Ghaziabad but in my opinion, in so far as the challenge if any to the action of the Collector, Ghaziabad against the Petitioner in pursuance to the Recovery

Certificate is concerned, this Court would not have territorial jurisdiction over the same. Be that as it may, since no arguments also were addressed on this aspect, it is deemed expedient to proceed with the decision of the writ petition on merits also.

7. The judgment of this Court in Suresh Jindal (supra) forms the backbone of the case of the counsel for the Petitioner; on the basis thereof it is contended that threat of arrest of Petitioner without recording satisfaction that the same will compel payment, is bad in law. This Court in Suresh Jindal held on the basis of Ram Narayan Agarwal (supra) that Section 51 of the CPC (laying down that execution of money decree by detention in prison shall not be ordered unless the judgment debtor has dishonestly transferred, concealed or removed his property or committed any other acts of bad faith in relation to his property) is applicable to recoveries of land revenue also. Attention of the counsel for the Petitioner was invited to the judgment dated 14th March, 2011 in W.P. (C) 1598/2011 titled P.C. Aggarwal v. Govt. of NCT of Delhi where it has been held that Suresh Jindal notices the judgment in Ram Narayan Agarwal only till paragraph 10 and does not notice the subsequent paragraphs particularly para 16 expressly laying down that Section 51 of CPC does not apply to recovery of monies as arrears of land revenue. Need is thus not felt to reiterate the judgment in P.C. Aggarwal (supra) herein. Thus no benefit can be derived by the Petitioner of the judgment in Suresh Jindal.

8. As far as the reference by the Petitioner to Jolly George Varghese (supra) is concerned, Suresh Jindal itself holds that the same is not applicable to payment of statutory dues of Financial Corporation.

9. The only other judgment cited by the counsel for the Petitioner, namely Ram Narayan Agarwal has also been exhaustively dealt with in P.C. Aggarwal (supra) and need is thus not felt to reiterate the same also. Ram Narayan Agarwal in fact deals with the recoveries as arrears of land revenue in the State of Uttar Pradesh within which the District of Ghaziabad also is situated and thus the position as in Ram Narayan Agarwal and as discussed in P.C. Aggarwal squarely covers the position herein also. Section 279(1)(b) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and Rules, 1952 framed thereunder authorize recovery of land revenue by arrest and detention of the person who has committed the default and the procedure therefore is provided under Rules 247 to 253.

10. The counsel for the Petitioner has else not urged any submissions or any other error in the action of the Respondent No. 1 DFC in invoking Section 32G. As far as the grounds taken in the petition are concerned, I do not find any bar in the SFC Act to invocation of Section 32G after invoking Section 29. While Section 29 can be resorted to for taking over the management/possession of the industrial concern and/or for transfer of the mortgaged/hypothecated property, Section 32G can be invoked for recovery of the monies remaining due. The Supreme Court in Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-

Rolling Mills and another, has held that the doctrine of election would not apply to cases where the ambit and scope of the two remedies is essentially different and that to hold otherwise may lead to injustice. It was further held that the State Financial Corporation must be held entitled and given full protection by the Court to recover its dues and it cannot be bound down to adopt only one of the two remedies provided under the Act. It is not the case of the Respondent No. 1 DFC simultaneously pursuing the remedies u/s 29 and Section 32G. The Respondent No. 1 DFC is not found to be under any disability to take recourse to the rights and remedies available to it u/s 32G for recovery of the amounts remaining due after recourse has been taken to Section 29. Moreover, Section 32G also uses the expression "without prejudice to any other mode of recovery". To denude the Respondent No. 1 DFC of its rights u/s 32G would tantamount to rendering redundant above quoted expression in Section 32G.

11. The Respondent No. 1 DFC along with its counter affidavit has filed a copy of the letter of the guarantor admitting sale of property of which guarantee was given, prior to the execution of Bond of Guarantee. Moreover there is no explanation as to why the Petitioner and/or the guarantor have even during the time when stay against the arrest was obtained from this Court, not re-paid the dues.

12. The other grounds urged of impugning the amount due do not really form the case of the Petitioner in as much as the Petitioner has not placed any of his own computation before this Court. Moreover such disputed questions of fact cannot be the subject matter of this writ petition as aforesaid the writ petition was filed basing the case on Suresh Jindal only.

13. The Supreme Court in GAR Re-Rolling Mills (supra) has held that time has come for the Court to stop granting any indulgence to such persons. It was held that the aim of equity is to promote honesty and not to frustrate the legitimate rights of Financial Corporations which after advancing the loans take steps to recover their dues from the defaulting party. The Full Bench of this Court as far back as in Digambar Prasad v. S.L. Dhani 1969 ILR (Del) 1016 held that the grant of a writ is in the discretion of the court and court will decline to exercise discretion where conduct of the Petitioner is such that it would be inequitable and unjust to grant him the relief. This Court would be loath to exercise discretion in favour of Petitioner who inspite of opportunity has failed to repay the public dues. Mention may also be made of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, where also the Apex Court noted that the process of the court is being abused - bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely.

14. There is thus no merit in the petition; the same is dismissed. Even though the Petitioner, having taken advantage of the interim order against his arrest, ought to be directed to now surrender himself to the Collector, Ghaziabad but since the Collector, Ghaziabad remained unserved, I refrain from issuing any

such directions. However, the Petitioner is directed to pay costs of Rs. 25,000/- of these proceedings to the Respondent No. 1 DFC within four weeks of today, failing which the same shall incur interest @ 12% per annum.

