(1986) 08 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 355 of 1978

Punjab Financial Corporation	APPELLANT
Vs	
K.B. Industries and Another	RESPONDENT

Date of Decision : 20-08-1986

Acts Referred:

State Financial Corporations Act, 1951 — Section 31, 31(1), 32

Citation : AIR 1988 P&H 50 : (1989) 66 CompCas 671

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

Bench : Single Bench

Judgement

1. This appeal is directed against the order of the learned Additional District Judge whereby the claim of the appellant corporation for compound interest in accordance with the terms of the loan agreement was rejected.

2. The appellant filed an application u/s 32 of the State Financial Corporations Act, 1951(for short called ''the Act'') for sale of the property of the respondents. In the final order passed, the Court ordered that the property be sold for the repayment of the loan of Rs. 97,832.81 with further interest from October 1, 1975 at the rate of 101/2 per cent per annum till realisation together with incidental and miscellaneous expenses that may be debited to the loan account of the respondents in terms of the mortgage deed. Before the property could be put to auction, the Judgment-Debtor deposited some amount in full and final satisfaction of the claim. The Corporation, however, urged that the interest amount has not been correctly calculated as it was entitled to compound interest in accordance with the terms of the mortgage deed. The learned Additional District Judge rejected the claim holding that in the application filed u/s 31 of the Act, the Corporation never mentioned that compound interest was chargeable and that he could not go behind the decrees passed vide judgment dated Match 3, 1976. Aggrieved thereby, the Corporation has filed this appeal.

3. The Supreme Court in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, has authoritatively settled the scope of

the proceedings under Sections 31 and 32 of the Act and ruled that the application is neither a plaint nor its subject matter a money claim. It was further held that the substitutive 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 state posterior to the passing of the decree and that the scope of the enquiry under sub-section (6) of S. 32 was confined to the matters specified in subsection (1) of S. 31. It is, therefore, obvious that the Court in these proceedings was not required to determine the money claim, or the rate of interest chargeable and any finding recorded in this regard was without jurisdiction. The amount for which the property is sought to be sold has to be determined by the Courts in accordance with the agreement of the loan between the parties and it would not be open to it to pass any order in variance of the terms of the said agreement The learned Additional District Judge, therefore went wholly wrong in observing that the order dated March 3, 1976 was either n decree or that the rate of interest had been determined therein, which, was binding on the parties. The proceedings right from the filling of the application till the sale of the property being in the nature of execution, the Court was within its'' competence to vary the order in respect of the interest chargeable if the same was not in accordance with the agreement of loan. This appeal is, therefore, allowed with costs and the impugned order reversed. The case would now go back to the learned Additional District Judge to determine the amount payable by the respondents in accordance with the agreement of loan between the parties and take further proceedings in accordance with law.

4. Appeal allowed.

