

(1983) 07 AHC CK 0018
In the Allahabad High Court
Case No : F.A.F.O. No. 119 of 1977

Rakesh Sugar Tail Factory and Others	APPELLANT
Vs	
U.P. Financial Corporation	RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
State Financial Corporations Act, 1951 — Section 32, 32(1)

Citation : AIR 1984 All 23

Hon'ble Judges : O.P. Saxena, J; N.D. Ojha, J

Bench : Division Bench

Advocate : Dhan Prakash, for the Appellant; Ravi Kant, R.N. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—An application was made by the Uttar Pradesh Financial Corporation Kanpur against the applicants u/s 31(1) of the State Financial Corporation Act, 1951 (hereinafter referred to as the Act). On the said application the District Judge passed, an ad interim order as contemplated by Section 32(1) of the Act on 24th August, 1963 and also issued notice as contemplated by Sub-section (4) thereof to the applicants to show cause. On receipt of that application the applicants put in appearance and filed an objection. However, on the date fixed they failed to appear and an order was passed on 27th March 1976, confirming the ad interim order dated 24th August, 1963. Subsequently the applicants made an application under Order 9 Rule 13 read with Section 151 C. P. C. for setting aside the order dated 27th March, 1976, on the ground that applicant No. 2 who was looking after the case on behalf of the applicants had fallen ill and was thus unable to appear and substantiate the objection. This application was opposed by the U. P. Financial Corporation, inter alia, on the ground that it was not maintainable inasmuch as Order 9 Rule 13, C. P. C. was not applicable. This objection found favour with the District Judge and the application made by the applicants for setting aside the

order dated 27th March, 1976 was dismissed on 11th December, 1976. On the view which he took the District Judge did not go into the question as to whether sufficient cause for non-appearance had been made out on behalf of the applicants or not as asserted by them. Aggrieved the applicants have preferred this First Appeal from order under Order 43. Rule 1(d) C.P.C.

2. For the appellants it has been urged that in view of Sub-section (6) of Section 32 of the Act the District Judge was required to investigate the claim of the Financial Corporation in accordance with the provisions contained in C. P. C. in so far as such provisions may be applied thereto. According to him since the investigation was made by the District Judge in accordance with the provisions of the C. P. C., an application for setting aside the ex parte order dated 27th March 1976, was maintainable under Order 9, Rule 13 : and the District Judge erroneously took a contrary view.

2A. For the respondent, U. P. Financial Corporation, on the "Other hand, it has been urged by its Counsel that the order which has been passed by the District Judge on 27th March, 1976 after making the investigation as contemplated by Sub-section (6) of Section 32 of the Act was essentially an order under Sub-section (7) thereof and was appealable under Sub-section (9) of Section 32 to this Court. According to him no application for setting aside the order dated 27th March, 1976 was maintainable.

3. Having heard counsel for the parties at some length, we are of opinion that even though Order 9, Rule 13, C.P.C. may not be applicable inasmuch as it is doubtful as to whether the order passed on 27th March, 1976 could be termed as a decree, there seems to be however, no doubt that the application for setting aside the order dated 27th March 1976, was maintainable u/s 151 C. P. C. In *Asnew Drums Private Ltd. and Others Vs. Maharashtra State Finance Corporation and Others*, it was held that the District Judge did not act as a persona designata under the Act. It is thus clear that for exercising the jurisdiction under the Act the District Judge acted as a Civil Court and would be subordinate to this Court for purposes of Section 115 C. P. C. In *Padam Sen and Another Vs. The State of Uttar Pradesh*, it was held that the inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Civil P. C. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.. The same view was reiterated by the Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, . According to Section 151 C. P. C. the inherent powers of the Court are exercisable in the ends of justice or to prevent abuse of the process of the Court. In case the applicants are able to satisfy the District Judge that there was sufficient cause for their non-appearance on the date fixed, there can be no manner of doubt that ends of justice would require the setting aside of the order passed in their absence and deciding the

proceedings afresh after hearing them. The District Judge, as seen above refused to go into the question as to whether sufficient cause as asserted by the applicants had or had not been made out. This he did on an erroneous view that he had no jurisdiction to entertain the application filed by the applicants. Consequently, the order passed by the District Judge is not sustainable and deserves to be set aside u/s 115, C. P. C.

4. At this stage we may point out that counsel for the applicants made a prayer that the First Appeal from order may be permitted to be converted into a Civil Revision. In our opinion on the facts of the instant case, this prayer deserves to be allowed and is accordingly allowed. The deficiency of Rs. 5/- in Court-fee has been made good by counsel for the applicants and he is permitted to make the necessary amendments in the Memo of Appeal so as to convert it into that of a Civil Revision.

5. In the result, this Revision succeeds and is allowed and the order dated 11th December, 1976 passed by the District Judge. Farrukhabad dismissing the applicants' application for setting aside the order dated 27th March 1976 is set aside and the District Judge is directed to decide the aforesaid application afresh in accordance with law. Since the matter is considerably old the District Judge will decide the application as expeditiously as possible. In the circumstances of the case, however, the parties shall bear their own costs of this revision.