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**(1998) 08 RAJ CK 0009**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4901 of 1989**

Ram Niwas Gupta

APPELLANT

Vs

Rajasthan Financial Corporation and Others

RESPONDENT

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**Date of Decision :** 28-08-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14  
State Financial Corporations Act, 1951 — Section 29

**Citation :** AIR 1999 Raj 140 : (1998) 3 WLC 751

**Hon'ble Judges :** J.C. Verma, J

**Bench :** Single Bench

**Advocate :** V.L. Mathur, for the Appellant; D.K. Soral, for the Respondent

**Final Decision :** Allowed

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## Judgement

J.C. Verma, J.—The petitioner M/s. Laxmi Enterprises Gangapur City, District Sawai Madhopur had applied for financial loan for establishing a small factory to the Rajasthan Financial Corporation, a Corporation established under law by the State of Rajasthan to help assist, guide and to uplift the industrialists. The petitioner wanted to manufacture and process sodium silicate. As per annexure-1 a total amount of Rs. 1,33,000/- was sanctioned on 2-9-1981. The petitioner established his factory at 246, Saloda Industrial Area, Gangapur City. On the application of the petitioner another loan of Rs. 22,000/- was sanctioned vide Annexure-3 on 2-2-1984, thus the amount of loan was enhanced to Rs. 1,55,000/-. Rate of interest as per Annexure-3 was fixed at 5% above the bank rate prevailing from time to time subject to a minimum 15%. However, it was also mentioned under clause 4(b) of Annexure 3 under "Soft Loans heading" that if subsidy is available from the state Government and refinance is made available by the IDBI @ 10%, the Corporation will charge interest @ 11 % p.a. There was default in quarterly payment of the instalments. However, the petitioner continued making certain payments. It is stated by the petitioner that on 30-12-1986 a total amount of loan including the interest which remained payable

was Rs. 1,05,658/- as per notice issued to it. However, in January, 1986 as informed to the petitioner the loan was Rs. 62,380/-. A notice was issued u/s 30/29 of the State Financial Corporation Act, 1951 vide Annexure 4. In the notice the principal amount has been shown as Rs. 41,335/- whereas the interest has been shown as Rs. 21,045/-. On receipt of the notice, the petitioner deposited certain amount as per Annexure 5. There were certain difficulties being faced by the industry in regard to non-availability of the raw material and also because of the power cuts. The petitioner had deposited Rs. 10,000/- in January and again deposited Rs. 5,000/- in March, 1986. Another legal notice was issued to the petitioner and again the Corporation reminded the petitioner that in case any default is made, the petitioner would face the consequences of Section 29 of the Act. The petitioner deposited another Rs. 5,000/- on 30-12-1986. In Annexure 8 dated 16-12-1986 the details given by the respondents of over dues as on 30-12-1986 are Rs. 77,335/- as principal amount and Rs. 28,323/- as interest and total Rs. 1,05,658/- @ 18.50%, however, after giving such details the petitioner has been asked to deposit an amount of Rs. 1,38,527/-.

2. It is the case of the petitioner that on 7-2-1987 a forcible possession had been taken of the factory of the petitioner by breaking open the lock. Raw material worth Rs. one lac which stood hypothecated to the bank was lying in the factory but no inventory was made by the RFC. According to the petitioner, as per statement submitted by the petitioner to the bank about the hypothecation of the raw material as on 31-1-1987, copy of which has been placed on record as Annexure 9, the raw material worth Rs. 1,10,932/- was lying in the factory. The RFC started taking proceedings for sale of the factory as per publication in the newspaper on 20-3-1987. Ultimately by way of negotiation it transferred the factory with its materials, machinery, building for an amount of Rs. one lac to Satya Narain Girdhari Lal, respondent No. 3. It is submitted by the petitioner that his property worth more than Rs. four lacs was thrown away at Rs. one lac.

3. The petitioner had been praying that in the circumstances he be allowed to pay the amount in instalments. His requests were not heeded to. It is interesting to note that this Satya Narain Girdhari Lal, respondent No. 3 (hereinafter called as respondent No. 3) is said to have purchased the property in question for Rs. one lac with a condition that he was to deposit 25% of the amount within seven days and the balance amount was to be deposited in 34 monthly instalments and in case of default of instalments. 7.5% of interest was to charge, meaning thereby RFC had agreed to charge the amount from the new purchaser of the factory in 34 instalments and in case of default interest of 7.5% whereas the petitioner's request for payment of instalments was not agreed to. The petitioner was given another notice vide Annexure 12 on 30-8-1989 for deposit of another amount of Rs. 1,01,988/- after adjusting Rs. one lac. Being aggrieved the petitioner has filed the present writ petition.

4. Reply has been filed by the Corporation. According to the Corporation the assets of the petitioner were valued to Rs. 2,07,244/-. The other averments are

not denied, but it is stated that the petitioner had not paid the regular instalments and, therefore, action was taken by issuing legal notice. It is also admitted that the possession was also taken in the absence of the petitioner but in the presence of some other witness i.e. a Notary Public. It is further stated that there was no raw material. It is specifically stated in the written statement that the auction was finalised after due publicity in the "Rajasthan Patrika". Auction proceedings had been attached as Annexure R/9 which are said to have been held in the presence of the committee. Annexure R/9 attached to the written statement reads as auction proceedings of sale of assets, date of auction on 20-1-1989, place of auction has been shown at Sawai Madhopur, wherein it is mentioned that against a tender of Rs. 80,000/- by negotiation of Rs. one lac has been agreed to be paid by Sarya Narain. Annexure R/9 reads that for the bid of the sale of the assets that being highest bid by Satya Narain had been recommended for acceptance and on the same day, the bid is accepted by the officers. On 21-1-1989 vide Annexure R/10 a letter is written by the Deputy General Manager to the General Manager to the effect that the offer of Rs. one lack is genuine and that should be accepted.

5. Record has been produced by the Corporation including the statement of accounts.

6. On the record there is a notice dated 16-12-1986 details of which have already been discussed above and then there are proceedings of 7-2-1987 wherein it is mentioned that one Shri K. R. Meena of the designation of A.M. had reached the site at 4.30 p.m. the main shed was lying closed, the locks were broken by Shri Ganeshi Ram, Blacksmith in the presence of one Notary Public. The proceedings taking of possession is reproduced as under as depicted from the order.

"We all reached the factory site at 16.30 AM/ PM. The main shed was lying closed and Shri.. ..... Chowkidar of the concern was found therein/no chowkidar was present. All the locks were got broken by Shri Ganeshi ram (Blacksmith) in the presence of Notary Public. The Chowkidar who was also present and had stored certain personal goods was asked to remove all goods.

4. The inventories of all the fixed assets namely, land building. Plant and Machinery and other assets were got repaid by Shri P.K. Gupta (Tech. Personnel of the Branch Office. The details of land, building Plant and Machinery and other equipment, found installed are given in Annexure "A" attached with the proceedings and details of additional assets/missing assets are given in Annexure "B" attached with the proceedings. The godown on which locks of Bank were found were not opened and concerned Bank was intimated about the takeover. The shed godown and other rooms were locked and keys were taken by Shri K. R. Meena was posted as Chowkidar for proper watch and ward.

Signature of the Officer

Name : K. R. Meena

Designation: AM

Branch Officer: SWM

In the presence of:--

Name Address

1. Harsahai s/o Sonaram UP Katbar Tech. Hindaun."

Signatures

Sd/-

7. The above said possession report is cyclostyled and only fill in the blanks have been done. It goes without saying that before taking possession, no notice had been issued to the parties and even me Blacksmith was accompanying the officer as if the officer was knowing that the premises would be locked and he would have to break up the locks and this very blacksmith is made a witness. There is a letter at page 45 in pro forma FR .28 showing me possession report which also reads as under :--

rfc Pro forma No. FR-28

POSSESSION REPORT REGARDING TAKEOVER OF ASSETS OF M/S. LAXMI ENTERPRISES U/S. 29 OF SFC'S ACT

No. Date: PART-1

In terms of authorisation dated 3-2-1987 issued by R. K. Tayal (name) Mgr. (Br.) (Designation) proceeded to take possession of the assets of M/s. Laxmi Enterprises (Address) Saloda Ind. Area Gangapur on 7-2-87 in the presence of Shri ..... Notary Public and the following officers of our Corporation.

1. Sh. K.R. Mecna

2. Sh. P. K. Gupta

2. In addition to the above, following officers of other institutions also accompanied/were present at the time of taking possession :-- -

Name of the officer with designation

1.

2.

3. We reached the site at..... AM/PM. The main shed of the unit was lying open and (1) following partners/Directors/Chowkidar of the concern were found there or (2) no persons were present at that time.

Name Status (Partner/Director/Chowkidar) 1. 2.

8. There is another letter of the Bank dated 23-3-1982 written to the Deputy

General Manager, Rajasthan Financial Corporation mentioning that the raw material was lying in the factory which was in possession of the bank and the bank had charged on the assets of the factory. There is a letter dated 15-2-1987 written by the Manager, Kota region of the RFC to the Manager, Bank of Baroda to the effect wherein it is mentioned that the RFC had no objection in releasing the goods lying in the above factory which is in possession of the RFC. The whole of the letter reads as under:

SWM/F/FR/659 15-5-87 The Manager

Bank of Baroda

Udai Kalan

Teh. Gangapur City

District Sawai Madhopur

Sub : -- M/s. Laxmi Enterprises, Gangapur

Dear Sir,

We are (in) receipt of your letter No. CC/ ADV/F7/7/337 dated 20-4-87 on the captioned subject. In this connection we would like to inform you that we have no objection on releasing the goods lying in the above factory which is in our possession.

You are, therefore, requested to get them transferred on any date suitable to us.

Thanking you,

Yours faithfully,

Sd/- Manager, Kota Region

Camp Sawai Madhopur.

C.C. to: the DGM (R) Kota for information in reference to his letter No. FR/4/179 dated 4-5-1987.

Sd/-

Manager, Kota Region

Camp Sawai Madhopur.

9. There is a letter on the file dated 20-1-1989 by one Satya Narain showing his intention to purchase this property for Rs. one lac in instalments. On 20-1-1989 itself a letter is written to the petitioner to the effect that the tenders will be opened on 20-1-1989. It is not shown as to how the letter written to the petitioner on 20-1-1989 for opening the tenders on that very day was supposed to reach the petitioner on the same day.

10. The record as produced before the Court about taking the possession has

been shown. I have gone through the noting of 3-2-1987 which is for taking over the possession of the unit which was approved on the same day and a report has further been made that the possession has been taken on 7-2-1987. Somebody has signed saying that MRV of the assets is Rs. 1,15,000/- only.

11. Statement of account of the petitioner has also been produced from the period 1-4-1982 to 31-3-1990 in account No. 3804 showing the interest at 13.5% and the penal interest at 18.5%. In the said account on the date of taking of the possession i. e. in February 1987 the total amount due has been shown as Rs. 1,39,457/- and on 13-12-1986 the total amount has been shown as Rs. 1,38,527/- In this account from 1-4-1982 to February, 1987 Rs. 10.131 + 306 + 11.793 + 566 have been shown to have been deposited towards principal side and Rs. 10.500 + 4.200 + 6.930 + 4.598 + 2.000 + 1.700 + 3.869 + 4.694 + 4.422 + 4.402 + 7.176 + 5.000 towards interest side. Total Rs. 82.2877- meaning thereby that for a loan of Rs. 1,33,000/-, the petitioner had deposited Rs. 82.2877- up to February 1987.

12. Similarly for other account No. 3812 though the total amount due as shown up to January, 1987 is Rs. 20,993/- and the amount deposited by the petitioner towards principal and interest is Rs. 7807/- against the loan of Rs. 22,000/- taken in 1984.

13. From the narration of the above-said facts, the position as emerges is as under :--

- (1) was there any auction ever held :
- (2) was any effort made by the RFC to rehabilitate the petitioner.
- (3) was the petitioner failing in depositing the amount due :
- (4) was the possession taken by ever issuing notice for delivery of possession :
- (5) even as per the admitted position in regard to assets of the factory being over Rs. two lacs reserved tender price was fixed at Rs. 80,000/-;
- (6) why all negotiations were held only with one person Satya Narain;
- (7) If Satya Narain respondent was given the opportunity to deposit the amount in 34 instalments, why this offer could not be made to the petitioner as well.
- (8) If Satya Narain respondent No. 3 had been offered the condition of levying of interest on him at 7.5% in case of default of payment, how is it that the real owner was charged a penal rent of 18.5% ;
- (9) Is there any malice or malice in law involved in the case.

14. This court in the case M/s. Jaya Properties Pvt. Ltd. v. The Rajasthan Financial Corporation and another, S. B. Civil Writ Petition No. 5812/96 decided on 18-12-1997 (reported in 1998 (4) Civ LJ 107 relying on Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, while dealing with the

powers of the Financial Corporation u/s 29 of the Act had, held as under :--

"Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable :

1. Sale of a unit should always be made by public auction.
2. Valuation of a unit for purpose of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.
3. If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.
- 4(a). If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.
- (b) If he brings third parties with higher offer it would be tested and may be accepted :
5. Sale by private negotiation should be permitted only in very large concerns where investments runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.
6. Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale shall be deposited in loan account.

Section 29 confers very wide power on Corporation to ensure prompt payment by arming it with effective measure to realise the arrears. But the simplicity of the language is not an index to enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale. Every wide power, the exercise of which has far-reaching repercussion has inherent limitation on it. it should be exercised to effectuate the purpose of the Act. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its action and decisions which touch the common man have to be tested on the touchstone of fairness and justice. Power u/s 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act cautiously, honestly fairly and reasonably.

Corporation deal with public money for public benefit. The approach has to be public oriented, helpful to the loanee, without loss to the Corporation. Section 24 of the Act itself required the Board to discharge its function on business

principles, due regard being had to the interest of industry, commerce and general public. "Business" is a word of wide import. It has no definite meaning. Its perceptions differ from private to public sector or from institutional financing to commercial banking. The Financial Corporation under the Act were visualised not as a profit earning concerns but an extended arm of a welfare State to harness business potential of the country to benefit the common man.

The Corporation or its officers or servants as trustee are bound to exercise their power in good faith in selling or dealing with the property of the debtor as a ordinary prudent man would exercise in the management of his own affairs to preserve and protect his own estate. Therefore, the acts of the officer or servant of the Corporation should be reasonable, just and fair which must meet the eye and the offer accepted must be of competitive and every attempt should be made to secure as maximum price as possible to liquidate the liabilities incurred by the industrial concern or the debtor under the Act."

15. It is true that the High Court is not to function as an appellate Court but it has been held by the Hon'ble Supreme Court in U. P. Financial Corporation v. M/s. Gem Cap (India) Pvt. Ltd. AIR 1993 SC 1435, that in case there is statutory violation on the part of the Corporation or where the Corporation acts unfairly and unreasonably, the High Court can interfere into the decision taken by the Financial Corporation.

16. In the present case, admittedly, there was no auction held as is clear from the orders and the record produced. Only one person respondent No. 3 had applied to purchase the property for Rs. one lac and on the same day his offer was accepted. As per the written statement of the respondent the assessed value of the building and machinery is over Rs. two lacs, but the RFC had fixed the reserve price at Rs. 80,000/- on what basis, it is only left to the imagination and ultimately is sold for Rs. one lac. The petitioner wanted to pay in instalments. No reply was given to the petitioner, but the new purchaser was able to get the factory in question with 34 instalments. The petitioner was levied the penal interest of 18.50% whereas the new purchaser in the case of default was asked to pay the interest of 7.5%. The action of the Corporation is totally discriminatory. Instead of trying to rehabilitate the petitioner, for which no steps whatsoever had been taken, as is clear from the record and only because of the reason that the petitioner had failed to some extent to repay the loan even though he had been repaying loan as mentioned above as it was not a case where no loan had been repaid at all, it was definitely unreasonable on the part of RFC to act in violation of the set norms of rehabilitation in the case of the small enterpriser and to take away his premises by selling it for petty amount of Rs. one lac.

17. Apart from above, it violates the principles of natural justice as well in breaking open the lock of the factory and to go to the factory with the preparation of breaking open the lock accompanying with blacksmith. U was a case where at least some notice should have been issued to the petitioner

informing him that the Corporation had taken a decision to take the possession of the factory in case the balance due of the instalments are not paid. Admittedly, no notice was given. Even the proceedings of taking of the possession is not in accordance with the principles of natural justice. A cyclostyled pro forma is filled up with the witness, the blacksmith who broke open the lock.

18. The respondent has denied that there was any raw material or any finished material was lying in the factory at the taking over the premises whereas the respondent itself has admitted in one of the letter written to the bank that the raw material is in possession of the Corporation and can be handed over to the bank. The respondent has definitely not stated the facts clearly in the written statement and there seems to be some concealment in this regard. Had the record not been called and produced, this fact would have gone unnoticed. Even at the time of taking of the possession there is a note of the material being inside the factory worth Rs. 1.15 lacs. Where the material has gone? Has it been given over to the purchaser who had purchased the property including the building and machines. The action of the respondent leaves no doubt that the action taken against the petitioner was unreasonable and not in accordance with law. It is the foremost duty of the Corporation, first to take all steps to rehabilitate the enterpriser and not to kill the enterpriser itself. In the present case though there are no mala fides alleged, but the action in question does seem to be involved the malice in law and thus cannot be sustained.

19. For the reasons mentioned above the writ petition is allowed. The order of taking over the property in question and selling it to the respondent No. 3 is set aside. The impugned orders in the writ petition are set aside with a further direction that the respondent shall compensate to the petitioner by refunding the amount equivalent to raw material seized in the factory but not accounted for and the possession of the factory in question shall be delivered back to the petitioner within two months from the date of receipt of certified copy of this order. A cost of Rs. 1,000/- is also awarded in favour of the petitioner.