(2013) 08 P&H CK 0522

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14704 of 2008

Ramesh Chander — APPELLANT

Vs

Punjab Financial Corporation and Another — RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (2014) 3 BC 263 : (2014) 1 PLR 124

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Nitin Thatai, for the Appellant;

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—Plot No. B-39 measuring 2512.12 Sq. Yds. Focal Point, Moga, was given as security for due repayment of the loan advanced to a partnership firm M/s. Prakash Chemicals through a registered mortgage deed. The mortgage was alongwith building and machinery installed therein. The borrower committed default in repayment of the loan and thus, respondent No. 1 M/s. Punjab Financial Corporation (PFC), which had advanced the loan, exercised powers u/s 29 of the State Financial Corporations Act, 1951 (in short ''the Act'') and took over the possession of the mortgaged properties. Petitioner was the highest bidder for purchase of this property and as per the Minutes of the Sale Committee placed on record dated 4.1.1995, the petitioner was called upon to make 25% down payment after deducting the dues payable to Punjab Small Industries and Export Corporation (PSIEC)/respondent No. 2 and the balance amount was payable in 12 quarterly installments on usual terms and conditions. It is stated that these terms and conditions provided that the payment would be made with 26% interest with a concession of 6% interest in installment if installments were paid by due dates.

2. The petitioner did make payment, but there was some default. It is the say of

the learned counsel for the petitioner that this default was in payment of interest though principal was paid. Suffice to say that as a result thereof, the PFC exercised its right once again u/s 29 of the said Act, but this time qua the petitioner and sought to re-auction the property after taking over possession from the petitioner.

3. The petitioner seeks to assail this action of respondent No. 1 under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner submits that the defaults in payment of interest on the part of the petitioner was occasioned by the fact that the petitioner was not able to utilize the plot despite possession being handed over on account of failure of respondent No. 1 to comply with its obligations to make payment of dues to respondent No. 2, on which payment, rights of the petitioner would have matured. The result was that there was no transaction completed in favour of the petitioner.

5. A legal plea is sought to be raised that in any case powers u/s 29 of the said Act cannot be utilized to take action against the petitioner who is an auction purchaser and not a borrower and in this behalf, reliance has been placed upon a Division Bench judgment of this Court in G.R. Industries Pvt. Ltd. Vs. Punjab Financial Corporation, where it was observed as under:-

5. After the learned counsel for the parties, we are of the considered view that the action of the corporation in taking over possession of the property concerning the petition is wholly illegal and is liable to be set aside because no action u/s 29 of the 1951 Act could be initiated against the petitioner. A perusal of Section 29 of the 1951 Act would show that it contemplates taking over the management or possession of the entire concern in case it makes default in repayment of loan or any installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the agreement with the corporation. It is conceded position that the petitioner is neither a borrower nor it has committed default in making repayment of such loan or installment thereof. It has not violated the terms of any agreement with the corporation executed regarding payment of loan or installment. We are further of the view that Section 29 of the Act does not contemplate violation of terms of any agreement with the Corporation independent of an agreement in respect of which default relating the repayment of loan or advance or interest thereon has been committed. The corporation cannot extend the scope of Section 29 of the Act by applying the same to the purchaser of a property like the petitioner. Admittedly, there is no default in payment of any amount towards the property taken over by the Corporation. The alleged default, if any, was on account of non-payment of part of price of raw material purchased by the petitioner. Therefore, the action of the respondent-corporation is wholly without jurisdiction and is liable to be set aside.

6. The other limb of the submission of learned counsel for the petitioner is that

once the possession was taken over from the petitioner, respondent No. 1 is not entitled to charge any interest and the interest meter would have stopped. In this behalf, learned counsel for the petitioner has relied upon a judgment of the learned Single Judge of this Court in M/s. Advance Oils Private Limited Versus Punjab Financial Corporation and others, 2007 (2) PLR 115.

7. We have had no assistance on behalf of respondents as none has chosen to appear even though the matter is effective at Item No. 3 on the Regular Board and it is 2:35 PM. None had appeared for the respondents even on the last date, when the matter was called on 14.8.2013. Thus, we have proceeded to judgment.

8. In our view, the action of the respondents against the petitioner u/s 29 of the said Act must fail on the short ground that the petitioner is not a borrower but is an auction purchaser and thus, the issue is no more res-integra in view of the Division Bench judgment of this Court in G.R. Industries Pvt. Ltd. (supra).

9. The result of the aforesaid is that the impugned action of the respondents u/s 29 of the said Act is quashed, there would be no question of re-auction in these circumstances and the possession must be restored to the petitioner within one month of communication of this order. However, this would not preclude the respondent No. 1 from taking any action in accordance with law including any other provision of the said Act. The petition is allowed to the limited extent as aforesaid leaving the parties to bear their own costs.

