**(1984) 12 CAL CK 0011**

**In the Calcutta High Court**

**Case No :** Civil Order No. 12261 (W) of 1984

Rose Potteries APPELLANT

Vs

West Bengal Financial Corporation RESPONDENT

**Date of Decision :** 21-12-1984

**Acts Referred:**

State Financial Corporations Act, 1951 — Section 29, 31
Transfer of Property Act, 1882 — Section 69

**Citation :** AIR 1986 Cal 277

**Hon'ble Judges :** Suhas Chandra Sen, J

**Bench :** Single Bench

**Advocate :** S.S. Hazra and S. Mukherjee, for the Appellant; A.K. Dhandhania, for the Respondent

**Final Decision :** Dismissed

## Judgement

Suhas Chandra Sen, J.—The petitioner defaulted in making repayment of loans obtained from the West Bengal Financial Corporation. A demand notice was served upon the petitioner by the Corporation on 12th July, 1984. It appears from the said demand notice that the amounts due to the Corporation amounted to Rs. 10,84,000/- towards principal, Rs. 7,22,077.53 towards interest up to 30th June, 1984. A further sum of Rs. 43,123.26 was also claimed towards other dues. The total claim amounted to Rs. 18,49,211.79. The petitioner was called upon to make payment within 15 days from the date of the receipt of the notice. In the notice it was further stated that "in default of payment as stated above within 15 days from the date of receipt of this notice the provisions of the security deeds under reference and the State Financial Corporation Act, 1951 shall be enforced against you without further reference and you shall be held liable for all costs and consequence."

2. The case of the respondent is that the petitioner had executed deed of mortgage and other security documents in favour of the West Bengal Financial Corporation in connection with the loans which were given to the petitioner

 

starting from 16th Aug.. 1978.

3. On 1st Aug., 1984 a further notice was given by the West Bengal Financial Corporation to the petitioner in which it was alleged that the petitioner had not observed the terms and conditions of the various security documents executed by the petitioner for the purpose of obtaining loan. It was also alleged that in spite of the notice dt. 12th July, 1984 the petitioner had failed to make any payment. The Corporation gave notice to the petitioner that in exercise of its right u/s 29(1) of the State Financial Corporation Act, a representative of the Corporation will take possession of the factory of the petitioner on 10th Aug., 1984.

4. The petitioner has challenged this notice by this writ petition and an interim order was issued on Aug. 9, 1984 restraining the respondent from giving effect to the two notices dt. 12th July, 1984 and 1st Aug., 1984. The question that arises now is whether the interim order should be continued or not.

5. The contention of the petitioner is that the proceedings may be started against the petitioner under Sections 30 and 31 which confer upon the Corporation the power to call for repayment, but the Corporation cannot proceed u/s 29(1) to take over the management of the industrial concern of the petitioner without obtaining an order from Court. In support of his contention, reliance has been placed on a Full Bench judgment of the Allahabad High Court in the case of Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another, .

6. Section 29 of the State Financial Corporations Act, 1951 provides : --

"Section 29(1) Where any industrial concern, which is a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance 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 terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under Sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property."

7. It is not necessary to set out Sub-sections (3), (4) and (5) of Section 29 for the purpose of this case. Section 31 provides:

"31.(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of the agreement with the Financial

 

Corporation or where the financial corporation requires an industrial concern to make immediate repayment of any loan or advance u/s 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the T. P. Act, 1882 any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely : --

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

8. The argument that Section 31 lays down the method of exercising the right given by Section 29(1) cannot be accepted because of the clear wordings of Section 31. Section 31 provides for special provisions and these provisions are "without prejudice to the provisions of Section 29 of this Act". Therefore, it cannot be suggested that provisions of Section 29 are controlled by Section 29 or Section 31 lays down the procedure and Section 29 merely lays down the right. The right u/s 29 arises whenever there is any default in repayment of any loan or advance or any instalment of the loan or meeting any obligation in relation to any guarantee given by the Corporation or failure to comply with the terms of the agreement with the Financial Corporation. The procedure laid down for enforcement of claims by Financial Corporation u/s 31 is not only without prejudice to Section 29 of the Act but also Section 69 of the T. P. Act Section 69 gives power to a mortgagee to sell the mortgaged property without the intervention of the Court and is distinct from the power of a simple mortgage to cause the mortgaged property to be sold by decree of the Court. The provisions of Section 29 are similar to the power given to a mortgagee u/s 69 of the T. P. Act. In view of the clear wordings of Section 31 it cannot be said that the right given u/s 29 can only be exercised in accordance with the procedure laid down by Section 31.

9. Furthermore, it should be noted that Section 29 specifically provides under Sub-section (2) that the transferee will acquire all rights in or to the property transferred as if the transfer had been made by the owner of the property. This clearly indicates that Section 29 was dealing with transfer and the legal consequence of such transfer. It did not confer only the right to file a suit.

10. The Full Bench judgment of the Allahabad High Court in the case of Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another, lays down that the

 

special and speedy remedy contained in Section 31 of the Act cannot be availed of by the corporation against the property of a surety. This judgment, in my opinion, does not really apply to the controversy before us.

11. In that view of the matter, this writ petition fails and is dismissed All interim orders vacated.

12. There will be no order us to costs.