

(2016) 09 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 7440 of 2011 (GM-KSSIDC)

S. Madhav

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 190
State Financial Corporation Act, 1951 — Section 29, Section 31, Section 32G

Citation : (2017) 1 KantLJ 114

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Sri Millend Gokale for Sri M. Vinayakeerthy, Advocates, for the Petitioner; Anandarama and Prashanth Kumar, Advocates, for the Respondent No. 3; Notice, for the Respondent Nos. 5 and 6; Sriyuths Lakshminarayana, Additional Government Advocate, for the Res

Final Decision : Dismissed

Judgement

A.S. Bopanna, J. - The petitioner is before this Court assailing the notice dated 28-12-2010, the certificate dated 10-11-2010 and the consequential official notice dated 4-12-2010 which are impugned at Annexures-D and C respectively.

2. The petitioner was the Managing Director of the company known as M/s. Bellary Steels and Alloys Limited. The company had availed loan from the third respondent-Corporation. Towards the said loan several properties had been hypothecated and mortgaged. The petitioner is one of the personal guarantors in respect of the loan availed by the said company as a borrower. Since the amount stood outstanding, the third respondent-Corporation made a representation to the Government of Karnataka seeking permission to recover the dues by invoking the provision of the Karnataka Land Revenue Act, 1964 ("The KLR Act" for short). In that view, a notification dated 16-1-2010 was issued by the Government of Karnataka in exercise of the power conferred under Section 32-G of the State Financial Corporations Act, 1951 ("The SFC Act" for short).

3. The third respondent-Corporation in that regard had quantified the amount recoverable from the company at Rs. 19,95,76,475.88ps and issued the certificate for recovery of the amount by sale of the mortgaged property. The fourth respondent-Deputy Commissioner in that light issued the notice dated 4-12-2010 directing the second respondent-Special Tahsildar to recover the said amount by invoking the provision under Section 190 of the KLR Act. Pursuant to the same, the second respondent has issued the notice in Form 37 calling upon the petitioner to pay the amount through the notice dated 28-12-2010. The recovery proceedings thus being initiated by respondents 1 to 4, the petitioner was before this Court assailing the said action. During the pendency of the petition, the process has been completed and in the said process the fifth and sixth respondents who are impleaded herein are the successful purchasers. In that view, the petitioner has sought for a declaration the that auction in favour of the said respondents held on 11-6-2014 is illegal and not sustainable.

4. The respondents have filed their objection statement. The details relating to the different loans availed by the company is referred and the amount due at Rs. 69,97,90,820.10ps towards lease finance, Rs. 19,95,76,475.88ps towards medium term corporate loan and Rs. 22,02,37,561.90ps towards subscribing to redeemable non-convertible debentures is referred. In that light it is contended the that petitioner and the other directors of the company offered the immovable properties as collateral securities by creating equitable mortgage by way of deposit of title deeds in favour of the respondent-Corporation. Since the amount due had not been paid despite the issue of legal notice dated 2-9-2010, appropriate action under the SFC Act was initiated. In view of the provision contained in Section 32-G of the SFC Act, the notification dated 16-1-2010 authorising the Managing Director of the respondent-Corporation to issue the certificate was made. Accordingly, the recovery certificate dated 10-11-2010 to the tune of Rs. 19,95,76,475.88ps was issued and the procedure as contemplated under the KLR Act has been initiated. Hence, it is contended that when the property is available for the purpose of recovery of the amount and the provision contained in the SFC Act provides for recovery by adopting the said procedure, the same is resorted to and the petitioner cannot make out any grievance when it cannot be in dispute the that amount was due and payable by the company and the petitioner and the other directors have also stood as guarantors for discharge of the loan. The respondents therefore seek dismissal of the petition.

5. In the light of the rival contentions, I have heard the learned Counsel for the parties and perused the petition papers.

6. The contention on behalf of the petitioner essentially is the that recovery under Section 32-G of the SFC Act cannot be resorted to against an individual but can only be against the industrial concern. In that regard it is contended the that property belonging to the petitioner could not have been brought to sale through the procedure adopted. In that view the procedure adopted to recover

the amount by issue of notice under Section 190 of the KLR Act to recover the same as arrears of land revenue is not justified is the contention. Hence, it is contended that the sale of the property is not justified and the same is liable to be set aside.

7. Learned Counsel for the respondent on the other hand would refer to the provision contained in Section 32-G of the SFC Act to point out that the same provides for recovery of the amount due from the industrial concern but does not limit the power to recover the same as arrears of land revenue only from the property belonging to the industrial concern. Such power in any event was available under Section 29 of the SFC Act and the introduction of Section 32-G of the SFC Act is to permit recovery from the other properties from which the recoveries could be made and such properties would also include the properties belonging to the guarantors, either mortgaged or not. It is further contended that it is for the financial Corporation to choose the mode of recovery as provided under the SFC Act. The exercise of power to recover under Section 32-G of the SFC Act therefore is not contrary to law and when the amount due is easily ascertainable, the petitioner cannot contend that any other procedure was required to be followed.

8. At the outset, a perusal of the provisions contained in Sections 29 and 32-G of the SFC Act would indicate on the face of it the distinction relating to the right available to the Financial Corporation while realising its dues. The former provides for taking over the management or possession or both of the industrial concern and thereafter transfer by lease or sale. Therefore, under Section 29 of SFC Act, the action relates to the property of the industrial concern itself. However, insofar as the latter provision, there is no such indication but is only with regard to the recovery of the amount due to the Financial Corporation. Hence, the contention that while exercising power under Section 32-G, only the property of the industrial concern can be brought to sale and not any other property cannot be accepted.

9. The learned Counsel for the petitioner while next contending that the property could not have been brought to sale without there being determination of the amount in the proceedings under Section 31(1)(a) and 31(1)(aa) of the SFC Act has relied on the decision of this Court in the case of *Smt. Shruti Shetty v. State of Karnataka and Others*, ILR 2014 Kar. 566. The learned Counsel for the respondent-Corporation on the other hand has sought to rely on the decision in the case of *Delhi Financial Corporation and Another v. Rajiv Anand and Others*, (2004) 11 SCC 625, to contend that the action initiated against the surety under Section 32-G of the SFC Act is permissible and that if the amount due as determinable from the account would be sufficient and there is no need for determination to be completed under Section 31(1)(a) and 31(1)(aa) of the SFC Act when action is initiated under Section 32-G of the SFC Act.

10. A close perusal of the cited decisions and the facts arising therein as against the facts in the instant case will have to be noticed. In the case of *Smt. Shruti*

Shetty she was neither a director of the company nor a guarantor for the loan obtained by the company. On the other hand she was claiming independent right to the sought to be auctioned, under a Will and having acted upon the same, had also obtained loan from a bank and had put up the construction. Despite the said position, the property owned by her was being proceeded against under Section 32-G of the SFC Act based on a personal guarantee that had been executed by the father of the petitioner therein on the premise the that property belonged to him. In that circumstance, the fact of the proceedings under Section 31(1) of the SFC Act instituted much earlier being pending and despite the same the Financial Corporation having invoked Section 32-G of the SFC Act thereafter was disapproved. However, in the case on hand, with regard to the amount claimed to be due, there is no contrary material placed on record to dispute the same to hold that only a determination made under Section 31(1) of the SFC Act would enable the quantum to be determined and the property to be sold.

11. Further, in the instant case, the consideration as made in Smt. Shruthi Shetty's case cannot be applied as the simultaneous proceedings is not in similar terms and the opportunity issuing notice also will not arise. That is for the reason that in the instant case the property regarding which the action under Section 32-G of the SFC Act was initiated is the property over which the petitioner had created a mortgage by deposit of title deeds and an agreement dated 24-3-1998 was executed and the petitioner was therefore aware the that property would be liable till the loan is discharged. That apart in the instant case, the proceedings under Section 32-G of SFC Act was initiated on 16-1-2010 with the Government permitting the issue of certificate for recovery of the amount and sufficient progress was made notwithstanding the pendency of this petition. The sale was accordingly concluded by the auction dated 11-6-2014. It was when the proceedings under Section 32-G of SFC Act had advanced sufficiently the petition bearing Misc. No. 53 of 2013 was filed on 25-4-2013. It is no doubt true the that question was also included in the schedule to that petition. However, as rightly contended by the learned Counsel for the respondent-Corporation, it was only technical error as it was not required to be included. In any event, the same has thereafter been deleted by carrying out amendment. In addition, it cannot also be in dispute that even after appropriating the amount recovered from the property in question the borrower company is still due to the respondent-Corporation and in that regard the proceedings under Section 31(1) of SFC Act relating to the other properties is required to proceed. In such circumstance, the petitioner under any circumstance cannot assail either the procedure adopted or the auction concluded which has liquidated only a portion of the amount due.

12. If all the above aspects are kept in view, the decision of the Hon'ble Supreme Court in the case of Delhi Financial Corporation relied on by the learned Counsel for the respondent-Corporation would be relevant to be applied to the facts and circumstance arising in this case. In that view the decision in the case of Karnataka State Financial Corporation v. N. Narasimahaiah and Others, (2008) 5 SCC 176 relied on by the learned Counsel for the petitioner also cannot be of

any assistance to the petitioner.

13. Therefore, keeping in view all the above aspects of the matter, the action of the respondents does not call for interference.

The petition accordingly being devoid of merit is dismissed with no order as to costs.