

(2001) 05 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3046 of 1999

Sanjeev Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 406, 420
State Financial Corporations Act, 1951 — Section 29, 31, 32, 32(4)

Citation : (2001) 2 ILR (P&H) 574 : (2001) 4 RCR(Civil) 521

Hon'ble Judges : Jawahar Lal Gupta, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : Mohan Jain, for the Appellant; Kamal Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Can the Financial Corporation take possession of the mortgaged property and sell it in view of the provisions of Section 29 of the State Financial Corporations Act, 1951 ? This is the short question that arises for consideration in this case.

2. The facts may be briefly noticed.

The petitioners are the two partners of the firm-M/s Mohan Ice Factory, Bahadurgarh. A request was made to the Haryana Financial Corporation for the grant of a loan. An amount of Rs. 18.79 lacs was sanctioned. The firm withdrew an amount of Rs. 17.18 lacs. In March 1997, the petitioners entered into an agreement with Mr. Yogender Dahiya for the sale of the unit. The petitioners allege that after taking over possession, the buyer removed a part of the machinery. They informed the respondent-Corporation as also the police. Thereafter, the respondent-Corporation took over the possession of the unit. On January 28, 1998, it lodged an FIR No. 26, at Police Station City Bahadurgarh alleging that the petitioners were guilty of offences punishable under Sections

406 and 420 IPC. The unit was put to sale. It was auctioned for Rs. 5 lacs. Then, the petitioners were served with a notice dated February 4, 1999 by which they were informed that House No. WZ/8C/26A New Mohan Nagar, New Delhi which is mortgaged with the Corporation shall be sold on March 9, 1999. The petitioners were asked to deliver possession. Aggrieved by this notice, the petitioners have approached this Court through the present writ petition under Article 226 of the Constitution. The petitioners allege that the action of the Corporation "is against the well settled law". They pray that the impugned notice issued on February 4, 1999 be quashed and that the Corporation be restrained from taking over possession of the residential house belonging to petitioner No. 2.

3. A written statement has been filed on behalf of respondent No. 2. Mr. Kamal Sehgal, counsel for the second respondent states that the written statement has been signed by Mr. Ashok Pahwa, who is now working as the Deputy General Manager of the Corporation. The claim made by the petitioners has been controverted. It is maintained that the Corporation is entitled to take over possession of the mortgaged property and to sell it. Its action in calling upon the petitioners to vacate the premises and to hand over possession is in conformity with law. Thus, the second respondent prays that the writ petition be dismissed.

4. The solitary contention raised by the counsel for the petitioner is that the Corporation cannot take possession of the mortgaged property. The claim made on behalf of the petitioners has been controverted by Mr. Kamal Sehgal, learned counsel appearing for the second respondent.

5. It is in the background of the above-noted facts that the question as posed at the outset arises. The question is - Can the Financial Corporation take possession of the mortgaged property and sell it in view of the provisions of Section 29 of the State Financial Corporations Act, 1951 ?

6. The Act was promulgated to provide for the establishment of the State Financial Corporations. The primary object of the Statute was to promote industry and to secure public dues. Therefore, a complete mechanism for providing facilities and ensuring recoveries was made. Section 29 was incorporated to ensure speedy recovery of dues. It was inter alia provided that in case where a person makes default in repayment of a loan or advance or even an instalment, the Corporation shall have the right to take over the management and possession of the industrial unit. It was further armed with a right to "realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation."

7. What is the import of this provision ? "Realise" in the Webster's Third New International Dictionary has been inter alia given the following meaning :-

"To make real; to change from what is imaginary or fictitious into what is actual; to accomplish; to bring from potentiality into actuality; to convert into actual money; to acquire as an actual position; to convert an intangible right or property into real property; to convert tangible property into money".

Thus, to take possession and to convert the property into money is one of the clear powers contemplated under the provision.

8. Realisation of the property is a very wide expression. The Parliament has empowered the Corporation to take every possible step to ensure the recovery of the public dues. In the very nature of things, the Corporation shall have the power to take over possession of the mortgaged or pledged property. It would also be competent to sell it so as to realise its dues from the loanee.

9. Mr. Jain has referred to the decision of their Lordships of the Allahabad High Court in *Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another*, . In this case, the question that arose for consideration was noticed by the Bench in the following words :-

"Whether the appellant Munnalal as surety who had mortgaged his property in favour of the Financial Corporation to secure or guarantee the loan advanced to Messrs Raki Electronics, an industrial concern, could be proceeded against at the instance of the Financial Corporation before the District Judge u/s 31 of the State Financial Corporations Act, 1951 ?"

While answering this question, the view taken by a Division Bench in *Uttar Pradesh Financial Corporation v. Deekey Industries (P) Ltd.* 1971 All LJ 756 was over-ruled. Such a question does not arise in the present case. Thus, the petitioners can derive no advantage from this decision.

10. On the other hand, Mr. Kamal Sehgal has placed reliance on the decision of a Division Bench of the Orissa High Court in *Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others*, . Reliance can usefully be made to the following observations wherein the decision of the Full Bench of the Allahabad High Court in *Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another*, , has also been explained :-

"A bare reading of the aforesaid provisions makes it abundantly clear that the Financial Corporation shall have the right to take over the management or possession of 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. There is nothing in the aforesaid provisions to indicate that the right u/s 29 of the Act is only in respect of the property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act. Mr. Palit, however, with reference to the Full Bench decision of the Allahabad High Court argues with vehemence that a guarantor's property cannot come within the purview of Section 29 of the Act. In the aforesaid case, their Lordships of the Allahabad High Court after analysing the provisions contained in Sections 29, 31 and 32 of the Act came to hold that the speedy remedy contained in Section 31 of the Act is available not against the surety but against the borrower only. The aforesaid conclusion was based on reading of Sections 31 and 32 of the Act together more particularly Sub-section

(4) of Section 32 of the Act. But the said conclusion, in our considered opinion, will not apply to an action u/s 29 of the Act."

A similar view was also taken by a Division Bench of the Kerala High Court in Thressiamma Varghese Vs. Kerala State Financial Corporation and Others, . The Full Bench of the Allahabad High Court was dissented from.

11. In the present case, the mortgaged property belongs to petitioner No. 2. It had been mortgaged to secure the repayment of the loan. The loanee having committed default, the Corporation has the right to recover it.

12. Mr. Mohan Jain referred to the provisions of Section 60 of the CPC to contend that the Corporation cannot take possession of the sole residential house.

13. This provisions is not attracted in the present case. The property is not being attached or sold in execution of a decree. It has been mortgaged by the petitioners with the Corporation. They owe money to the Corporation. It has a right to sell this property to recover money. Even otherwise, the provisions of the State Financial Corporations Act, 1951 have an over-riding effect. Thus, Section 60 cannot be invoked by the petitioner.

No other point has been raised.

In view of the above, we find no merit in the contentions raised on behalf of the petitioners.

However, before parting with the judgment, it may be observed that we had given an opportunity to the counsel for the petitioners to obtain instructions if they were willing to make the deposit. He has expressed his liability to do so. He states that the petitioners cannot pay the dues of the Corporation. It is thus, clear that the attitude of the petitioners is most unfair. Having taken the loan, they are not willing to repay. They are not even willing to pay whatever they can.

As a result, the writ petition is dismissed. In the cir- cumstances, we make no order as to costs.

14. Petition dismissed.