

(2012) 01 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7446 of 2011

Shiv Charan Singh

APPELLANT

Vs

Haryana State Industrial and Infrastructure Development
Corporation Limited and Another

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Constitution of India, 1950 — Article 12
Contract Act, 1872 — Section 126, 127
Delhi Rent Act, 1995 — Section 13, 5
State Financial Corporations Act, 1951 — Section 2(c), 29, 30, 31, 31(1)
Transfer of Property Act, 1882 — Section 69

Citation : AIR 2012 P&H 50 : (2012) 168 PLR 760

Hon'ble Judges : K. Kannan, J; Hemant Gupta, J; G.S. Sandhawalia, J

Bench : Full Bench

Advocate : Vikas Mohan Gupta and Ms. Sonal Dutta, for the Appellant; Rajvir Singh Sihag, for the Respondent

Judgement

Hemant Gupta, J.—I. The Subject of Reference.

The present writ petition came up before the Division Bench of this Court on 2.11.2011. The challenge in the writ petition is to action taken by the State Financial Corporation against the petitioner u/s 29 of the State Financial Corporation Act, 1951 (for short "the Act") being guarantor. The learned counsel for respondent No. 1 relied upon a Division Bench judgment of this Court reported as M/s Aggarwal Overseas Limited v. State of Haryana and others 2008(4) PLR 772 and also the Full Bench judgment of this Court, reported as Paramjit Singh Ahuja v. Punjab State Financial Industrial Development Corporation Limited & others, 2006 (2) PLJ 480 to contend that the State Financial Corporation can proceed against the guarantor u/s 29 of the Act. The question of law in respect of the scope of Section 29 of the Act in view of the judgment of the Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, reads as under:

Whether a clause in the deed of guarantee, entitle a financial corporation to proceed against the Guarantors including mortgagors to realize its dues in exercise of powers conferred u/s 29 of the Act?

After hearing the arguments of the learned counsel for the parties, we find that the question of law as framed by the Division Bench requires to be reframed. The reframed question of law is as follows:

Whether the parties can agree to confer jurisdiction to the financial Institution to proceed against the guarantor in exercise of the powers conferred u/s 29 of the Act?

II. The Facts

The brief facts, of the present case, which are relevant to decide the point of reference, are that the petitioner is owner and in possession of agricultural land situated in Village Jassat, Tehsil Pataudi, District Gurgaon. Respondent No. 2 i.e. M/s Panwar Steels Limited, a company registered under the provisions of Companies Act, 1956 availed financial assistance from respondent No. 1. - Haryana State Industrial & Infrastructure Development Corporation Limited (for short "the Corporation") incorporated under the Act. The petitioner stood as guarantor in respect of the financial assistance granted by respondent No. 1 to respondent No. 2 and executed a mortgage deed dated 22.06.2001 offering the property contained in the document as collateral security. It is pointed out that the Corporation has recovered an amount of Rs. 5.5 crores from the assets of respondent No. 2, but the property of the petitioner is sought to be auctioned in exercise of the powers conferred u/s 29 of the Act. It is the said action, which is challenged by the petitioner in the present writ petition.

2. It is contended that u/s 29 of the Act, the property of the guarantor cannot be put to sale. Such right of sale can be exercised either under the rights available to the creditor under the Transfer of Property Act, 1882 or in terms of Section 31 of the Act. It is contended that u/s 29 of the Act, the assets of an industrial concern alone can be taken over and put to sale and not the assets of the guarantor. Reliance is placed upon the judgment of Hon''ble Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, .

3. In reply, the Corporation has sought to justify its action in initiating recovery proceedings against the petitioner in view of deed of guarantee dated 28.05.2001 and mortgage deed dated 22.06.2001. It is alleged that the petitioner has given collateral security of his agricultural land and executed a bond of guarantee in lieu of sanction and grant of loan of Rs. 5 crore to respondent No. 2. It is pointed out that the judgment of Hon''ble Supreme Court in Karnataka State Financial Corporation's case (supra) relied upon by the petitioner is not applicable to the facts of the present case in the light of provisions of deed of guarantee, as the petitioner has stepped into the shoes of the principal debtor in case of its default.

4. The relevant terms from the bond of guarantee and mortgage deed read as under:

Bond of Guarantee: 5. In order to give effect to the guarantee herein contained the Corporation shall be entitled to act as if the guarantors were the principal debtors to the Corporation for all payments and covenants guaranteed by them as aforesaid to the Corporation.

Mortgage Deed:

6. It shall be lawful for the mortgagor to retain possession and use the mortgage properties until the Corporation takes possession thereof under these presents or by virtue of the provisions contained in the State Financial Corporation Act, 1951 and take possession thereof accordingly.

7. Over and above the provisions herein contained and without prejudice thereto, if the Borrower makes any default in payment or mortgage debt or any installment thereof as provided in the Agreement or otherwise fails to comply with the terms of these present, the Corporation shall have the right u/s 29 of the SFCs Act, 1951 to take over the possession of the whole of the said mortgage property as well as the right to transfer by way of lease or sale and realize all the mortgage property assign or charged to the Corporation these presents and mortgagor shall in such events forth with on demand by the Corporation hand over charge and possession of the whole of the property without any encumbrance, hindrances or interruptions.....

III. The Supreme Court's view in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others,) governs the Held relating to scope of S.29 vis-a-vis limit of enforcement against guarantor.

5. Learned counsel for the petitioner relies upon Karnataka State Financial Corporation's case (supra) to contend that the Act has been enacted for a speedy recovery by the Financial Corporations constituted under the Act so as to enable them to exercise the statutory power of either selling the property or to take over management or possession or both belonging to "industrial concern". Since the power has been conferred on a Financial Corporation, the same is required to be exercised within four corners of the Statute. Such special provisions in the Statute require strict construction. It is contended that u/s 29 of the Act, the right has been given to the Financial Corporation to act against the industrial concern to take over not only possession, but management thereof, whereas Section 31 of the Act is exhaustive, which confers jurisdiction on the Corporation to proceed not only against the industrial concern, but also against the surety, as is evident from insertion of Clause (aa) in Section 31(1) vide Central Act No. 43 of 1985. The procedure in respect of petition u/s 31 is contemplated u/s 32 of the Act. Section 32G has been inserted again by Central Act No. 43 of 1985 empowering the Corporation to recover its dues as an arrear of land revenue. It is, thus, contended that all three provisions operate in different fields and have different consequences. u/s 29 of the Act, the

Corporation has right to take over management of the industrial concern along with power to sell or lease such property, whereas u/s 31 of the Act, the power can be exercised without prejudice to the provisions of Section 29 of the Act not only against the industrial concern, but against surety and also to seek an interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern. Sub-section (1A) of Section 32 of the Act contemplates a notice to the surety before his liability can be enforced. On the other hand, Section 32G of the Act empowers the Corporation to recover the amount due as arrears of land revenue. The procedure of recovery as arrear of land revenue is the severest of all.

6. The Full Bench judgment of this Court, reported as *Paramjit Singh Ahuja v. Punjab State Financial Industrial Development Corporation Limited & others*, 2006 (2) PLJ 480 is prior to the judgment in *Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others*, The Full Bench relied upon *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills* and another, to hold that the powers u/s 29 of the Act can be enforced against the surety. In *A.P. State Financial Corporation case (supra)*, the challenge was to the action taken by the Corporation against the industrial concern. It was held therein that it is choice of the Corporation to act in the first instance u/s 31 of the Act and save its rights and remedies u/s 29 of the Act to be availed at a later stage, with the sole object of enabling the Corporation to recover its dues. The Hon'ble Supreme Court was not seized of a question in respect of liability of surety in the aforesaid case. In view of the later judgment of Hon'ble Supreme Court, the Full Court judgment of this Court does not hold field, as the view expressed therein is contrary to the judgment of Hon'ble Supreme Court. Therefore, the judgment of this court in *Paramjit Singh Ahuja's case (supra)* taking contrary view to the law laid down by the later Supreme Court judgment ceases to be binding precedent.

7. In *M/s Aggarwal Overseas Limited v. State of Haryana and others*, 2008(4) PLR 772, the liability of the principal debtor had been fastened on the guarantor relying upon similar Clause 6 of the above deed of guarantee, which contemplates that the guarantor steps into the shoes of the principal debtor. The said clause in the bond of guarantee is that the Corporation shall be entitled to act as if the guarantor was the principal debtor. The said clause is a condition precedent for making a guarantor liable for the dues of the principal debtor and is in terms of Sections 126 and 127 of the Contract Act, 1872. In the absence of such term, the guarantor would not be liable in the first place for discharging the liability of the principal debtor. It is an act of the guarantor by agreeing to be a surety which makes his liability co-extensive with the principal debtor. It is through the said act of submission of bond by the guarantor that the principal debtor secures the guarantee for the creditor. Therefore, we find that the basis of the judgment of this Court in *M/s Aggarwal Overseas Limited case (supra)* as if to say that it is special clause granting an extra privilege to the creditor proceeds on wrong assumption of law and does not lay down correct law.

8. It may be noticed that in *Jasbir Kaur and another v. Punjab State Industrial Development Corporation Ltd., Chandigarh and another* AIR 2002 P&H 74, a Division Bench of this Court has taken the same view as was taken by the Full Bench in *Paramjit Singh Ahuja's case* (supra). Since *Jasbir Kaur's case* (supra) was decided prior to the Hon'ble Supreme Court judgment in *Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others*, , the judgment in *Jasbir Kaur* is also no longer good law.

IV. Effect of Specific Clause empowering enforcement u/s 29 of the Act against guarantor.

9. Learned counsel for respondent No. 1 has relied upon number of judgments such as *Shri Lachoo Mal Vs. Shri Radhey Shyam, Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others*, *Parmod Kumar Jain v. Sudha Choubey and others*, (2004) 8 SCC 228 and *B.S.N.L. and Others Vs. Subash Chandra Kanchan and Another*, to contend that the petitioner as a surety could waive the advantage of law such as Section 29 of the Act, which is enacted for the protection of such surety in his private capacity. Therefore, once the petitioner has agreed that the Corporation can proceed against him u/s 29 of the Act, the petitioner cannot be permitted to challenge the action against him u/s 29 of the Act.

10. The relevant provisions of the Act, necessary for the determination of the question as mentioned above arising for our consideration, read as under:

2. Definitions -- In this Act, unless the context otherwise requires --

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(c) "industrial concern" means any concern engaged or to be engaged in --

(i) the manufacture, preservation or processing of goods;.....

25. Business which Financial Corporation may transact --

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(h) granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be;

29. Rights of Financial Corporation in case of default -- (1) Where any industrial concern, which is under 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, 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 concerns, as well as the right to transfer by way of lease or sale and

realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

31. Special provisions for enforcement of claims by Financial Corporation -- (1) Where an industrial concern, in breach of any 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 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 Transfer of Property Act, 1882 (4 of 1882), any officer of the Financial Corporation, generally or specially authorized 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

(aa) for enforcing the liability of any surety; 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.

32- Procedure of District Judge in respect of applications u/s 31 --(1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the District Judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value of the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken u/s 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(1A) When the application is for the relief mentioned in clause (aa) of sub-section (1) of section 31, the district judge shall issue a notice calling upon the surety to show-cause on a date to be specified in the notice why his liability should not be enforced.

V. Findings

11. The aforesaid provisions of the Act have been considered by the Hon''ble Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah

and Others, , wherein it observed as under:

15. A lender of money under the common law has the remedy to file a suit for realization of the amount lent if the borrower does not repay the same. The Act, however, provides for a special remedy in favour of the Financial Corporation constituted thereunder enabling it to exercise a statutory power of either selling the property or take over the management or possession or both belonging to the industrial concern. Section 29, therefore, confers an extraordinary power upon the "Corporation". It, being a "State" within the meaning of Article 12 of the Constitution of India, is expected to exercise its statutory powers reasonably and bona fide.

16. Apart from the said constitutional restrictions, the statute does not put any embargo upon the corporation to exercise its power u/s 29 of the Act. Indisputably, the said provision was enacted by the Parliament with a view to see that the dues of the Corporation are realized expeditiously. When a statutory power is conferred, it is a trite law that the same must be exercised within the four corners of the Statute. Power of a lender to realize the amount lent either by enforcing the charged and/or hypothecated or encumbrance created on certain property and/or proceeding simultaneously and/or independently against the surety/ guarantor is a statutory right....

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18. If special provisions are made in derogation to the general right of a citizen, the statute, in our opinion, should receive strict construction. "Industrial concern" has been defined under the Act. For the purpose of enforcing a liability of an industrial concern, recourse can be taken both under Sections 29 and 31 of the Act. Right of the corporation to file a suit or take recourse to the provisions contained in Section 32G of the Act also exists.

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20. Section 29 of the Act nowhere states that the corporation can proceed against the surety even if some properties are mortgaged or hypothecated by it. The right of the financial corporation in terms of Section 29 of the Act must be exercised only on a defaulting party. There cannot be any default as is envisaged in Section 29 by a surety or a guarantor. The liabilities of a surety or the guarantor to repay the loan of the principal debtor arises only when a default is made by the latter.

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37. The legislative intent, in our opinion, is manifest. The intention of the Parliament in enacting Sections 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern, Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. The Parliament intended to provide an additional remedy for recovery of the amount in favour of the

Corporation by proceeding against a surety only in terms of Section 31 of the Act and not u/s 29 thereof.

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41. A surety may be a Director of the Company. He also may not be. Even if he is a close relative of the Director or the Managing Director of the Company, the same is not relevant. A Director of the Company is not an industrial concern. He in his capacity as a surety would certainly not be. A juristic person is a separate legal entity. Its veil can be lifted or pierced only in certain situations. [See *Salomon v. Salomon and Co.* [1897 AC 22], (1944) 12 ITR 458, *Juggilal Kamlatpat v. Commissioner of Income Tax, U.P.* (1969) 1 SCR 988 : 1969 (73) ITR 702 : (AIR 1969 SC 932) and *Kapila Hingorani Vs. State of Bihar*,].

12. The reliance of the learned counsel for the respondent is on *Shri Lachoo Mal's* case (*supra*). It was held as under:

6. The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet renuntiare juri pro Re introducto*. (See *Maxwell on Interpretation of Statutes*, Eleventh Edition, pages 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition, it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy...

13. The other judgments, relied upon the learned counsel for the respondent, are taking the same view. Section 29 of the Act does not deal with rights and liabilities of a guarantor. But in our opinion, it is not a case of waiver of a right by a guarantor, which can authorize the Corporation to act against the surety in exercise of powers u/s 29 of the Act. It is not a question of waiver of a notice before proceeding against the guarantor or any such other procedural aspect, but the very jurisdiction of the Corporation to proceed against the guarantor. The issue to be examined is whether the parties by an agreement can confer jurisdiction on the Corporation to proceed against the guarantor u/s 29 of the Act.

14. The parties can enter into an agreement for enforcement of legal rights and subjecting themselves to obligations, but cannot agree to confer jurisdiction by agreement on a Forum or a Tribunal. The parties cannot agree to confer jurisdiction on a Rent Controller by a lease deed in a notified urban area or upon a Consumer Court by an agreement, when it does not involve consumer dispute. The jurisdiction of special tribunals or forums is to be determined keeping in view the provisions of the applicable statute alone.

15. The Hon''ble Supreme Court in *Harshad Chiman Lal Modi Vs. DLF Universal*

and Another, while examining the jurisdiction of a Court, held that a jurisdiction of Court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; & (iii) Jurisdiction over the subject-matter. In respect of territorial and pecuniary jurisdiction, it held that the objection to such jurisdiction has to be taken at the earliest possible opportunity, but in respect of jurisdiction over the subject-matter, the Hon''ble Supreme Court relying upon Halsbury's Laws of England (4th Edition), observed as under:

27.....Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

28. In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated:

317. Consent and waiver.-- Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject-matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent.

16. In P. Dasa Muni Reddy Vs. P. Appa Rao, where an order of eviction was sought from the Rent Controller on the basis of the consent of the parties, the Court observed that control of premises under the Rent Control Acts cannot be acquired either by estoppel or by res judicata. The court cannot exercise jurisdiction under the Acts when no such jurisdiction is not conferred by the provisions of the Act by estoppel or by res judicata,. The Court observed as under:

14. Just as the courts normally do not permit contracting out of the Acts so there can be no contracting in. A status of control of premises under the Rent Control Acts cannot be acquired either by estoppel or by res judicata. The principle is that neither estoppel nor res judicata can give the court jurisdiction under the Acts which those Acts say it is not to have. The Rent Control Acts operate in rem.

These Acts give a status to the house from which certain legal consequences follow.(Emphasis supplied)

17. In *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, , the Hon''ble Supreme Court held that Rent Court under the Bombay Rent Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra-vires the Act. The existence of one of the statutory grounds mentioned in Sections 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court under those provisions. It held that parties cannot by their consent confer such jurisdiction on the Rent Court to do something which according to the legislative mandate, it could not do. It observed as under:

18. Construing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Sections 12 and 13 is a sine qua non to the exercise of Jurisdiction by the Rent Court under those provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which according to the legislative mandate, it could not do. (Emphasis supplied)

19. In the view we take, we are fortified by the ratio of the decision in *Barton v. Fincham*, (1921) 2 KB 291 at p. 299. Therein the Court of Appeal was considering the scheme of the Rent Restrictions Act, 1920 the language of Section 5 of which was similar to Section 13 of the Delhi Rent Act. In that context *Atkin L.J.* stated the law on the point thus :

The section appears to me to limit definitely the jurisdiction of the Courts in making ejectment orders in the case of premises to which the Act applies. Parties cannot be in agreement give the Courts jurisdiction which the Legislature has enacted they are not to have if the parties before the Court admit that one of the events has happened which give the Court jurisdiction and there is no reason to doubt the bona fides of the admission the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act.

18. In *Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and Others*, , the Hon''ble Supreme Court considered the plea of estoppel or waiver and held that the procedural requirement imposed for the benefit on protection of one party alone has some times been construed as, subject to implied exception that it can be waived by the party for whose benefit it is imposed. It also observed that a distinction arises between the provisions which confer jurisdiction and provisions which regulate procedure. It was held that jurisdiction

can neither be waived nor created by consent. It observed as under:

26.....A procedural requirement imposed for the benefit or protection of one party alone has some times been construed as, subject to implied exception that it can be waived by the party for whose benefit it is imposed. In that context, "waive" means that the party has chosen not to rely upon the non-compliance of the other party with the requirement, or has disentitled himself from relying upon it either by agreeing with the other party not to do so or because he has so conducted himself that it would not be fair to allow him to rely upon the non-compliance.

27. A distinction arises between the provisions which confer jurisdiction and provisions which regulate procedure. Jurisdiction can neither be waived nor created by consent. A procedural provision may be waived by conduct or agreement....." (Emphasis supplied)

19. A Division Bench of this Court in a judgment, reported as *G.R. Industries Pvt. Ltd. v. Punjab Financial Corporation*, 2007 (3) PLR 88 examined the action taken u/s 29 of the Act against the auction purchaser for non-payment of the auction price. This Court held that 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. Though the said judgment is in a writ petition filed by the auction purchaser, but the ratio of the said judgment is fully applicable to the facts of the present case as well.

20. Keeping in view the aforesaid principles, an agreement between the parties conceding a right to the Corporation to act against the guarantor u/s 29 of the Act is akin to conferment of jurisdiction on the Corporation to exercise jurisdiction to take over possession of the assets of the guarantor. Section 29 of the Act is restrictive in nature as it confers right on the Corporation to act against the industrial concern, engaged in the manufacture, preservation or processing of goods etc., as defined in Section 2(c) of the Act alone. A guarantor does not fall within the definition of industrial concern either expressly or impliedly. The right to take over the management and possession is of industrial concern and not of assets of a guarantor. The Corporation has a right to proceed against a guarantor u/s 31 of the Act or u/s 32G of the Act, but Section 29 of the Act confers limited jurisdiction on the Corporation to act against the industrial concern alone. The parties cannot by agreement confer jurisdiction on the Corporation, which the Act does not contemplate. Therefore, Clause 8 of the mortgage deed will not enable the Corporation to take possession of the assets of the guarantor and to sell the same in exercise of powers conferred u/s 29 of the Act.

VI. Conclusion

21. In view of the above, we hold that the parties by an agreement cannot confer jurisdiction on the Corporation to proceed against the guarantor u/s 29 of the Act as the jurisdiction under the aforesaid provisions of law can be exercised

only against the industrial concern. Consequently, the reference on the question of law having been answered, the matter be placed before an appropriate Bench for decision in view of the opinion, referred to above.