
(2007) 02 AP CK 0083

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19958 of 2006

Sri Devi Hotels Private Limited and Another

APPELLANT

Vs

The A.P. State Financial Corporation and Another

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

State Financial Corporations Act, 1951 — Section 2, 25, 25(1), 25(2), 29
Transfer of Property Act, 1882 — Section 69

Citation : AIR 2007 AP 182 : (2008) 1 BC 309 : (2007) 138 CompCas 661

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Y. Vivekananda, for P. Kamalakar, for the Appellant; J. Partha Sarathy, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—Heard Mr. Y. Vivekananda appearing for the Mr. P. Kamalakar, learned Counsel for the petitioner and Mr. J. Parthasarathi, learned Standing Counsel for the A.P. State Finance Corporation.

2. The petitioner claims that the action of the Andhra Pradesh State Finance Corporation ("the Corporation") in calling for sealed tender-cum-bid for the sale of the land and building of the 1st petitioner and the collateral security of land in an extent of 416.66 sq. yds. in Plot No. 10, Subash Nagar, Nizamabad, belonging to the 2nd petitioner, shown at Sl. No. 12 and 24 of the notification dated 20-7-2006, published in the English daily news paper "The Hindu", is illegal, void and seeks a direction to the respondents to act as per the judgment in W.A. No. 1717 of 2004, dated 8-11-2004.

3. This is the third bout of litigation by and on behalf of the 1st petitioner with a view to thwart the efforts of the Corporation to recover its dues.

4. The 1st petitioner applied for and was sanctioned a term loan of Rs. 37.4 lakhs in March 1990 and an additional term loan of Rs. 44.70 lakhs in February 1992.

The loans were sanctioned by proceedings dated 6-3-1990 and 25-2-1992 respectively. The petitioner drew Rs. 76.45 lakhs till November 1994. The petitioner defaulted in the repayment of the principal as well as the interest installments. Up to 31-3-1999 only Rs. 21 lakhs was paid as under:

Date Amount

2-8-1997	1,00,000.00	6-8-1997	1,00,000.00	4-10-1997	1,00,000.00
17-10-1997	1,00,000.00	6-11-1997	1,00,000.00	24-11-1997	1,00,000.00
31-3-1998	4,33,333.00	31-3-1998	4,33,333.00	31-3-1998	4,33,333.00
31-3-1999	2,00,001.00	Total	21,00,000.00		

5. The petitioner had become a defaulter by 1997 itself Responding to telegraphic demands by the Corporation on 6-12-1997 and 11-12-1997 for clearing the arrears of the loan and interest installments, the petitioner sought a One Time Settlement (OTS). The Board of the Corporation at a resolution dated 2-12-1998 agreed on terms. By the letter dated 9-12-1998, the Corporation informed the 1st petitioner that it was agreeable to close the loan account on payment of Rs. 1,69,93,000/-. The 1st petitioner represented that it could pay only Rs. 90 lakhs. Eventually and after negotiations, at the meeting held on 8-2-2002 the Board of the Corporation determined OTS at Rs. 93 lakhs. The Corporation did not agree to give credit for the Rs. 21 lakhs paid during 2-8-1997 to 31-3-1999. The amount of Rs. 93 lakhs agreed towards the OTS was de hors the amount of Rs. 21 lakhs already paid by 31-3-1999. As the petitioner failed to avail this OTS, the respondent-Corporation demanded payment of Rs. 2,73,76,537/-.

6. Assailing the above demand the 1st petitioner filed W.P. No. 21863 of 2000. This Court by the order dated 7-12-2000 disposed of this writ petition with a direction that the petitioner should pay Rs. 15 lakhs on or before 31-1-2001 and may approach the respondents for consideration afresh. The petitioner deposited Rs. 15 lakhs on 30-1-2001. It requires to be noticed that before the above deposit of Rs. 15 lakhs (on 30-1-2001), the petitioner had deposited Rs. 1 lakh, Rs. 2 lakhs, Rs. 8 lakhs and Rs. 8,55,000 on 31-3-1997, 31-3-1997, 31-3-2000 and 31-3-2000, respectively.

7. The Corporation issued another notice to the petitioner demanding payment of the dues, on 31-1-2001. Aggrieved thereby the 1st petitioner filed W.P. No. 2681 of 2001. This Court granted interim stay and directed payment of Rs. 40.45 lakhs on or before 2-3-2001. There was a default by the stipulated date and extension was sought twice and granted one up to 11-4-2001 and again up to 30-6-2001. On 29-6-2001 the petitioner paid Rs. 40 lakhs. By the judgment dated 21-9-2004, W.P. No. 2681 of 2001 was dismissed. This Court held that the petitioner did not abide by the terms of the OTS and had made payments only in terms of the interim order.

8. Aggrieved by the dismissal of the writ petition, the 1st petitioner filed W.A. No. 1717 of 2004. By the judgment dated 8-11-2004 the writ appeal was dismissed

directing that on the appellant making a representation within ten days the Corporation should take an appropriate decision on the representation within one month thereafter and communicate the same giving a reasonable opportunity to the appellant to start making payments and till then no coercive steps be taken by the Corporation. In its judgment (in the appeal) this Court clearly rejected the 1st petitioner's claim that all the amounts paid by the 1st petitioner up to 8-2-2000 were not taken account of by the Corporation. The Court held that all the amounts paid up to 8-2-2000 were duly adjusted, no amount remains to be adjusted till that date; that the 1st petitioner was liable to deposit Rs. 32.55 lakhs on or before 31-3-2000 towards 35% of the OTS but had deposited only Rs. 16.55 lakhs on 31-3-2000; and that there was default even in payment of the five bi-monthly installments of Rs. 12.09 lakhs. In the circumstances, while declining to interfere in appeal, the appellate Bench permitted the appellant (1st petitioner herein), to make a fresh representation including for waiver of interest.

9. On 18-11-2004 the 1st petitioner submitted a representation to the Corporation reiterating that the amount of Rs. 21 lakhs paid (earlier to the OTS) should also be taken into consideration in adjusting the OTS due of Rs. 93 lakhs. In this representation while stating that no amount was due and at best for the delayed payment made during June 2000 to June 2001 the 1st petitioner might be liable to payment of interest, it was requested that for payment of any amount determined as due, benefit of installments be granted.

10. According to the petitioner the Corporation did not take a decision and communicate the same to the petitioner within the time stipulated in the judgment in W.A. No. 1717 of 2004. According to the respondents by the letter dated 13-12-2004 the Corporation had responded to the 1st petitioner's representation dated 18-11-2004.

11. In support of the Corporation's claim that the decision contained in its letter dated 13-12-2004 was communicated to the 1st petitioner, the Corporation has filed before this Court a Xerox copy of its dispatch register, which shows that the letter (dated 13-12-2004) was delivered to the 1st petitioner on 15-12-2004 and was acknowledged under the signature of the Managing Director of the 1st petitioner.

12. In its letter dated 13-12-2004 after setting out the chronology of events and chronicling the persistent defaults in repayment, the Corporation stated that as the OTS offered by the Corporation on 18-2-2000 was not complied with, the OTS stood cancelled and consequently the total amount due was Rs. 5,15,25,000; that for recovery of the outstanding amount action u/s 29 of The State Financial Corporations Act 1951 (Central Act (33 of 1951) (the Act)) was initiated and the assets of the 1st petitioner were seized on 26-10-2004; that as a special case a revived OTS package is being offered, in effect reviving the earlier OTS package (which was cancelled); and that the 1st petitioner is liable to pay the balance OTS crystallized liability of Rs. 21 lakhs together with further interest (amounting to Rs. 56,84 lakhs in all), aggregating to Rs. 77,84 lakhs.

The Corporation stipulated that Rs. 39 lakhs representing 50% of the amount should be paid on or before 15-1-2005 and the balance of Rs. 38.84 lakhs on or before 15-2-2005. The 1st petitioner was also intimated that on default by the petitioner in repayment of the amounts stipulated, the OTS package would be cancelled and the Corporation would take appropriate action to recover the entire outstandings in the loan account on 31-1-2004. amounting to Rs. 5, 15.25.000/-. Apart from the copy of the dispatch register maintained by the Nizamabad Branch of the Corporation (filed by the Corporation in WVMP No. 1930 of 2006). the Corporation has annexed a copy of the outward register which discloses communication by registered post and under certificate of posting, of the letter dated 30-12-2004 to the 1st petitioner as well as to the Corporation's Nizamabad branch.

13. The 1st petitioner has filed a counter-affidavit dated 18-1-2007. This affidavit is in response to WVMP No. 28705 of 2006 (seeking leave of this Court to file additional document). In this counter the 1st petitioner states that no reasons are disclosed as to why the documents now filed by the Corporation were not filed earlier. The 1st petitioner also asserts that no documents were filed by the Corporation evidencing service of the letter dated 13-12-2004.

14. It requires to be noticed that the petitioners do not impeach the assertion by the Corporation that the letter dated 13-12-2004 was communicated to the 1st petitioner on 15-12-2004 as evidenced by the dispatch register. The 1st petitioner does not also deny his signature against the entry in the dispatch register (dated 15-12-2004).

15. In the circumstances above, this Court is satisfied that the Corporation has not only taken a decision as directed in W.A. No. 1717 of 2004 and within the stipulated time, but has also communicated its decision (contained in the letter dated 13-12-2004) to the 1st petitioner on 15-12-2004.

16. That the petitioners failed to comply with the terms of the revived OTS. as intimated in the Corporation's letter dated 13-12-2004 is not in dispute. There was no payment of any amount either as stipulated in the revived OTS nor at all. There is thus, chronic and clear default in the payment of dues by the petitioners and in complying with the terms of even the revised OTS.

17. It is legitimate to conclude that the Corporation is relieved of its obligation under the OTS offered by its letter dated 13-12-2004, in view of the default in compliance of the terms of that OTS, by the petitioners.

18. On 25-7-2006 the Corporation addressed the petitioners that there was a persistent default in payment of dues; that the hotel was seized u/s 29 of the Act; and consequently the primary and the collateral security properties were advertised for sale (in The Hindu on 20-7-2006 and "Andh Jyothi" on 19-7-2006), the petitioners were informed that they may bring sponsors or bidders before the finalisation of the sale by the Corporation pursuant to the advertisement and if bids are brought they would be examined along with other

bids and offers. The petitioners were also informed that in case the sale proceeds are insufficient to cover the total outstanding amount, the Corporation would proceed against the primary security and also invoke the provisions of the A.P. Revenue Recovery Act against the promoters/guarantors for recovering the balance amounts.

19. In support of the relief sought in this writ petition, the contention on behalf of the petitioners is two fold:

(A) That as no decision was taken and communicated by the Corporation as directed in the judgment dated 8-11-2004 in W.A. No. 1717 of 2004, the Corporation is disentitled to pursue coercive steps by way of bringing the properties to sale; and

(B) That the property offered as collateral security by the 2nd petitioner towards the loan availed by the 1st petitioner is not liable to be proceeded against u/s 29 of the Act.

20. In so far as the first facet of the challenge is concerned, as the first petitioner is a persistent defaulter and as the Corporation had not only taken a decision within the time stipulated in the judgment in W.A. No. 1717 of 2004 but has also communicated the decision by its letter dated 13-12-2004 to the 1st petitioner on 15-12-2004 (as evidenced by the signature of the 1st petitioner in the dispatch register), the Corporation was well within its right to proceed against the properties u/s 29 of the Act. There is no violation of the direction in the judgment dated 8-11-2004 in W.A. No. 1717 of 2004.

21. The 2nd contention is that the provisions of Section 29 of the Act, on terms and on a true and fair construction, do not enable either seizure or sale of assets offered as collateral security by third parties in respect of the loan availed by an industrial concern from the financial corporation. According to Mr. Vivekananda, the provisions of Section 29 are available only for taking possession or management and for the lease or sale of the assets of the industrial concern (which has availed the loan from the financial corporation and has defaulted) towards recovery of such loan. Reliance for this contention is placed on the judgment of a Division Bench of Karnataka High Court in N. Narasimahaiah and Others Vs. Karnataka State Financial Corporation and Others, .

22. It requires to be noticed that such a plea (as to the inapplicability of recovery process u/s 29 of the Act to third party collateral security offered) has not been raised in the writ petition. However, since this plea is a wholly legal plea and turns upon the construction and interpretation of Section 29 of the Act, I proceed to consider this claim.

23. By the sale notification dated 20-7-2006 the Corporation notified for sale inter alia the property of the 2nd petitioner in an extent of 416.66 sq. Yds in Plot No. 10, Subhashnagar, Nizamabad, which was secured in favour of the Corporation by way of collateral security for the loan obtained by the 1st

petitioner.

24. The petitioners contention on this issue is that the financial corporation cannot lease or sell a property secured by a surety u/s 29 of the Act but may enforce the liability of the surety or proceed against any property secured by the surety only u/s 31 of the Act.

25. Sub-sections (1), (2) and (4) of Section 29 and Section 31 are relevant. These provisions read as under:

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 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 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 realize 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.

(3) ...

(4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) ...

31. Special provisions for enforcement of claims by Financial Corporations :-- (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 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, 1881 (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 concerned 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.

(2) An application under Sub-section (1) shall State the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

26. By Act 43 of 1985 Clause (aa) was inserted in Section 31(1) of the Act. Prior to this amendment the relevant legislative position was that where an industrial concern commits a breach or default of the nature specified in Sub-section (1) of Section 31, then without prejudice to the provisions of Section 29 of the Act and of Section 69 of the Transfer of Property Act, 1882, any officer of the Financial Corporation, generally or specially authorized by the Board, could apply to the District Judge having jurisdiction, for any of the specified reliefs. Clause (a) of Section 31(1) enables the Financial Corporation to apply for an order for the sale of the property pledged, mortgaged, hypothecated or as-signed to the Financial Corporation as security for loan or advance.

27. Interpreting the pre-amended Section 31 (containing only Clause (a)) a Full Bench of Allahabad High Court in *Munnalal Gupta Vs. Uttar Pradesh Financial Corporation and Another*, had taken the view that the speedy remedy provided in Section 31 of the Act is not available against the surety, it is available only against the principal borrower.

28. However, in *Thressiamma Varghese Vs. Kerala State Financial Corporation and Others*, , the Kerala High Court disagreeing with the view taken by the Allahabad High Court in *Munnalal Gupta* (supra) held that there was no restriction in the provisions of Section 31 of the Act which disables an application by a financial corporation to the District Judge to proceed against the assets secured in its favour by a surety. It held that there was nothing to indicate that while the legislature wanted to enable the financial corporation to have a summary and expeditious remedy against the industrial concern, intended that in order to recover the amount due from the surety for the property pledged, mortgaged, hypothecated or assigned, the financial corporation should be driven to the dilatory process of a civil suit.

29. To put the interpretative conflict beyond dispute, the Legislature intervened and Clause (aa) was inserted in Section 31 by amendment Act 43 of 1985. Though the scope and reach of the speedy remedy provided by Section 31 of the Act (to order for the sale of the property pledged, mortgaged, hypothecated or assigned to a financial corporation by a surety) is now beyond controversy (in view of insertion of Clause (aa)), in my considered view the interpretation placed on Clause (a) of Section 31, by the decision in Thresiamma (supra) is preferable to the contrary view in Munnalal Gupta (supra).

30. Munnalal Gupta proceeded on a restrictive interpretation of the provisions of Section 31 which does not advance the legislative purposes of Section 31. With respect, the provisions of Clause (a) of Section 31 could not have been restrictively construed to exclude the application (of the speedy remedy provided) to a property pledged, mortgaged, hypothecated or assigned by a surety. The Thresiamma interpretation advances the legislative purposes.

31. On the scope of Section 29 (with regard to its application to the property pledged, mortgaged, hypothecated or assigned by a surety) there is a conflict of authorities. In *Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others*, and *Jasbir Kaur and Another Vs. Punjab State Industrial Development Corporation Ltd., Chandigarh and Another*, as well as in *Thresiamma (supra)*, High Courts have held that the reach of the provisions of Section 29 extends to the property of a surety. A Division Bench of the Karnataka High Court in *N. Narasimhaiah and Others Vs. Karnataka State Financial Corporation and Others*, (supra) held to the contrary. All these decisions are persuasive authorities for this Court. Which is the appropriate view and which the preferred meaning of the provisions of Section 29 of the Act, will therefore have to be considered.

32. In *Narasimhaiah (supra)* a Division Bench of the Karnataka High Court disagreed with the interpretation placed on the provisions of Section 29 of the Act by the Orissa, Punjab & Haryana and Kerala High Courts in *Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others*, ; *Jasbir Kaur and Another Vs. Punjab State Industrial Development Corporation Ltd., Chandigarh and Another*, and *Thresiamma (supra)*. Several reasons were recorded by the Karnataka Division Bench for the conclusion that Section 29 does not enable a Financial Corporation to transfer by way of lease or sale the property pledged, mortgaged, hypothecated or assigned to it by a surety. Firstly, that Section 29 permits take over of the management or possession or both only of the industrial concern and therefore the entirety of the provisions of Section 29(1) must be construed as in relation to an industrial concern and its property and assets (Para 5). Secondly, that Section 31 (before the insertion of Clause (aa)) did not enable recourse to the speedy remedy u/s 31 in respect of the property pledged, mortgaged, hypothecated or assigned, by a surety (agreeing with *Munnalal Gupta (supra)*); and since the remedy u/s 31 was extended for enforcing the liability of a surety, by the legislative intervention

by Act 43 of 1985 (by the insertion of Clause (aa) in Section 31), the difference in the phraseology of Section 31 (as so amended) with that of Section 29 must guide the construction of provisions of Section 29 and compel the conclusion that Section 29 was inapplicable to the property of a surety.

33. Narasimhaiah (supra) interpreted the clause "as well as" in Section 29 as indicating that the right conferred by the words succeeding the clause, is in regard to the subject, matter of the words proceeding it (para 21 of 1 supra). On this construction it was held that the right to transfer by way of lease or sale and realize the property secured in favour of the financial corporation is only with reference to the property, the management and/or possession of which has been taken over by the Corporation.

34. Even on textual analysis (as considered later in the judgment) the conclusion is not, with respect, correct. Section 29(1) enacts two sets of rights to a financial corporation. One facet confers the right to take over the management or possession or both of the industrial concern; the second additionally enables the transfer by way of lease or sale for realizing the property pledged, mortgaged, hypothecated or assigned to the financial corporation. On a grammatical construction the phrase "as well as" refers to the other set of rights endowed to the financial corporation.

35. If the Legislature had intended that the financial corporation's right to transfer by way of lease or sale must be confined to the property or assets of the industrial concern, the appropriate phraseology would have been otherwise and the expression "the industrial concern" would have occurred at the end of the sentence, qualifying the locii of both sets of the right conferred.

36. It requires to be noticed that de hors the amendment of Section 31 (by Act 43/85 and the insertion of Clause (aa)), Thresiamma (supra) had held that the remedy u/s 31 is available even as against the property of a surety. There was therefore even on the unamended provisions of Section 31 a conflict of judicial opinion as to the applicability of Section 31 to the property of the surety, with Munnalal Gupta (supra) holding that the section was inapplicable while Thresiamma holding that Section 31 was applicable even to the property of a surety.

37. To resolve the ambiguity and the possibility of a restrictive judicial construction, the Legislature intervened with Act 43 of 1985.

38. In the considered view of this Court the interpretation on the provisions of Section 31 by Thresiamma (supra) is, with respect, the correct interpretation. The insertion of Clause (aa) in Section 31 is a clarificatory amendatory exercise making explicit what was always implicit in the provisions of Clause (a) of Section 31. Clause (a) of Section 31(1) enables the District Judge on an application as specified in Section 31(1), to pass an order for the sale of the property pledged, mortgaged, hypothecated or assigned. On a true and fair construction, consistent with the legislative purposes of the Act, Clause (a)

confers jurisdiction, power and authority on the District Judge u/s 31(1) to order for the sale of the property of the industrial concern and if a surety as well. Therefore the Thresiamma (supra) interpretation accords with the grammatical meaning -- on construction as a piece of English prose according to the rules and usages of grammar, syntax and punctuation and the accepted linguistic cannons of construction.

39. On the above analysis the conclusion is compelling that the insertion of Clause (aa) in Section 31(1) is a clarificatory legislative exercise. If that be so, the provisions of Clause (aa) would not guide the interpretation of Section 29, to legitimize the conclusion that a Financial Corporation may only transfer by way of lease or sale (and realize the property pledged, mortgaged, hypothecated or assigned to it), the property of the industrial concern but not the property of a surety.

40. Narasimhaiah (supra) reasoned that since the power to take over possession or management or both is only in respect of the industrial concern, the power to transfer by way of lease or sale must also be construed as restricted to the property of the industrial concern. This reason does not commend acceptance by this Court.

41. The scheme of the Act, the provisions in Chapter III, the particular Section 25 are clearly indicative of the purposes and functions of a financial corporation which include guaranteeing "loans raised by industrial concerns; guaranteeing deferred payments due from an industrial concern; underwriting of the issue of stock, shares, bonds or debentures by industrial concerns and other specified commercial activities and to extend support to the commercial activities an industrial concern as specified.

42. In the very nature of the evolution and exponential growth of commercial transactions, surety or collateral security is integral to industrial and commercial growth and not merely by another industrial concern. Security may be provided by a private individual too or a body which does not answer the description of industrial concern (as the expression is defined in the Act). Where an individual pledges, mortgages, hypothecates or assigns his property to the financial corporation in respect of a loan or advance obtained by an industrial concern. Section 29 does not enable the corporation to take over the management or possession of an individual. The provision is so designed since the Legislature was conscious and aware of the established, evolving and growing commercial practice, of private individual too offering surety for loans or advances obtained by industrial concerns or establishments. The Legislature has consciously restricted the power of a financial corporation to take over the management or possession or both, of the industrial concern. Such legislative intent analysis is compelling and at any rate persuasive. The mere fact that Section 29 enables the financial corporation to take over the management or the possession only of the industrial concern, does not therefore compel the interpretation that the power vouchsafed to the financial corporation to transfer by way of lease or sale and

realize the property pledged, mortgaged, hypothecated or assigned is confined to the property of the industrial concern.

43. Section 29(1) has three principal aspects. The first aspect delineates the parties governed by the provision. Thus, Section 29 is applicable in the context of a liability owed by an "industrial concern" to a "financial corporation", expressions defined in Clauses (c) and (b) in Section 2, respectively. The second aspect of Section 29 defines the circumstances in which the rights of the Financial Corporation under the provision, are applicable. According to this aspect of Section 29, the relevant circumstance (s) is the existence of a liability of the industrial concern to the financial corporation under an agreement, the arising of a default in the repayment of any loan or advance or any instalment thereof or in meeting any obligations in relation to pay guarantee given by the Corporation; or other failure to comply with the terms of the industrial concern's agreement with the financial corporation. The third aspect specifies the rights of a Financial Corporation on the occurrence of default.

44. The right conferred u/s 29 to a Financial Corporation, in the context of the provision are of wide amplitude. The rights conferred on the Financial Corporation (in case of default) are generically dual in character. Each of these set of rights are also complex. Under this clause of Section 29(1), the Financial Corporation has a right (i) to take over the management of possession or both of the industrial concern; (ii) 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 no explicit language in Section 29(1) or any of the other provisions of the Act either, indicating that only the property or assets of the industrial concern could be mortgaged or hypothecated. Absence of such a restriction is understandable and appears a well advised legislative scheme. To insist that every industrial concern must have sufficient assets of its own before it may approach the Financial Corporation for accommodation is to stifle entrepreneurial growth. That would adversely effect public interest, as economic growth of the Republic by private initiative is a key component of contemporaneous global economic synergy.

45. On an analysis of the drafting architecture of Section 29(1) and on a true and fair construction of its provisions, the conclusion is irresistible that while the right to take over the management or possession or both is only in relation to the industrial concern; the right to transfer by way of lease or sale is in respect of every property pledged, mortgaged, hypothecated, or assigned to the Financial Corporation including the property or assets of a surety.

46. The construction to the contrary propounded by the petitioner appears impermissible either on empirical analysis of the text or on grammatical or even purposive construction of the provisions of Section 29(1), read either in isolation or in conjunction with other provisions of Section 29 or the other provisions of the Act. No provision of the Act either expressly or by compelling implication signals the intent that every industrial concern must have adequate assets of its

own before it can approach the Financial Corporation for accommodation. Such as an assumption is also inconsistent with the market and commercial realities of contemporaneous society.

47. The legislative dynamics of Section 25 equally negate an assumption that an industrial concern must have adequate assets of its own. As originally enacted, Section 25(2) prohibited accommodation being given by a Financial Corporation under Clauses (a) and (e) of Section 25(1) unless, it is sufficiently secured by a pledge, mortgage, hypothecation, or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets, in the manner prescribed by Regulations. By the State Financial Corporations (Amendment) Act, 1956 Sub-section (2) of Section 25 was amended. As per this amendment a Financial Corporation could also grant accommodation if the repayment of the principal and payment of interest is guaranteed by the State Government, a Scheduled Bank or a State Co-operative Bank. The section was further amended by the Amendment Act 1962. This amending though did not change substantially the character or the manner of the security required, was necessitated in the context of new types of businesses that could be carried on and transacted by the Financial Corporation, in the context of the other amendments incorporated by the 1962 Amendment. There was a 3rd Amendment (insofar as Section 25(2) is concerned). In 1985 Sub-section (2) was omitted and as a consequence the normative basis of the Financial Corporations' activities shifted from a security oriented approach to a protect-oriented approach.

48. From the evolutionary history of Section 25, it is apparent that consistent with commercial realities, an industrial concern could approach a Financial Corporation for accommodation even when it did not have adequate assets of its own, provided it could make available sufficient security or guarantee for the repayment of the principal and the payment of interest.

49. To support the petitioner's contention in this behalf, Section 29(1) to the extent relevant, should read : "... the Financial Corporation shall have the right to take over the management or possession or both, 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, by the industrial concern." Such is not the legislative text.

50. Another contention canvassed on behalf of the petitioner in respect of the contention on this aspect is that since u/s 29(1) the Financial Corporation is not empowered to take over the management or possession (or both) of a third party other than the industrial concern, conferment of a mere right to transfer by way of lease or sale the property of a surety would tantamount to empowering the transfer of an imperfect right, sans possession. The purchaser or the lessee, as the case may be, of the property of a surety (pledged, mortgaged, hypothecated or assigned to the financial corporation) on a transfer by way of sale or lease would again have to pursue appropriate (and dilatory) remedies for

obtaining possession on such transfer. This would debilitate the core legislative purpose of providing a speedy remedy. For this reason also the right to transfer by way of lease or sale must be construed as restricted to the property or asset of the industrial concern, excluding the property of a surety, is the contention.

51. Section 29(2) enjoins that 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. In the light of this legislative prescription the transfer made by a financial corporation, exercising power u/s 29(1), by way of lease or sale of a property, including the property of a surety would transfer to the lessee or purchaser as the case may be, all the rights of the owner of the property as if the transfer were made by the owner. There would thus be a protanto divestiture of the rights of the owner and vestiture in favour of the transferee, on the financial corporation exercising its rights u/s 29(1). In the case of a transfer of the property of a surety, in case of resistance by the surety (owner) to deliver possession of the property, legal proceedings to secure the coercive powers of the State could be availed of to obtain possession. Merely on this ground it cannot be gainfully contended that the right conferred on the financial corporation to transfer (by way of lease or sale) is confined to the property of the industrial concern. It is left to the legislative judgment as to how comprehensive even a speedy remedy ought to be. But wherever a speedy remedy is provided and in an exclusive legislative architecture, the statutory intent and thrust ought not to be derailed by an artificial construction that hampers or retards the clear legislative intent and purpose, Do not discard a body with the tepid bathwater, is a sound principle even in statutory construction.

52. It therefore does not appear permissible to narrowly construe the provisions of Section 29(1) to restrict the rights of the Financial Corporation (to lease or sell) only relation to assets belonging to the industrial concern. Such a narrow construction, in the considered view of this Court does violence to the legislative text and smothers the legislative purposes as well.

53. The learned Counsel for the petitioner also contended that the auction held pursuant to the impugned sale notification dated 20-2-2006 was not preceded by due and adequate publicity and notice so as to fetch the best possible and competitive market price and the process should therefore be invalidated. Reliance for this contention is placed on the decisions of the Supreme Court in *Gajraj Jain Vs. State of Bihar and Others*, and *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, . It is contended that in both the decision the principle to reiterated that in a sale u/s 29(1) of the Act even where the financial corporation is the first charge-holder, it should so act as to obtain the best possible price for the mortgaged asset and the best possible price must, in the context, mean the fair market value. In *S.J.S. Business Enterprises (P) Ltd. (supra)* the Supreme Court pointed out that Section 29 being a statutory power vested in a State financial corporation under the Act must be exercised bona fide.

In the context, adequate publicity mean to ensure maximum participation of bidders and for that a fair and practical period of time must be given to the purchasers to effectively participate in the sale. Unless the subject-matter of the sale requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on "as-is-where-is basis" to inspect the property and make a considered offer. This principle is reiterated in Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, .

54. It requires to be noticed that in Cavalet India Ltd., (supra) the Supreme Court had pointed out that the relationship between the financial corporation and the borrower is that of a creditor and debtor, a feature that cannot be lost sight of. The financial corporation would be well within its rights and enjoined by public policy considerations as an instrumentality of the State to recover the amounts due so that fresh loans could be given. Interfering with such right to speedy recovery of the dues owed to it by an industrial concern on jejune grounds and contrived doubts would be to subvert the legislative purposes, debilitate the economic health and derail public purposes charter of a State financial corporation. In any event there is no plea in the writ petition that the sale notification was not attended by due publicity with a view to secure the best possible price.

55. The respondent-financial corporation in its counter-affidavit has specifically pleaded that after giving sufficient and in fact unmerited latitude to the first petitioner to repay the dues by successive one time settlements and accommodation, it was eventually decided in a Board resolution dated 21-9-2006 that the land given as collateral security and the building, furniture and fixtures of the first petitioner should be sold after calling the two tenders for negotiation.

56. There is no material, by way of pleadings or order wise to legitimize a conclusion that the auction and sale of the secured assets of the petitioner by the respondent-State Financial Corporation is vitiated by irrationality, arbitrariness or imprudent conduct. This plea orally urged is without a factual basis and is therefore rejected.

57. Sri Y. Vivekananda, the learned Counsel for the petitioner (a young member of the Bar, of about 5 years standing) has presented the case on behalf of the petitioners with assiduous and thorough preparation. He has not only cited several relevant precedents on the issues arising in this case but has also made an efficient and clinical analysis of the relevant provisions of the State Financial Corporations Act 1951 with reference to empirical principles of law and statutory construction. His effort deserves appreciation.

58. There are no merits. The writ petition is dismissed. The interim order dated 25-9-2006 stands dissolved. There shall be no order as to costs.