
(2010) 01 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (C) 199 of 2004

Suresh Jindal and Others

APPELLANT

Vs

Delhi Financial Corporation and Another

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Citation : (2010) 2 BC 65 : (2010) 166 DLT 462 : (2010) 3 ILR Delhi 260

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ashim Vachher, for the Appellant; Rajesh Mahajan, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The prayer in this writ petition originally filed by three Petitioners is for a direction to the Respondent No. 1, Delhi Financial Corporation (DFC) not to arrest and detain the Petitioners 1 and 2 for the recovery of the amounts due to the DFC in proceedings u/s 32(G) of the State Financial Corporations Act, 1951 (SFC Act) and the Punjab Land Reforms Act, 1887 (PLR Act). A further prayer is for the declaration that the PLR Act does not apply to Delhi and for quashing the proceedings taken thereunder. The Petitioners also seek a complete statement of accounts of the amounts due and recovered by the DFC.

2. On account of the failure of the Petitioner No. 3 Aar Em Alloys Pvt. Ltd., to repay the loan borrowed by it from the DFC, the latter invoked Section 32(G) of the SFC Act, and a recovery certificate dated 18th February 1998 was issued by the competent authority appointed in terms of the said provision. This certificate addressed to the Collector (Recovery), Govt. of National Capital Territory of Delhi (GNCTD) required him to recover a sum of Rs. 57,87,145.70 along with pendente lite and future interest with effect from 1st November 1997. The direction was that the said sum should be recovered as arrears of land revenue from the Petitioner No. 3 Company as well as Petitioner Nos. 1 and 2 who were both

Directors of the Company and guarantors for the loan borrowed by it. The Petitioner No. 1 Suresh Jindal is the son of the Petitioner No. 3 R.C. Jindal.

3. The immediate cause of action for the present petition is that a final notice dated 29th October 2003 was issued by the DFC to the Petitioners stating that they had failed to pay the arrears of Rs. 86,98,745/- and were, therefore, required to appear before the Assistant Collector (R), DFC (Respondent No. 2 herein) on 28th November 2003. The notice stated that if the Petitioners 1 and 2 did not appear before the Respondent No. 2 further action for realization of dues will be taken.....including the warrant of arrest or/and attachment of your movable and immovable property. This was followed by a warrant of attachment dated 5th November 2003 issued by Respondent No. 2 u/s 77 of the PLR Act, attaching the Immovable properties of the Petitioner No. 2 Shri R.C. Jindal being a shop at 25-B Lal Kuan, M.B. Road, Badarpur, Delhi. The said warrant of attachment mentioned the amount due as Rs. 2,31,16,123/-.

4. The Petitioners state that the properties of the Petitioner No. 2 Company, i.e., the plant and machinery for manufacture of stainless steel wires and a 180 sq. yds. industrial building at 1/342, Friends Colony Industrial Area, Gali No. 1, G.T. Road, Shahdara, Delhi were available with the DFC for recovery of the dues and therefore, there was no occasion for issuing a warrant for arrest and detention of the Petitioners 1 and 2.

5. On the first hearing of the present case on 12th January 2004, the following order was passed by this Court:

WP(C). Nos. 199-200/2004

Petitioners case is that the properties which have been offered as security are already under attachment and respondents have issued notice for public auction and advertised the same in the issue of Hindustan Times dated 04.01.2004. Learned Counsel for the petitioner submits that a sum of Rs. 86, 96, 745/- was demanded vide notice dated 29.10.2003, as shown in Annexure P- 5. However, vide notice dated 05.12.2003, respondents are claiming Rs. 2,31,16,123/- for which amount recovery certificate had been issued (Annexure P-6). Learned Counsel for the petitioner prays for a direction to the respondents to provide a computation showing the basis on which the figure of Rs. 2,31,16,123/- has been arrived at. The petitioners do not question the auction or sale of the properties. However, they only submit that they have no means even of sustenance and in these circumstances their arrest is not called for.

Notice to the respondents to show cause as to why rule nisi be not issued returnable on 14th April, 2004, confined to the above submission.

Mr. Rajesh Mahajan accepts notice on behalf of the respondents and seeks time to file counter affidavit. Let the same be filed within six weeks. He further submits that as per instructions, petitioners own a bungalow in Saket. However, no particulars are forthcoming.

I consider it appropriate to direct petitioner Nos. 1 and 2 to file an affidavit disclosing their assets. Petitioners would also disclose in the affidavit the movable and immovable properties owned by them. Petitioners shall further disclose whether they own any automobile or other vehicle as well as whether they have membership with any Club and subscription & charges paid therefore. Let the affidavit be filed within six weeks.

Respondents to file computation within six weeks showing the basis on which amount of Rs. 2,31,16,123/- has been arrived at.

C.M. No. 248/2004

Notice for 14th April, 2004.

Mr Rajesh Mahajan accepts notice on behalf of the respondents.

In the meantime, petitioners 1 and 2 be not arrested.

6. Thereafter on 15th April 2004, the court recorded the undertaking of the Petitioners that they would not dispose of or part with any of the immovable properties, as disclosed in their affidavits dated 26th February 2004. In his affidavit dated 26th February 2004, Suresh Jindal, the Petitioner No. 1 stated that he did not have any movable and immovable properties. He had a nominal amount in the savings account held in Canara Bank. He also did not own any automobile or vehicle or any membership of a club. The Petitioner No. 2 Shri R.C. Jindal in his affidavit disclosed that he owned the following immovable properties:

1. IInd Floor, D-172, Saket, New Delhi-7
2. Shop No. 25-B, Lal Kuan, Badarpur, M.B . Road, New Delhi.

Shri R.C. Jindal further disclosed that the property at Saket was a residential house and stood mortgaged with Central Bank, Janpath, New Delhi. The property No. 2 at Badarpur was also mortgaged with the Punjab National Bank, Patparganj, Delhi. Shri R.C. Jindal also stated that he did not own any automobile or other vehicle nor did he have any membership of any club.

7. It is stated by the DFC that on 26th February 2004 the machinery was auctioned for a sum of Rs. 5 lakhs and on 18th March 2004 the property belonging to Petitioner No. 3 which was mortgaged with it, admeasuring 180 sq. yds. at Friends Colony, Shahdara was auctioned for Rs. 17.75 lakhs. This in any event did not cover the entire amount due to the DFC.

8. DFC seeks to defend its action in issuing a final notice requiring the Petitioners to appear before the Respondent No. 2 failing which they would be arrested on the ground that the Petitioners 1 and 2 had dishonestly alienated their respective properties to certain other financial institutions by way of mortgage much after the issuance of the certificate u/s 32(G) of the SFC Act.

9. One other important development requires to be noticed at this stage. Shri R.C. Jindal filed a separate petition being Civil Writ No. 2370 of 2005 pertaining

to the property at Badarpur. The prayer in that petition was that the decision of the DFC to put the said property to public auction after attachment should be quashed.

10. During the pendency of both the writ petitions Shri R.C. Jindal expired. While he was substituted by his legal representatives by an order dated 9th February 2007 in Writ Petition (Civil) No. 2370 of 2005, the prayer for substitution in Writ Petition (Civil) No. 199-200 of 2004 was declined by a separate order which reads thus:

These are applications, one u/s 5 of the Limitation Act for condonation of delay and the other under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 for substitution of the legal heirs of the petitioner No. 2, who has passed away. The learned Counsel appearing on behalf of the respondent submits that this petition involves the question of arrest of the petitioner Nos. 1 and 2. Since the petitioner No. 2 has passed away, there would be no question of substituting the legal heirs of the petitioner No. 2 as they cannot be arrested in place of the deceased petitioner No. 2. I am in agreement with the submission made by the learned Counsel for the respondent and accordingly, the application for substitution would not be necessary as the cause of action does not survive to the legal heirs of the petitioner No. 2. The petition will now proceed in respect of the petitioner No. 1. An amended memo of parties be filed in terms of this order within one week.

These applications stand disposed of.

11. On 10th July 2009 the Writ Petition (Civil) No. 2370 of 2005 was disposed of by an order, the operative portion of which reads as under:

It is clarified that the present Writ Petition only pertains to property No. 25-B, Lal Quan, M.B. Road, Badarpur, Delhi and in case Mr. R.C. Jindal or any other debtor have any other property, it is open to the respondent No. 1 to press for attachment and sale of the said property. It is also clarified that in case the property is not mortgaged with the Punjab National Bank, the respondent No. 1 will be at liberty to attach the property and sell the same for recovery of their dues. The Writ Petition is accordingly disposed of.

12. Shri Suresh Jindal also filed an affidavit dated 4th March 2008 in Writ Petition (Civil) No. 199-200 of 2004 stating that during the pendency of the present petition he had filed an insolvency petition before the Insolvency Court, Delhi and that the same was still pending. It is pleaded that the Petitioner No. 1 simply does not have the means to pay the dues demanded by the DFC. Relying on the judgments of the Supreme Court in Jolly George Varghese and Another Vs. The Bank of Cochin, and Ram Narayan Agarwal and Others Vs. State of Uttar Pradesh and Others, , it is submitted by the learned Counsel for the Petitioner, Mr. Aman Vachher that there was no justification whatsoever for the DFC to issue any warrant of attachment for the recovery of the loan. It is submitted that unless it is shown that the Petitioner No. 1 had dishonestly alienated the moveable and

Immovable properties belonging to him during the pendency of the proceedings, the recovery of the amounts from him in his capacity as guarantor and consequently the issuance of a warrant for his arrest was not justified.

13. Mr. Rajesh Mahajan, the learned Counsel, appearing for the DFC submitted that the observations in *Jolly George Varghese v. The Bank of Cochin* have to be read in the context of the subsequent judgment of the larger Bench of the Supreme Court in *Ram Narayan Agarwal v. State of Uttar Pradesh*. He submits that the Petitioner No. 1 would have all along known about the properties owned by the Petitioner No. 2 as he was in the full know of the fact that the Petitioner No. 2 had already mortgaged his properties to other financial institutions. It is accordingly submitted that the issuance of a warrant of arrest against the Petitioner No. 1 is fully justified.

14. On behalf of the Petitioner No. 1, it is pointed out that after the death of the Petitioner No. 2, there was no occasion for continuing with the warrant of arrest vis-a-vis the Petitioner No. 1 since in any event the Petitioner No. 1 has nothing to do with the properties which were mortgaged by the Petitioner No. 2 to certain other financial institutions.

15. Mr. Rajesh Mahajan, submits that the issuance of the warrant of arrest and attachment for recovery of the statutory dues is traceable to Section 138 of the Delhi Land Reforms Act, 1954 (DLRA) which has been incorporated by reference into the Delhi Land Revenue Act, 1954 which has in turn substituted the PLR Act 1887. It is submitted that the bar against the attachment of residential premises in terms of Section 60 CPC would not be attracted. A reference is made to the judgment of the Supreme Court in *State of Punjab and Another Vs. Dina Nath*, .

16. Having considered the submissions of the counsel for the parties, this Court is of the view that the Petitioners should succeed in the petition. It has been very candidly stated by the learned Counsel appearing for the DFC that apart from the fact that the Petitioner No. 1 is the son of the Petitioner No. 2 and would have known the creation of the mortgage by Petitioner No. 2 of his properties in favour of the banks, there is nothing to show that the Petitioner No. 1 has any right, title or interest to the property of Shri R.C. Jindal either at Saket or at Badarpur.

17. It is true that in *Jolly George Varghese v. The Bank of Cochin*, the Supreme Court was concerned with the recovery of the contractual dues by using the coercive process of arrest and detention. Therefore, as rightly pointed in *Ram Narayan Agarwal* that decision may not apply to a case where the dues are statutory. To that extent there will be no doubt that as far as the present case is concerned the dues owed by the Petitioner No. 2 to the DFC are statutory dues. Nevertheless in *Ram Narayan Agarwal*, the Supreme Court while distinguishing the *Jolly George Varghese*, explained in paras 9 and 10 as under (SCC @ p. 284-85):

The Law Commission in its 54th Report submitted in the year 1973 after examining in detail the provisions for arrest and detention of a judgment-debtor

in execution of a decree passed by a civil court contained in Section 51 of the CPC in the light of the international covenant referred to above observed that this mode of recovery should not be given up. In its Report, the Law Commission observed:

Situation in Section 51(b)

1-E-12. Perhaps, it could be argued that imprisonment of the judgment-debtor in the situation in Section 51, proviso, Clause (b) causes hardship. That clause applies where the judgment-debtor (i) has the means and refuses or neglects to pay or (ii) has had the means and has refused or neglected to pay. The essential condition in either case is the possession of means, coupled with contemporaneous failure or neglect to pay. Imprisonment, if it follows in such cases, is not based on mere non-payment, nor on mere inability to pay, but is confined to cases where a person is able to pay and dishonestly makes default in payment.

1-E-13. It will, thus, be seen that the provisions as to arrest do not violate the provision in the International Covenant, as they are not based on mere non-fulfilment of a contract. Further, even apart from their consistency with the Covenant, they are justifiable on principle because the conduct which attracts their operation is dishonest. Technically, no crime is committed, as there is no bodily harm to the decree-holder or direct harm to society. But, to deprive another person of his lawful dues when one has the means to pay is, in the special situations to which Section 51, proviso, is confined ultimately causing harm to society, which suffers if an individual member suffers by reason of the dishonest conduct of another member.

Present law sufficiently restrictive.

1-E-14. We are, therefore, of the view that so far as the cases in which arrest may be ordered are concerned the law in India is sufficiently restrictive, except in two respects, which we shall presently discuss. This mode of execution should not, therefore, be totally abolished.

The situations mentioned in the proviso to Section 51-which is the section dealing with arrest in execution of decrees for payment of money - are those which indicate fraud or clandestine designs on the part of the judgment-debtor. Mere inability to perform the obligation to repay a loan (or other monetary obligation) does not result in imprisonment.

10. The foregoing shows that in the contemporary Indian conditions the process of arrest and detention of a judgment-debtor or a defaulter to enforce payment of the amount due from him is not altogether unreasonable. It cannot be held to be unconstitutional if there are sufficient safeguards which make the process conform to reasonable standards.

18. The law emerging from the above decisions is that the extreme coercive process of arrest and detention of a defaulter will be resorted to not on account

of mere non-payment or inability to pay but only where a person is liable to pay and dishonestly makes default in payment. The Supreme Court has in Ram Narayan Agarwal emphasized that it is only the dishonest conduct of a borrower that will attract the coercive step of arrest and detention.

19. As far as the present case is concerned, the burden is on the Respondent No. 1 DFC to show that the Petitioner No. 1 acted dishonestly in creating mortgage of his movable and immovable properties in favour of certain other financial institutions much after the issuance of the recovery certificate against him well as well as Petitioners 2 and 3 in 1998 itself. Unfortunately, however, the DFC has not been able to show any right, title or interest of Petitioner No. 1 in the properties of Shri R.C. Jindal either at Saket or at Badarpur. Shri R.C. Jindal is no longer alive. Consequently the DFC has not been able to make out a case for issuance of a warrant or arrest or detention of Petitioner No. 1.

20. For the above reasons, this Court is of the view that the DFC cannot proceed against the Petitioner No. 1 in terms of the Section 32(G) of the SFC Act for either his arrest or his detention. Further, in view of the unambiguous provisions of the DLRA and the DLRA Rules, the question whether the PLR Act 1887 applies to Delhi really does not arise. Consequently the proceedings, initiated by the DFC against the Petitioner No. 1 u/s 32(G) of the SFC Act seeking his arrest and detention, are hereby set aside.

21. The writ petition is accordingly allowed in the above terms.