(1998) 04 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 397 of 1997

Surjit Singh APPELLANT

Vs

Haryana Financial Corporation and Others RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
State Financial Corporations Act, 1951 — Section 29

Citation : (1998) 120 PLR 280 : (1998) 2 RCR(Civil) 670

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant; Adarsh Jain, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—This petition has been directed against the order dated 2.8.1996 passed by the learned Additional District Judge, Hisar. By this order, the learned Additional District Judge, Hisar, has upheld the order dated 25.7.1994 passed by the learned trial Court. The learned trial Court has dismissed the application of the petitioner-plaintiff under Order 39 Rules 1 and 2 read with Section 151, CPC for interim injunction. Notice of this petition was issued to the respondents.

2. Briefly stated, the facts of the case are that one Sanjay Bindal got loan from Haryana Financial Corporation (respondent No. 1) and hypothecated his own truck and the petitioner stood surety for the loan and the house of the petitioner was mortgaged to secure loan advanced to Sanjay Bindal. Since said Sanjay Bindal did not repay the amount of loan of the Corporation, an order u/s 29 of the State Financial Corporation Act was passed by the respondent-corporation. To recover the amount of the loan, the respondent-corporation served a notice on the petitioner to auction the house of the petitioner which was mortgaged to secure loan advanced to Sanjay Bindal. On receipt of the notice, the petitioner filed suit for perpetual injunction. Along with the suit, the petitioner also filed application under Order 39 Rules 1 and 2, CPC for interim injunction, which was

dismissed by the learned trial Court on 25.7.1994, which order has been upheld by the learned lower appellate Court, as stated hereinabove.

3. Mr. Jain, learned counsel appearing on behalf of the petitioner submits that u/s 29 of the Financial Corporation Act, the respondent-corporation ha*got the right to take over the management or possession of the industrial concern and can realise the amount of loan against the property belonging to the principal which has been mortgaged and they cannot recover the loan against the property belonging to the guarantor though mortgaged by the principal. He submits that in view of clear language of Section 29, the respondent-corporation could not recover the loan amount against the property belonging to the petitioner who is only guarantor. In support of his submission, learned counsel placed reliance on a recent judgment of the Supreme Court in Jagdish Ch. Patnaik and Others Vs. State of Orissa and Others, .

4. After hearing the learned counsel for the parties and having perused the orders of the Courts below, I do not find any infirmity in the orders passed by the Courts below. Similar question which has been raised by the learned counsel for the petitioner in this case was also raised before the Division Bench judgment of Orissa High Court in Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others, . In that case, the Division Bench of Orissa High Court held that the amount of loan could be recovered by the Financial Corporation against the property belonging to the guarantor which has been mortgaged by the industrial concern to secure the loan. The relevant portion from this judgment is reproduced hereinbelow:-

"A bare reading of the aforesaid provision makes it abundantly clear that the Financial Corporation shall have the right to take over the management or possession of both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. There is nothing in the aforesaid provision to indicate that the right u/s 29 of the Act is only in respect of the property of the loanee mortgaged with the Corporation, On the other hand, all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act."

5. I fully agree with the observations made by the Division Bench of Orissa High Court which have been reproduced hereinabove.

6. In view of the above discussion, I do not find any merit in this petition and the same is dismissed. The observation given by the learned lower appellate Court that it is hoped that the respondent-Corporation shall try to recover the amount of loan from the principal shall remain intact.