
(2006) 11 GAU CK 0008
In the Gauhati High Court

Tiles India and Another

APPELLANT

Vs

Assam Financial Corporation

RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 31, 32

Citation : (2007) 1 GLT 745

Hon'ble Judges : D. Biswas, J; B.D. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—This appeal u/s 32(9) of the State Financial Corporation Act, 1951 (for brevity the "Act") has been filed by the borrower against the judgment and order dated 04.05.2000 passed by the then learned District Judge, Nagaon in Misc. (R) No. 141/1998. By the impugned judgment the learned Trial Judge has accepted the prayer of the Assam Financial Corporation (the "Corporation" in short) made u/s 31(1)(a) and (c) of the said Act. In other words, the learned Trial Judge has made the interim order of attachment of the mortgage and hypothecated properties dated 17.08.1998 absolute. Being aggrieved with this order, the borrower has filed this appeal.

2. We have heard Sri C.K. Sarma Barua, learned Counsel for the appellants. Sri B.K. Goswami, learned senior counsel appearing on behalf of the corporation. We have also gone through the impugned judgment and the pleadings of both the parties made in the lower Court.

3. The corporation filed an application u/s 31 of the Act in the Trial Court praying for sale of mortgaged and hypothecated properties for realization of the debt amount., which included the principal amount with interest. It was the case of the petitioner/respondent that the term loan of Rs. 4,05,000/- was sanctioned to the appellants vide letter dated 08.07.1987 to set-up an industrial unit under the name and style of M/s Tiles India at Puranigudam in the district of Nagaon,

Assam. The loan amount was disbursed on hypothecation of plant and machinery and mortgaging of landed property on 30.07.1987. It may be mentioned here that the appellant No. 1 is a firm and appellant No. 2 is the proprietor of the said industrial unit. As per the terms and conditions, the loan amount was to be redeemed in 28 quarterly installments from January, 1989 onwards with interest. It was also the case of the respondents that the loan was sanctioned @ 12.5% interest per annum. However, there was a rider that the interest @ 13.5% p.a. would be charged if the loan amount is not re financed by IDBI. There was another stipulation in the loan agreement that panel interest @ 4% p.a. would also be levied additionally if the borrower defaults in repaying the loan. As per the corporation, the borrower did not pay a single installment against the principle amount of loan. Only a sum of Rs. 2,10,245.10 was deposited which was adjusted against the interest. Consequently a sum of Rs. 14,97,776/- became due as on 15.07.1998 with interest and interest tax. According to the corporation, despite notice to refund the money, the borrower failed to keep the promise, and as such, they had to take recourse to S. 31 of the Act for sale of mortgaged properties.

4. The case of the appellants in the Trial Court was that the corporation has imposed very high and illegal interest rate, which is against the policy of the Government. The appellants also took a point that the corporation did not release certain amount of working loan, which ultimately made the unit a sick one. The opposite parties also took a plea that their deposits/refunds were not adjusted with the principle loan but it was arbitrarily adjusted against the interest.

5. During the hearing, Sri Sarma Barua, learned Counsel for the appellants did not dispute the fact of taking loan from the corporation and also the fact of non-refund of the same. His only grievance was that the corporation has obtained the order of sale of the property on the basis of a fictitious account. Elaborating his submissions, the learned Counsel submitted that the corporation has not clarified in the application u/s 31 as to how they had calculated the amount of interest, and as such, the prayer for sale of the property ought to have been rejected on the basis of such defective pleading and insufficient evidence. The learned Counsel has also submitted that u/s 32(6), the District Judge is duty bound to make an investigation to ascertain the actual claim of the corporation and only thereafter, an order of attachment and sale should be confirmed. According to the learned Counsel the learned Trial Court did not follow this mandatory provision of the law, and as such, the matter deserves to be remanded back for reassessment of the outstanding amount.

6. Per contra, Sri Goswami, learned Senior Counsel for the corporation made a brief submission that the appellants have failed to point out any defect in the calculation of the debt amount, and as such, the impugned order does not require any interference. The learned Counsel has also pointed out that interest has been calculated as per the loan agreement and not whimsically or arbitrarily.

According to the learned Counsel, the interest was charged on the basis of 6 monthly rests and not on any irregular basis, i.e. either daily or monthly, as has been suspected by the borrower.

7. We find from the impugned judgment that both the parties examined one witness each in the lower Court and they also produced their respective documents. We also find from the impugned judgment that the appellant No. 2, i.e. the borrower, have admitted in his oral evidence that he did not pay any installment of the principal loan. In fact, Sri Sarma Barua, learned Counsel for the appellants also did not controvert this factual possession.

8. As noted earlier, the primary contention of the learned Counsel for the appellants is that neither the corporation disclosed the method of calculation of interest in the lower Court nor the learned District Judge made any attempt to ascertain the correctness of the interest amount. However, after going through the impugned judgment and the pleading of the borrower/appellants, we do not find that the calculation of the interest was at all challenged in an effective manner. Charging of interest was assailed in the following words in the written objection of opposite party No. 1 and 2.

4. That the applicants have imposed high and illegal interest against the policy and rules set for technical entrepreneurs.

10. That from all sides the claim of the applicant for more than twelve lakhs is highly speculative, arbitrary and against all norms and equity. Had the applicants released the sanctioned amounts, refrained from under payment the capital and working copies by U.B.I. Puranigudam Branch, amount would not have been 2/3 lakhs only and the O.P.'s could have made the one time settlement easily. The O.P.'s will apply for set-off by way of submitting a counter claim.

8.1. Even in his oral evidence and in the cross examination of the corporation witness, the borrower failed to point out any defect in the calculation of the interest amount. At the same time, we find that the learned District Judge has made a due enquiry as required u/s 32(6) of the Act. We are also of the view that in absence of a specific case of the borrower regarding any possible miscalculation of the interest, the District Judge was not duty bound to make an unending investigation. It is needless to say that the investigation, contemplated u/s 32(6) in the Act, can be held in a summary procedure and the Court is not duty bound to ask the corporation to prove the authenticity of its calculation meticulously.

9. According to the learned District Judge, the corporation has calculated the interest as per the loan agreement. Relying upon the judgment of the Hon'ble Supreme Court given in the case of Delhi Financial Corporation Vs. B.B. Behel, . The learned District Judge has held that it is beyond the power of the Court to change either the rate of interest or the date of the same etc.

10. While dealing with an identical application of a financial corporation u/s 29 of

the Act, in the case of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, . The Hon''ble Supreme Court has observed as follows:

The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one.

11. Similarly in the case of U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , the Apex Court came down heavily in the matter of interference with the procedure adopted by the financial corporations to realize the loan amount by way of public auction of the mortgaged property by the Courts. The said view were reiterated in the case of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, . Although these observations were given while examining the powers of financial corporations to recover their dues by way of sale of the property invoking the powers u/s 29, the underlying message given by the Hon''ble Supreme Court should also be kept in mind while dealing with an application u/s 31 of the Act. In the case before us, we find that there is no iota of evidence to take a view that the corporation had obtained the order of sale of mortgaged property on the basis of any false fabricated and fictitious outstanding amount with any malafide intention. We are also of the view that no purpose will be served by remanding the case to ascertain the so-called defective account, as it will also not be in the interest of the borrower since by that time the due amount would increase further.

12. Before parting with the case we would like to put on record that we were interested to give certain relief to the appellants for liquidating the loan amount in installments. However, we are refraining from doing so since the appellants were given identical relief while staying the impugned order at the time of admission of appeal. Vide order dated 01.05.2002 this Court stayed the impugned order with a condition that the appellants shall deposit a sum of Rs. 30,000/- per month with the Assam Financial Corporation. However, except depositing one installment of Rs. 30,000/- the appellants did not deposit any further amount in the last four and half years. Hence we do not propose to give any such observation in this order.

13. In view of the aforesaid reasoning, we hold that the appeal is bereft of any merit and the same is hereby dismissed. The interim order dated 01.05.2002 stands vacated. Send a copy of this order to the Trial Court.