(2008) 10 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 7320 of 2008

Tripada Stone Quarry — APPELLANT

Vs

The Gujarat State Finance Corporation — RESPONDENT

Date of Decision : 06-10-2008

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2008) 10 GUJ CK 0063

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Utpal M. Panchal, for the Appellant; N.C. Nayak and Jyotsna M. Amin, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Ms. Shreddha Trivedi, learned Counsel for Mr. Nayak for respondent No. 1 waives service of notice of Rule. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard.

2. The only question to be considered in the present proceedings is as to whether the respondent Corporation can invoke the power u/s 29 of the State Finance Corporation Act (hereinafter referred to as the ''Act'' for short) against the property of the Surety, who stood as the guarantor for the loan transaction or not?

3. It is an admitted position that the loan was given to M/s. Raj Quarry Works and as per the respondent Corporation, the petitioner Firm stood as the guarantor/surety and the property of the firm was given as collateral security, whereas as per the petitioner, such documents are entered into by the then partner of the petitioner firm by way of a fraud and it is only after the petitioner took over the firm, the transaction of collateral securities was entered into.

4. Be that as it may, even if the case of the respondent Corporation is considered for the sake of examination to invoke the power u/s 29 of the Act, at the most it

can be said that as per the respondent Corporation, the petitioner stood as guarantor/surety in the loan transaction to M/s. Raj Quarry Works and the respondent Corporation by the impugned communication, has called upon the petitioner to pay up the amount, failing which the exercise of the power u/s 29 of the Act for taking over the possession of the property.

5. This Court in Special Civil Application No. 15898 of 2007 decided on 11.9.2008 had an occasion to consider the similar question and this Court, inter alia, observed at paragraphs 3 to 8 as under:

3. The only question to be considered in the present petitions is as to whether it is open to the respondent No. 1 Corporation to invoke power u/s 29 of the State Financial Corporation Act against the property of the guarantor or not.

4. Heard Ms. Mehta learned Counsel for the petitioner and Mr. Munshaw learned Counsel for the respondent.

5. As such the issue is covered by the decision of the Apex Court in case of Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, . Wherein the conclusion inter alia recorded at paragraph No. 37 as under:

37. The legislative intent, in our opinion, is manifest. The intentions of Parliament in enacting Section 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. 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.

6. The aforesaid shows that the highest Court of land has observed that power u/s 29 of the Act is not available to the State Financial Corporation against the property of the guarantor, and if it is desirous to take possession of the property of the guarantor, it has to resort proceedings u/s 31 of the Act and only by intervention of the Court, the possession can be taken.

7. In view of the aforesaid, answer to the question has to be negatived, and the powers u/s 29 of the Act are not available to the respondent Corporation against the property of the petitioner, who are admittedly guarantor.

8. As in the impugned notice the respondent Corporation has also threatened for action u/s 29 of the Act, such would not be available to the respondent.

6. The same will be the situation in the present case for the exercise of the power u/s 29 of the Act inasmuch as the Corporation will have no power u/s 29 of the Act against the property of the petitioner Firm. If the Corporation is desirous to realise the money by taking over the possession or disposal of the property of the petitioner, who is alleged surety of the loan transaction, it will be required for the respondent Corporation to move application u/s 31 of the Act

before the appropriate Court. If such proceedings are initiated by the Corporation, the petitioner may raise the contentions, including that the transaction is by way of fraud or otherwise and appropriate Court shall examine the matter. No conclusion is required to be made on the said aspect, more particularly when the proceedings u/s 31 of the Act are yet to be initiated by the respondent Corporation and such Court is to examine the matter after giving opportunity of hearing to both the sides.

7. In view of the above, the impugned communication for exercise of power u/s 29 of the Act by the respondent Corporation cannot be sustained in the eye of law. Therefore, the same is quashed and set aside with the further observations that it would be open to the Corporation to make proper application u/s 31 of the Act if the Corporation is desirous to recover the amount by taking over the possession or disposal of the property of the surety. At that stage, the petitioner will be at liberty to raise all contentions as available in law. Suffice it to state that the rights and contentions of both the sides shall remain open in such proceedings.

8. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.