

RAJASTHAN HIGH COURT

O.K. Gaur and Co.

Vs.

Rajasthan Finance Corpn.

Civil Misc. Appeal No. 243 of 1999

(Amaresh Ku. Singh, J.)

11.07.2000

JUDGEMENT

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the appellants and the respondent.
2. This appeal has been filed under Section 32(9) of the State Financial Corporation Act, 1951 against the decree dated 24-2-1994 passed by the Additional District and Sessions Judge No. 3, Jodhpur in *Rajasthan Financial Corporation v. M/s. O. K. Gaur and Company and another*.¹
3. A perusal of the record of the lower Court shows that an application under Section 31(1)(aa) of the State Financial Corporations Act, 1951 was filed by the respondents in the Court of Additional District and Sessions Judge No. 3, Jodhpur with the prayer for reliefs enumerated in para No. 16 of the application. Reply was filed by the non-applicant-appellants. Issues were framed and after hearing the parties, the Additional District and Sessions Judge No. 3, Jodhpur passed the judgment dated 24-2-1994. The Additional District and Sessions Judge No. 3, Jodhpur passed the decree passed the decree against the appellants for the sum of Rs. 64,855/- with interest at the rate of 22% per annum with quarterly rest. It was also directed by the Additional District and Sessions Judge No 3, Jodhpur that plant, machinery and land property which had been hypothecated in favor of the applicant shall be auctioned for the recovery of the decretal amount.
4. Feeling aggrieved by the impugned decree dated 24-2-1994, this appeal has been filed. The main contention of the learned counsel for the appellant is that while

dealing with the application filed under Section 31 of the State Financial Corporations Act, 1951, a decree for money cannot be passed because the jurisdiction conferred by Sections 31 and 32 of the State Financial Corporation Act, 1951 is limited to conducting enquiry under Section 32 and passing order in accordance with the provisions of Section 32. In support of his submission that an application under Section 31 of the State Financial Corporations Act cannot be treated as plaint nor a decree for money can be passed on such application, the learned counsel for the appellant has placed reliance on the decision given in the following cases :-

- (1) *M/s. Kiril Fine Art. Chandrapur v. Maharashtra State Financial Corporation*.²
- (2) *M/s. Amar Cold Storage and Ice Factory v. Punjab Financial Corporation*³
- (3) *The Maharashtra State Financial Corporation v. M/s. Jaycee Drugs and Pharmaceuticals (P) Ltd.*,⁴
- (4) *M/s. Parkash Playing Cards Manufacturing Co. v. Delhi Financial Corporation*,⁵

5. In the last case *M/s. Parkash Playing Cards Manufacturing Co. v. Delhi Financial Corporation*,⁶ their lordships of the Delhi High Court held that an application under Section 31 cannot be properly described as a suit in view of the decision of the Supreme Court in Gujarat State Financial Corporation Case, AIR 1978 Supreme Court 1765. It was further held that in an application under Section 31(1) the corporation does not and cannot pray for a decree for its outstanding dues. It can make an application for one of the three reliefs, none of which, if granted, result in a money decree, or decree for recovery of outstanding loan or advance.

6. In *M/s. Kiril Fine Art. Chandrapur v. The Maharashtra State Financial Corporation*,⁷ it was held that on an application under Section 31 of the State Financial Corporation Act, the reliefs mentioned in Clause (a), (aa), (b) and (c) can be claimed but there is nothing in Section 31 to indicate that the Court has any power of passing any order in the nature of the decree for the payment of any amount and Section 31(1) of the Act is clear enough to exclude the power on the part of the District Judge to order any payment to be made to the Corporation by way of an independent relief and all that can be done by the District Judge in passing an order for the sale of the property pledged, mortgaged or hypothecated or for enforcement of any liability or a surety and under the wider Clause (c), District Judge could grant ad

interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipments from the premises.

7. In *M/s. Amar Cold Storage and Ice Factory v. Punjab Financial Corporation*,⁸ it was held that the scope of enquiry under Sections 31 and 32 of the Act is very limited and it is in the nature of an application for attachment of property in execution of a decree before a judgment.

8. In the *Maharashtra State Financial Corporation v. M/s. Jaycee Drugs and Pharmaceuticals (P) Ltd.*,⁹ it was held that the amendment made in Sections 31 and 32 by the Amendment Act of 1985 have expanded the scope of the proceedings under Section 31 read with Section 32 of the Act. The said amendments have not resulted in converting the said proceeding in which reliefs are prayed under Section 31(1)(aa) into full-fledged money suits for enforcing pecuniary claims of the corporation as against sureties and even after the said amendments the corporation under Section 31 read with Section 32 cannot obtain any relief personally against the principal debtor and the remedies under these provisions are still against the properties mortgaged by sale or by way of taking over management or by obtaining temporary injunction, and it is not possible to contemplate that by effecting amendments in Sections 31 and 32, the Parliament intended to enlarge the scope of enquiry.

9. In view of the above decisions, it can be said without hesitation that on an application under Section 31 of the State Financial Corporations Act, 1951, a decree for money cannot be passed because the reliefs which can be granted under Section 32 are against the property whereas a money decree is to be passed by the Civil Court against the concerned person i.e., the judgment- debtor.

10. The learned counsel for the respondent has not cited any decision to the contrary, before the Court.

11. In the facts and circumstances of the case, the impugned judgment and decree deserves to be quashed and set aside and is hereby quashed and set aside and the application filed by the respondent is hereby remanded with the direction that it should be disposed of in accordance with law. Parties to bear their own costs.

Order accordingly.

Cases Referred.

1. Civil Misc. Case No. 4A/1993
2. AIR 1998 Bom 207
3. AIR 1994 Punand Har 235
4. AIR 1991 Bom 96
5. AIR 1980 Del 48
6. AIR 1980 Del 48
7. AIR 1998 Bom 207
8. AIR 1994 Punand Har 235
9. AIR 1991 Bom 96