

RAJASTHAN HIGH COURT

Nanglia Syntex Ltd.

Vs.

R.S.I.D.I. Corpn. Ltd

Civil Revn. Petn. No. 1000 of 2001

(Harbans Lal, J.)

13.05.2003

ORDER

Harbans Lal, J.

1. This revision petition under Section 115, C.P.C. challenges the order dated 16-4-2001 of the learned ADJ No. 7, Jaipur city, Jaipur whereby issue No. 4 pertaining to the maintainability of the application filed under Section 31 of the State Financial Corporations Act 1951 (in short 'the Act') has been decided against the petitioners.

2. The relevant facts which are not in dispute are that the Rajasthan State Industrial Development and Investment Corporation Ltd., *Jaipur* (in short "the RIICO") advanced on 7-3-1988 a loan of Rs. 95 lacs to the petitioner for installation of a factory at Abu Road, Sirohi for the production of texterized/filament twisted yarn, who executed the necessary documents in favor of the non-petitioner. As the petitioner failed to repay the loan as per the terms and conditions agreed between the parties, the loan was re-scheduled but the petitioner failed to repay the loan even as per the re-scheduled package. The non-petitioner, therefore, took possession of the mortgaged/hypothecated properties in exercise of its rights under Section 29 of the Act and recovered Rs. 100.00 lac by auctioning the same. For the hypothecated goods which were not available in stock, the petitioner deposited Rs. 28,000/- in lieu thereof. After adjusting Rs. 3,39,804.10 paises against the expenses incurred on the sale of the properties, the non-petitioner credited an amount of Rs. 96,88195.90 paises towards the aforesaid term loan. As a further amount of Rs. 53,61,131/- remained outstanding against the petitioners, an application under Section 31 of the Act was filed by non-petitioner against the debtor and the guarantor for recovery of the aforesaid amount through the attachment and sale of the properties of which the details were given in

para 17 of the application. The petitioners filed a joint reply admitting that the non-petitioner had taken possession of the mortgaged hypothecated properties and had sold the same for satisfaction of its debt. But, denying all other averments, one of the pleas taken by the petitioners herein in their reply was that the non-petitioner herein having exercised its rights under Section 29 of the Act was not entitled to invoke the provision of Section 31 of the Act and the application under Section 31 of the Act for monetary claim of dues was, therefore, not maintainable. The Court below after considering the relevant provisions of the Act, the submissions made at the Bar and on the basis of the judgment of the Hon'ble Apex Court in the case of *A.P. State Financial Corporation v. M/s. Gar Re-Rolling Mills with A.P. State Financial Corporation v. Kota Subba Reddy*,¹ held that the application under Section 31 of the Act was maintainable even after taking recourse to the rights under Section 29 of the Act.

3. On the basis of the pleadings of the parties, four issues were framed by the Court below. Issue No. 4 pertains to the maintainability of the application and is based on the aforesaid plea of the petitioners herein. After hearing learned counsel for the parties on this issue, the Court below decided it against the petitioners and held that the application under Section 31 of the Act was maintainable even after taking recourse to rights under Section 29 of the Act. Aggrieved by the said order, the petitioners have filed this revision.

4. The first contention of Mr. Kasliwal, learned counsel for the petitioners, is that a perusal of the reliefs sought in the application under Section 31 of the Act reveals that it is an application for recovery of monetary claim of dues which is not maintainable as has been held in the case of *M/s. O.K. Gaur and Company v. Rajasthan Financial Corporation*;² He has submitted that no money decree can be passed under Section 31 of the Act.

5. Mr. Ajit Kumar Sharma, learned counsel for the non-petitioner has submitted in rebuttal that the application under Section 31 of the Act is both against the debtor and the guarantor and the reliefs sought for is for recovery of its dues through attachment and sale of the properties. Even if there is any discrepancy in claiming the relief, it can be granted under residuary prayer made in the application.

6. After giving my thoughtful consideration to the rival submissions, I am of the well considered view that this ground on which the application is said to be non-maintainable is not the subject-matter of the issue. The Court below has neither considered nor given its findings in respect thereof. This argument being not germane

to the controversy in hand cannot be decided in this revision. The petitioner may if he has taken such a plea in his reply may canvass this contention in the Court below and in this light of the matter, the first contention raised by the learned counsel for the petitioners is hereby rejected.

7. While strongly criticizing the impugned order, Mr. Kasliwal has candidly conceded in view of the authoritative pronouncement of the Hon'ble Apex Court in the aforesaid case of 'A.P. State Financial Corporation' (AIR 1994 Supreme Court 2151) (supra) which has been relied upon by the learned Court below that the application under Section 29 of the Act may be made after abandoning or withdrawing application under Section 31 of the Act, but his contention is that vice versa cannot be done. His contention is that the non-petitioner having taken recourse to and exhausted its remedy under Section 29 of the Act is not entitled to move the Court under Section 31 of the Act.

8. Mr. AjitKumar Sharma, learned counsel for the non-petitioner has opposed this contention with equal vehemance and has strongly supported the impugned order. According to him, there is no bar to the filing of the application under Section 31 of the Act after having recourse to the provisions of Section 29 of the Act.

9. Both the sides have relied upon the aforesaid judgment of the Hon'ble Supreme Court in the case of *A.P. State Financial Corporation v. M/s. Gar Re- Rolling Mills* with *A.P. State Financial Corporation v. Kota Subba Reddy*,³ wherein it has been clearly held by the Hon'ble Supreme Court that the scope and nature of Section 29 of the Act is wider than Section 31 of the Act. An application under Section 31 of the Act is not a monetary claim of dues, but it is in the nature of application for attachment of property in execution of a decree and the Corporation has choice to initiate proceedings under Section 29 or Section 31 of the Act. After initiating proceedings under Section 31 of the Act, it can abandon those proceedings at any stage including the stage of execution in view of unlikelihood of recovery of its dues and then proceed under Section 29 of the Act for the same relief. Like-wise, the Corporation has right to abandon the proceedings under Section 29 of the Act and take recourse to Section 31 of the Act as has been done in the instant case. But it cannot proceed simultaneously both under Section 29 and Section 31 of the Act. The position would also be different if clam of the Corporation in initial proceedings is negated on facts by the Court. It has also been held in very explicit terms that 'doctrine of election' does not apply where two remedies are available under the statute which differ in ambit and scope.

10. Section 31 of the Act in terms provides that the action under the said provision may be taken "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882". While considering the import of the term "without prejudice to the provisions of Section 29 of this Act" and on a conjoint reading of Sections 29 and 31 of the Act, their Lordships have held that the Corporation has two remedies available to it against the defaulting industrial concern one under Section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. The expression "without prejudice to the provisions of Section 29 of this Act" as appearing in Section 31 of the Act clearly demonstrates that the legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. Their Lordships of the Hon'ble Supreme Court have observed thus :-

'The Legislature clearly intended to preserve the rights of the Corporation under Section 29 of the Act, by expressly stating in Section 31 of the Act, that its recourse to action under that section is without prejudice to the provisions of Section 29 of the Act. What alone is not desirable or permitted by the Act is to pursue both the remedies simultaneously by the Corporation and not that it cannot withdraw or abandon the proceedings initiated under Section 31 at 'any stage and then take recourse to the provisions of Section 29 of the Act. Any interpretation which frustrates the right of the Corporation to recover its dues must be eschewed. Similarly, if in a given case, the Corporation has taken recourse to the provisions of Section 29 of the Act, there is no bar for it without taking those proceedings to their logical conclusion to abandon them and approach the Court under Section 31 of the Act to seek one or more of the reliefs available to it under that Section.

11. This renders the contention of the learned counsel for the petitioner wholly untenable and unacceptable and the learned Court below has taken a correct view of the matter in deciding issue No. 4 against the petitioners herein.

12. In this view of the matter, therefore, there being no merit and substance in this revision petition, the same deserves to be and is hereby dismissed and the impugned order dated 16-4-2001 passed by the learned Addl. District Judge No. 7, Jaipur city, Jaipur is hereby affirmed.

Revision dismissed.

Cases Referred.

1. (1994) 2 SCC 647: (AIR 1994 SC 2151)
2. AIR 2001 Raj 4. 3
3. (1994) 2 SCC 647: (AIR 1994 SC 2151)