

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.29 OF 2002

Zenith Magnetix Limited,
a Public Limited Company
having its Factory Premises
at 127/9, Alto Betim, Porvorim,
Bardez, Goa and/or having its
Registered Office at Jaikishan
Nivas 220, Walkeshwar Road,
Mumbai 400 006, represented
through its Manager

... APPELLANT

VERSUS

1. The Chief Secretary,
Government of Goa,
Secretariat,
Panaji, Goa;

2. The Managing Director,
The Economic Development
Corporation of Goa, Daman
and Diu, having its Office
at EDC House, Dr. Atmaram
Borkar Road, Panaji, Goa

... RESPONDENTS.

Mr. E.P. Badrinarayan, Advocate for the Appellant.

Mr. V.P. Thali, Addl. Advocate General, with Ms. S.
Linhares, Addl. Government Advocate, for the
Respondent No.1.

Mr. M.S. Sonak with Ms Pooja Bharne, Advocates for
the Respondent No.2.

CORAM : V.C. DAGA, J.

DATED : JUNE 28, 2002.

ORAL ORDER

Heard the learned Counsel for the
Appellant.

2. The Appeal is directed against the
Order passed by the Civil Judge, Senior Division,

Mapusa in Regular Civil Suit No.17 of 2002 seeking interim injunction restraining the Defendants No.1 and 2, their agents or officers from proceeding with the attachment and auction or sale of the property situated at Ward No.127/9, Alto-Betim, Bardez, Goa, which is admittedly mortgaged in favour of the Respondent No.2 Corporation under the indenture of mortgage followed by other loan documents. These documents are placed on record by the defendant Corporation.

3. The amount of loan borrowed by the Appellant/original Plaintiff was repayable in half yearly instalments commencing from 15th August, 1988. The last instalment was payable on 15th February 1992. It appears that after borrowing the substantial amount of loan, the Plaintiff failed to discharge its obligation to pay its liability, which compelled the Corporation to resort to the action under Section 29 of the State Finance Corporation Act, 1951 (51). As on date total amount of loan due and recoverable from the Plaintiff is Rs.5,56,76,000/- (Approx).

4. In order to obstruct and prevent the Corporation from attaching and taking over the

industrial unit, Plaintiff filed a suit for permanent injunction, being Regular Civil Suit No.17 of 2000. The suit came to be allotted to the Civil Judge Senior Division, Mapusa, Government of Goa being party to the suit. The bare reading of plaint would show that only two substantive grounds are raised to challenge the action under Section 29 of the said Act. The first ground is based on the 'doctrine of estoppel' without there being any pleadings with respect to the alleged representation alleged to have been made by the Corporation with acceptance thereof resulting in prejudice to the Plaintiff. No specific much less even vague pleadings are to be found in this behalf. Mere use of the word "estoppel" in the plaint does not furnish any cause of action to challenge action taken by the Corporation under Section 29 of the said Act.

5. Another ground sought to be raised in the plaint is that the action of recovery ought to have been initiated within a period of three years from the date of cause of action. One fails to understand how the three years period of limitation can be put forth when the finances made are admittedly secured by deed of mortgage with

other loan documents executed by the borrower from time to time. No material facts and/or material particulars in this behalf are to be found in the plaint to substantiate this plea of limitation. I see no merit in the contention sought to be pressed into service.

6. A feeble attempt is made to contend that the action is mischievous and is being taken to harass the Plaintiff. In order to substantiate this challenge no material particulars and/or details are to be found in the plaint. The plea raised is vague. No cause of action for this plea can be made out from the plaint. Under these circumstances, considering the quality of the pleadings in the plaint, no judicial mind can reach to the conclusion that any case, much less a prima facie case, has been made out by the Plaintiff.

7. It is no doubt true that the Corporation while resorting to the action under Section 29 of the Act has to take reasonable view of the matter. Their action should not be arbitrary or unreasonable. The action of the Corporation is to be judged in the light of the fact that recovery against plaintiff is running into crores. This

Court keeping in view the observations of the Supreme Court in the case of **Haryana Financial Corporation v. Jagdamba Oil Mills** [2002(3) SCC 496] called upon Appellant/Plaintiff to show their bonafides by offering substantial amount by way of part payment, so that the Corporation could be asked to give some concession and time for repayment by rescheduling repayment schedule.

8. At the request of the Appellant desired time was granted on 13/14th June 2002 but Appellant/Plaintiff did not come forward with any proposal to show their bonafides.

9. As observed by the Apex Court in the case of **Jagdamba Oil Mills'** case (cited supra), the Corporation alone cannot be shackled hand and foot in the name of fairness. In matters like the present one, fairness cannot be a one-way street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been followed. The fairness

required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. Also, the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. In commercial matters the courts are not expected to risk their judgments for the judgments of the bodies to whom that task is assigned.

10. The question is what the defendant/Respondent Corporation is expected to do in such a situation ? The Corporation is not expected to sit with folded hands. The Corporation is bound to invoke their powers to effect the

recovery. No doubt, it is true that the Corporation has to demonstrate its action as a reasonable action in the eye of law. But it is not a one-way traffic. The borrower also has to show that he has taken all reasonable steps to satisfy the liability of the Corporation. This can only be through pleadings in the plaint. No such pleadings are to be found in the plaint.

11. The learned Counsel for the Appellant, while making his submissions, tried to travel beyond the scope of the pleadings incorporated in the plaint. I am afraid, no new plea can be allowed to be raised in the Appeal, that too, for the first time without there being any foundation in the plaint. Therefore, the learned Counsel for the Appellant was asked to confine himself to the scope of the suit. No substantial submissions were made warranting interference with the impugned Order.

12. The Apex Court in the case of **Uttar Pradesh Co-operative Federation Ltd., v. Sunder Bros., Delhi** (AIR 1967 SC 249) had occasion to observe that where the discretion vested in the Court has been exercised by the lower Court, the

appellate Court should be slow to interfere with the exercise of their discretion. In dealing with the matter raised before it at the appellate state, the appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, the fact that the appellate Court would have taken a different view may not justify such interference with the trial Court's exercise of discretion. If it appears to the appellate Court that in exercising its discretion, the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would be open for the appellate Court to interfere with the trial Court's exercise of discretion. In the case at hand it is not possible to reach to the conclusion that the trial Court has acted unreasonably, capriciously or has ignored relevant facts. On the contrary, the view taken by the trial Court is reasonable, possible and judicious.

13. In this view of the matter, if the

trial Court did find that there was no **prima facie** case made out for grant of injunction. No fault can be found with the impugned Order. The observations made are prima facie. Trial Court to decide suit without getting influenced with the observations made herein.

14. The Appeal is therefore dismissed with no order as to costs. Needless to mention, that the interim order shall stand automatically vacated.

V.C. DAGA, J.