

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7020 of 1992

*For Approval and Signature:**HONOURABLE MS. JUSTICE R.M.DOSHIT*

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to civil judge ?

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**SHRAMJIVI PAPER MILLS (P) LTD - Petitioner(s)***Versus***GUJARAT STATE FINANCIAL CORPN. & 1 - Respondent(s)**

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*Appearance :*

MR NV SOLANKI for MR MS RAO for Petitioner

MR RD DAVE for Respondent(s) : 1,

MR SHAKEEL A QURESHI for Respondent(s) : 2,

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*CORAM:* HONOURABLE MS. JUSTICE R.M.DOSHIT  
31<sup>st</sup> July, 2007

***ORAL JUDGMENT***

*The* petitioner-Shramjivi Paper Mills Private  
Limited, a Company registered under the Companies

Act, 1956 [hereinafter referred to as, "***the Company***"], has preferred the present petition under *Article* 226 of the Constitution to challenge the action of the Gujarat State Financial Corporation [hereinafter referred to as, "***the Corporation***"] in executing a sale deed in respect of the assets of the Company in favour of the respondent no.2; and for a direction to the Corporation to resume the said assets from the respondent no.2 in exercise of the power conferred by section 29 of the State Financial Corporations Act, 1951 [hereinafter referred to as, "***the Act***"].

*The* Company had established its manufactory at G.I.D.C. Estate, Ankleshwar. On 20<sup>th</sup> December, 1977, the Corporation had sanctioned financial assistance to the Company in the sum of Rs. 16,43,000/= on interest at the rate of 8% *per annum*. Accordingly, a loan agreement was executed on 31<sup>st</sup> March, 1978. The assets of the Company, including plant and machineries were hypothecated to the Corporation. An equitable mortgage in respect of the land was created in favour of the Corporation. The Company availed of the loan to the tune of Rs. 12,15,600/=. The Company, however, failed to discharge its obligation to repay

the loan amount. Apprehending that the Corporation will take action under Section 29 of the Act, the Company preferred Special Civil Application No. 5310 of 1982 before this Court. Pending the said petition, the Corporation was restrained from recovering unit of the Company under Section 29 of the Act. The said petition came to be dismissed in February, 1986.

*P*ursuant to the dismissal of that petition and vacation of the *interim* injunction, the Company was called upon to repay the outstanding amount of Rs. 16,73,952/=. As the Company failed to pay its outstanding dues, the Corporation, in exercise of power conferred upon it under Section 29 of the Act, took over possession of the unit of the Company. On 4<sup>th</sup> February, 1987, the Corporation published advertisement inviting offers for sale of the unit of the Company. In answer to the said advertisement, two offers were received - one from Messrs. Glamour Dyeing & Manufacturing Mills Prvt. Ltd [hereinafter referred to as, "**M/s. Glamour**"] in the sum of Rs. 35 lakhs, and another from Messrs. Lakhani Paper & Board Mills, the respondent no.2 herein, for a sum of Rs. 25,25,000/=. Under the valuation report dated 16<sup>th</sup>

April, 1987, the assets of the Company was valued at Rs. 26,20,000/=. It may be noted here that since the Company could not run its business profitably, the Company had inducted the respondent no.2 as a licensee and it was the respondent no.2 which was running the manufactory at the relevant time.

Feeling aggrieved by the action of the Corporation in recovering the unit of the Company and in trying to dispose of the same by public auction, the respondent no.2 instituted Regular Civil Suit No. 41 of 1987 in the Civil Court against the Corporation. Pending the suit, injunction was issued against the Corporation restraining it from selling the assets of the Company. In view of the *injunction* granted by the Civil Court, by its letter dated 25<sup>th</sup> March, 1987, the offerer Messrs. Glamour, withdrew its offer. Thereafter, the suit was withdrawn by the respondent no.2 on 15<sup>th</sup> June, 1987. The Executive Committee of the Corporation, in its meeting held on 15<sup>th</sup> September, 1987, decided to accept the offer made by the respondent no.2. In furtherance thereof, the Corporation agreed to sell the assets of the Company to the respondent no.2 on the terms and conditions

mentioned in the agreement. The respondent no.2 also failed to discharge its obligation to the Corporation. Ultimately, the matter was settled, the Corporation waived its right to recover penal interest and re-framed the repayment schedule. After the respondent no.2 paid-up whole of the amount as per the agreement in the year 1994, the sale deed came to be executed in favour of the respondent no.2.

*It* is this action of the Corporation which has aggrieved the Company. Mr. Solanki has submitted that it is indeed true that the Company failed to discharge its obligation to repay the loan amount, as scheduled. He has submitted that though the Corporation is empowered to take over possession of the unit-in-default, either to lease it, or to sell it out, the Corporation is under obligation to fetch the maximum price. Any amount recovered in excess of its dues should be remitted to its rightful claimant. In disposing of any unit-in-default in exercise of power conferred by Section 29 of the Act the Corporation is required to act as a trustee and not as an owner. In the present case, though an offer in the sum of Rs. 35 lakhs was made by Messrs. Glamour,

the Corporation without considering the said offer, agreed to sell the unit to the respondent no.2 at a much lesser price. The action of the Corporation thus smacks of *mala fides* and collusion. Besides, the Company's liability would freeze on the date of taking over the possession of its assets by the Corporation i.e., on 21<sup>st</sup> October, 1987. In the present case, the Corporation has made an attempt to recover the loss made by it in its transaction with the respondent no.2. As recorded hereinabove, the respondent no.2 also had failed to discharge its liability, but the Corporation waived the penal interest. He has submitted that if the Corporation failed to recover the amount due from the respondent no.2, it is not the liability of the Company to make good the loss. Mr. Solanki has also drawn my attention to the accounts reflected in the counter affidavit made by the Corporation. He has submitted that the Corporation has not only charged interest at the agreed rate of 8% but has also charged penal interest at the rate of 16% so as to inflat the claim against the Company to square off its accounts quae the Company. He has submitted that the amounts though

not paid to the other statutory authorities like the Gujarat Industrial Development Corporation and the Government, such amounts have been reflected in the accounts as the dues of the Company. In the submission of Mr. Solanki, the accounts are manipulated so that the Corporation may not have to refund the excess amount recovered by it to the Company. He has submitted that since vacation of the *interim* stay granted by the Civil Court, the Corporation was required to re-advertise and call for offers afresh, or at least to call upon the other offerer Messrs. Glamour to renew its offer. By not inviting the offers afresh or by not informing the offerer-Messrs. Glamour, the Corporation has failed to perform its statutory duty to fetch the maximum price for the unit which has resulted into a great loss to the Company. Evidently, the Corporation has favoured the respondent no.2 by accepting its offer without soliciting offers from the other prospective buyers, in collusion with the respondent no.2. In support of his submissions, he has relied upon the judgments of the *Hon'ble* Supreme Court in the matters of ***Gajraj Jain vs. State of Bihar & Ors.*** [2004 (7)

SCC 151]; of **Narandas Karsondas vs. S.A Kamtam & Anr.** [AIR 1977 SC 774]; of **Karanataka State Industrial Investment & Development Corpn. Ltd. vs. Cavalet India Limited & Ors.** [(2005) 4 SCC 456]; and an unreported judgment of the Division Bench of this Court in the matter of **Gujarat State Financial Corporation v. Kumarpal V. Shah & Ors.** [Letters Patent Appeal No. 16 of 1989 :: Decided on 11<sup>th</sup> May, 1999 :: *Coram-Hon'ble Mr. Justice K.G Balakrishnan, CJ., as he then was & Mr. Justice R.K Abichandani, J.*] and of **Durgesh Cold Storage & Ice Factory, Gorakhpur vs. U.P Financial Corporation, Kanpur & Ors.** [AIR 1989 Allh. 96].

*The* petition is contested by Mr. Dave. He has submitted that the Corporation had given wide publicity for sale of the assets of the Company. Nevertheless, the Corporation had received only two offers mentioned hereinabove. In view of the stay granted by the Civil Court, one of the offerers Messrs. Glamour, under its letter dated 25<sup>th</sup> March, 1987, withdrew its offer. Now, there was only one offerer on the field i.e., the respondent no.2. Besides, the respondent no.2 was a licensee of the

Company and it was running the paper mill. The Corporation, therefore, decided to accept the offer made by the respondent no.2. He has submitted that the action of the Corporation was neither *mala fide* nor collusive, as suggested by the petitioner. He has submitted that true it is that the Corporation could have informed the other offerer Messrs. Glamour to renew its offer but failure to do so cannot vitiate the action of the Corporation taken under Section 29 of the Act. At the most, it can be said to be an irregularity. He has submitted that Section 29 [4] of the Act envisages that the sale proceeds in excess of the dues of the Corporation shall be paid to the person entitled thereto. Mr. Dave has submitted that in the present case, there were outstanding dues of the sales tax and the Government subsidy against the Company. Hence, the residual amount was required to be paid to the said two authorities in discharge of the said debts. The Company is not a rightful claimant of such excess amount. Nor the Company is entitled to the reliefs prayed for. In support of his submissions he has relied upon the judgments in the matters of **Karnataka State Industrial Investment &**

**Development Corporation Limited vs. Cavalet India Limited & Ors.** [2005 (4) SCC 456]; and of **Rajendra Singh v. Ramdhar Singh & Ors.** [AIR 2001 SC 2220]; of **Gajraj Jain vs. State of Bihar & Ors.** [(2004) 7 SCC p-151}.

*Mr.* Qureshi has appeared for the respondent no.2. He has submitted that the respondent no.2 is a *bona fide* purchaser for consideration. The respondent no.2 has discharged its liability to the Corporation and nothing is due to the Corporation. The sale made in favour of the respondent no. 2 by the Corporation, therefore, is valid and may not be interfered with.

Section 29 of the Act empowers the Financial Corporation to take over the management or possession, or both of the industrial concern which is under liability to the financial corporation and makes any default in repayment of the loan or advances or any installment thereof, or which fails to comply with the terms and conditions of its agreement with the financial corporation. Sub-section [4] thereof provides for recovery of its dues by the financial corporation from the sale proceeds of the industrial concern and for disbursement of the

residual amount.

*In* the matter of **Gajraj Jain** [*Supra*], the sale of the assets of the industrial unit by the State Financial Corporation made under Section 29 of the Act was subject matter of challenge. The *Hon'ble* Supreme Court observed that the State Financial Corporation, after putting the assets to sale by public auction, entered into an agreement for sale of the assets without ascertaining the market value and realization of sale proceeds for distribution. The sale price was worked out by adding the Corporation dues and the claim of the Bank and that sale consideration was also not realized in full. The *Hon'ble* Court did not accept the contention that absence of valuation report and the reserved bid did not vitiate the sale. It was observed that the State Financial Corporation had not complied with the provision of sub-sections [1] & [4] of Section 29 of the Act and nor had it acted fairly. The State Financial Corporation failed to act reasonably, did not take steps to secure best price and failed to protect the interest of the Bank which was having the second charge. For this and the other infirmities

noticed, the *Hon'ble* Supreme Court set-aside the agreement for sale made by the State Financial Corporation.

*In* the matter of **Narandas Karsondas** [*Supra*], the question was in respect of the right of mortgagor to redeem the mortgage. The *Hon'ble* Court held that, **"..In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right to redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act."**

In the matter of Karnataka State Industrial Investment & Development Corporation Limited [*Supra*], the *Hon'ble* Supreme Court has discussed the scope of interference by the High Court in the matters between the Corporation and its debtor. The *Hon'ble* Court has summarized the principles in paragraph 19 of the judgment. It has been held, *inter alia*, that, **a writ Court has no say except in two situations : [a] there is a statutory violation on the part of the**

Corporation, or [b] where the Corporation acts unfairly i.e. unreasonably. Unless the action of the Financial Corporation is *mala fide*, even a wrong decision taken by it is not open to challenge; in the matter of sale, the dominant consideration is to secure the best price for the property to be sold; the fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them; reasonableness is to be tested against the dominant consideration to secure the best price.

*In* the matter of Gujarat State Financial Corporation [Supra], the Division Bench of this Court while dealing with a similar matter observed that, "*..There is no provision which authorizes the Corporation to postpone the realization of the money while selling the property. ...when the Corporation itself treated the remaining amount as if it was 'money received' by it, on which, by treating it as a loan advanced to the purchaser, it charged interest, it would not lie open in the mouth of the Corporation to say that it had not received the entire consideration of the sale of the unit in question.*"

*In* the matter of **Durgesh Cold Storage & Ice Factory, Gorakhpur** [Supra], the *Hon'ble* Allahabad High Court *set-aside* the *impugned* sale made by the State Financial Corporation on the grounds that the State Financial Corporation had not acted reasonably. It was observed that, "***..the time given for inviting tenders was too short and the very fact that only one tender was received in the present case does not indicate fairness; ... that the best price could not be received.***"

*In* the matter of **Rajender Singh** [Supra], the *Hon'ble* Supreme Court rejecting the challenge to the sale made by the State Financial Corporation, refused to *set-aside* the sale on the ground of inadequacy of the price. The *Hon'ble* Court held that, "***..The respondents have not alleged any fraud or material irregularity in the conduct of the Court's auction sale, whereby they suffered injustice. Mere inadequacy of the price is not a ground for setting aside the Court sale.***"

*It* is not in dispute that the Company did make

default in repayment of the loan amount and interest, as agreed. The offer for re-schedulement made by the Company was not acceptable to the Corporation. In the circumstances, the action of the Corporation in taking over possession of the assets of the Company was within its power and cannot be questioned. The action of the Corporation in accepting the offer of the respondent no.2 without calling for the offers afresh or without calling upon the offerer Messrs. Glamour to renew its offer cannot be said to be justiciable. Nevertheless, I am unable to infer that such lapse was committed deliberately, with an ulterior design to favour the respondent no.2. Such lapse at the worst can be said to be an irregularity which would not vitiate the sale made to the respondent no.2. In absence of any other material on record, allegation of *mala fide* and collusion cannot be accepted on mere surmise or conjecture. Besides, the Company did not make any offer in response to the public notice for sale of the unit.

Undoubtedly, if the Corporation has incurred any loss in its transaction with the respondent no.2, the said loss cannot be recovered from the Company.

Thus, on and from the date the possession of the petitioner's Unit was taken over by the Corporation i.e., 21<sup>st</sup> October, 1987, no further liability can be saddled upon the petitioner Company. If any such amount is reflected in the accounts of the Corporation, the same calls for reconsideration. Further, in the accounts produced by the Corporation, it appears that the Corporation has added certain statutory liabilities in account of the Company as against its outstanding sales-tax dues and dues to the Gujarat Industrial Development Corporation, and dues of the Government subsidy. Mr. Dave has admitted that the Corporation was required to pay over the said dues to the concerned authorities but the Corporation has failed to do so. I am of the opinion that unless the Corporation pays the aforesaid dues of the Company, as it is obliged to do under Section 29 [4] of the Act, such amounts cannot be recovered from the petitioner-Company.

*In* view of the above discussion, I am of the opinion that the petitioner-Company cannot be granted relief of setting aside the sale made in favour of the respondent no.2 nor the Corporation be directed

to pay excess amount to the petitioner outright. However, the Corporation is under obligation to account for the sale proceeds received by it. It is, therefore, directed that the respondent no.1-Gujarat State Financial Corporation shall, within two months from *today*, submit the accounts of the sale proceeds received by it in respect of the assets of the Company. If there is any dispute in respect of the accounts, or any amount is recoverable by the petitioner-Company, the petitioner-Company shall be at liberty to seek recovery of such amount and may resort to legal remedy, if required.

Subject to the above direction, the petition is dismissed. Rule is *discharged*. The parties will bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash\**