

A.F.R.

ORISSA HIGH COURT : CUTTACK.

M.A. NO. 644 OF 1996

From a judgment dated 27.8.1996 passed by Sri M.R. Behera, learned District Judge, Phulbani in M.J.C. No. 4 of 1989.

Orissa State Financial Corporation
Having its Head Office
At- O.M.P. Square, Cuttack,
Through its Managing Director.

...

Appellant

-Versus-

M/s. Azad Auto Servicing Garage
And others.

...

Respondents

For Appellant : M/s.B.H. Mohanty, S.C. Mohanty,
J.K. Bastia, R.K. Nayak,
B. Das & D.P. Mohanty.

For Respondents : None

P R E S E N T:

THE HONOURABLE MR. JUSTICE B.N.MAHAPATRA

Date of Judgment : 18.5.2012

B.N.MAHAPATRA, J. This is an appeal under Section 32(9) of the State Financial Corporations Act, 1951 (for short, "Act, 1951") filed by the Orissa State Financial Corporation (for short, "OSFC") challenging correctness of the order dated 27.8.1996 passed by the learned District Judge, Phulbani in M.J.C. No. 4 of 1989.

2. The facts and circumstances giving rise to the present appeal in a nutshell are that respondent no.2 was the proprietor of the firm M/s.

Azad Auto Servicing Garage, which is respondent no.1 in the present appeal. He had applied for a term loan of Rs.41,800/- to O.S.F.C. and the same was sanctioned by the petitioner-appellant in favour of respondent nos. 1 and 2 on 9.3.1981. Accordingly, a deed of hypothecation was executed between the parties on 18.3.1981 whereby respondent no.2 hypothecated the plant and machinery. Respondent no.3, as a guarantor to the aforesaid loan executed the deed of guarantee on 18.3.1981. The said loan was to be repaid by ten monthly instalments and last such instalment fell due on 18.3.1987. Pursuant to such loan agreement an amount of Rs.12,600/- was disbursed on 1.7.1981 from the sanctioned loan. Case of the appellant is that as no instalment was paid to the Corporation despite intimation, the appellant-Corporation seized the hypothecated plant and machineries of respondent nos. 1 and 2 and put the matter before the Disposal Advisory Committee in its meeting held on 29.6.1985. The plant and machineries were sold to one Surendra Katta on 14.10.1985 for a consideration of Rs.10,000/-. The sale proceed was credited to the account of respondent no.2. After adjustment of the aforesaid amount of Rs.10,000/-, further amount of Rs.8,329.15 including interest remained due from the respondents No.1 and 2. Since the said respondents did not clear up the balance dues despite notice dated 25.1.1989, the Corporation filed a petition under Section 31 of the Act, 1951 impleading the guarantor (Respondent no.3) as a party to the case claiming recovery of Rs.11,716.50.

To this, opposite parties-respondents filed objection raising the question of maintainability of the application made u/s. 31 of the Act, 1951. The respondents further challenged the action of O.S.F.C. as illegal on the ground that O.S.F.C. had disbursed only Rs.12,600/- against the sanctioned loan of Rs.41,800/- for which the respondents sustained heavy loss. Learned District Judge dismissed the petition filed under Section 31 of the Act, 1951 on the ground that the reliefs sought for by the petitioner-appellant in the said petition cannot be entertained.

3. None appeared for respondents despite service of notice.

4. The only question that arises for consideration by this Court is as to whether the learned District Judge, Phulbani is justified in dismissing the petition of the petitioner-appellant filed under Section 31 of the Act, 1951 vide its order dated 27.8.1996 passed in M.J.C. No. 4 of 1989.

5. To deal with this question, it is necessary to know what is contemplated under Section 31 of the Act, 1951 and what is the relief sought for by the petitioner-appellant before the learned District Judge, Phulbani in its petition filed under Section 31 of the Act, 1951.

Section 31 of the Act, 1951 reads as follows:

“31. Special provisions for enforcement of claims by Financial Corporation.- (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof (or in meeting its obligations in relation to any guarantee given by the Corporation) or otherwise fails to comply with the terms of its agreement with the Financial

Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, (then, without prejudice to the provisions of section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882 (4 of 1982)) any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:-

- (a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the (Financial Corporation) as security for the loan or advance; or
- (aa) for enforcing the liability of any surety; or
- (b) for transferring the management of the industrial concern to the Financial Corporation; or
- (c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.”

6. Thus Section 31(1) of the Act, 1951 prescribes a special procedure for enforcement of claim by the Financial Corporation. Under the said Section the Corporation may apply to the District Judge within local limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of his business inter alia for any of the following reliefs:-

- (a) for an order for sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance;
- (aa) for enforcing the liability of any surety;
- (b) for transferring the management of the industrial concern to the Corporation;
- (c) for an ad interim injunction restraining the defaulting industrial concern from transferring or removing its machinery or plant or equipment or any other material from the premises of the industrial concern without the permission of the Board.

Sub-section (2) of Section 31 provides that an application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made.

7. The Hon'ble Supreme Court in the case of ***the Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. Pvt. Ltd. and others***, AIR 1978 S.C. 1765 while considering the scope of Section 31 of the Act, 1951 has held as under:

“9. Section 31(1) prescribes a special procedure for enforcement of claims by the Financial Corporation. The Corporation is to make an application for the reliefs set out in S. 31(1). The reliefs that a Court can grant under S. 31(1) are the sale of the property mortgaged, etc. to a Financial Corporation as security for the loan or advance; transfer of the management of the industrial concern to the Financial Corporation or restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the board of the Financial Corporation. An application for such a relief is certainly not a plaint in a suit for recovery of mortgage money by sale of mortgaged property. On a breach of an agreement by

an industrial concern the Corporation can seek one or more of the three reliefs set out in S. 31(1). If the Corporation seeks the relief of transferring the management of the industrial concern to the Financial Corporation it could hardly be said that the application purports to be a plaint for recovering the mortgage money by sale of mortgaged property. It would be inappropriate to say that on an analogy an application under S. 31(1) is something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property. At any rate, in an application under S. 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, results in a money decree, or decree for recovery of outstanding loan or advance....”

8. In view of the above, it is necessary to know what are the reliefs claimed by the petitioner-appellant in its petition made under Section 31 of the Act, 1951. The prayer made in the petition filed under Section 31 of the Act, 1951 is extracted below.

“The petitioner, therefore, prays –

(a) for a personal decree against O.P.Nos.1,2 and 3;

(b) and direct the enforcement of liability of O.P. Nos.1,2 and 3 for an amount of Rs.11,716.50 P. and P.I interest @ 12% p.a.

(c) Any other relief to which the petitioner is entitled including the costs of this petition.....”

9. A bare perusal of the prayer made in the petition under Section 31 of the Act, 1951 clearly shows that the petitioner-appellant filed petition under Section 31 of the Act, 1951 to realize the amount due from the opp.

parties-respondents. Such a relief is not contemplated under Section 31 of the Act. Therefore, learned District Judge has rightly held that no money decree can be passed under Section 31 of the Act, 1951. The petitioner having not approached for any relief as envisaged under Section 31 of the Act, 1951, prayer made in the said petition for realization of money is misconceived.

10. In view of the above, this Court does not find any illegality or infirmity in the order dated 27.8.1996 passed by the learned District Judge, Phulbani in M.J.C. No.4 of 1989 warranting interference by this Court. Therefore, the prayer made in this appeal to set aside the aforesaid order cannot be granted by this Court.

11. In the result, the appeal is dismissed. No cost.

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B.N.Mahapatra,J.