

MAHARASHTRA STATE FINANCIAL CORPORATION

A

v.

ASHOK K. AGARWAL AND ORS.

MARCH 30, 2006

[ARUN KUMAR AND R.V. RAVEENDRAN, JJ.]

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*Limitation Act, 1963—Article 136 or 137—Applicability of, to application under Sections 31 and 32 of State Financial Corporations Act, 1951—Held: Article 137 is applicable and not Article 136—Article 136 is applicable to execution of decree or order of civil court—There being no execution of decree or order of a civil court while dealing with an application under Sections 31 and 32, Courts below rightly held Article 136 inapplicable—State Financial Corporations Act, 1951—ss.31 and 32—Code of Civil Procedure, 1908—Section 2(2).*

C

Appellant-Corporation had sanctioned loan to a Company. Respondents are Directors of this Company who stood sureties for the loan amount. The company failed to repay the loan amount. In 1983, appellant filed an application under Sections 31 and 32 of the State Financial Corporations Act, 1951 against the borrower Company praying for sale of hypothecated properties. The properties were put to sale. But there was shortfall in amount realised from such sale and so on 2.1.1992, appellant filed application under Section 31(1)(aa) against respondents for recovery of the amount due. ADJ dismissed the application on the ground of limitation, which was upheld by High Court. Hence the present appeal.

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Appellant contended that application under Section 31 is in the nature of execution proceedings, therefore, Article 136 applies which allows a period of twelve years for execution of decrees and orders and the application was thus within time.

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Dismissing the appeal, the Court

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HELD: 1. Section 31 of the State Financial Corporations Act, 1951 contains special provisions for enforcement of claims by State Financial Corporations. There is no decree or order of a civil court being executed while dealing with an application under Sections 31 and 32 of the Act. It is only on the basis of a legal

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A fiction that the proceedings under Section 31 are treated as akin to execution proceedings. In fact, there is no decree to be executed nor there is any decree holder or judgment debtor and therefore in a strict sense it cannot be said to be a case of execution of a decree. Therefore, Article 136 of the Limitation Act has no application in the facts of the present case. [621-D]

B *Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. (P) Ltd. and Ors.*, [1979] 1 SCR 372; *M/s. Everest Industrial Corporation and Ors. v. Gujarat State Financial Corporation*, [1987] 3 SCC 597 and *Maganlal etc. v. Jaiswal Industries Neemach and Ors.*, [1989] 3 SCR 696, referred to.

C 2. Article 137 of the Limitation Act applies in the facts of the present case. When Article 137 is applied, the application moved by the appellant-Corporation on 2.1.1992 for proceeding against the sureties i.e. the respondents, was clearly barred by time and the courts below were correct in holding so. [621-E, F]

D 3. The amendment under Section 31 of the State Financial Corporation Act which authorises the State Financial Corporations to take action under Section 31 of the Act for enforcing the liability against the sureties, was brought about in the year 1985 by introduction of sub-section (aa) in Section 31 (1) of the Act. Even after this amendment the appellant did not wake up to take any step against the sureties in the present case. Notice was issued to the sureties only on 7.12.1991 and the application for enforcement of liability against them was filed on 2.1.1992. The application, therefore, was clearly barred by time and the decisions of the courts below cannot be faulted. [621-G, H; 622-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3727/1999.

F From the Judgment and Order dated 22.7.1998 High Court of Bombay at Goa in F.A. No. 80/1994.

Santosh Paul, Rajeev Sharma, A.K. Rao and M.J. Paul for the Appellant.

Ashok Grover, (A.C.) for the Respondents.

G The Judgment of the Court was delivered by

H ARUN KUMAR, J. The appellant Maharashtra State Financial Corporation (hereinafter referred to as 'the Corporation') had sanctioned a loan of Rupees Five lakhs in favour of M/s. Crystal Marketing Private Limited on 14th November, 1978. The respondents in the present appeal were Directors of the said borrower and stood sureties for the loan. The amounts under the

said loan were disbursed to M/s. Crystal Marketing Private Limited from time to time in the year 1979. The company however failed to repay the loan amounts. The Corporation issued various letters calling upon the borrower to clear its dues. Ultimately, the Corporation got a legal notice dated 8.3.1983 issued calling upon the borrower to repay the entire amounts due. On 25th October, 1983, the Corporation moved an application under Sections 31 and 32 of the State financial Corporation Act, 1951 in the Court of the District Judge, North Goa, Panaji. The appellant Corporation prayed for an order of sale of the hypothecated property of the borrower company so that the sale proceeds could be appropriated towards meeting the outstanding liability of the borrower towards the appellant. On 11th June, 1990 the attached properties of the borrower company were put to sale. Because there was a shortfall in the amount realized on sale of the hypothecated property, the appellant-Corporation sent notices on 27th December, 1991 to the sureties, that is, the respondents in this appeal. An amount of Rs.16,79,033 was claimed as due from the sureties together with interest at the rate of 14.5% per annum. On 2nd January, 1992, the appellant-Corporation filed an application under Section 31 (1) (aa) of the State Financial Corporation Act against the respondents for steps for recovery of the amount due. The respondents took various objections against the application and the reliefs prayed therein including that the application was barred by limitation. The learned Additional District Judge vide his order dated 16th April, 1994 upheld the objection regarding the application being barred by limitation. The application was accordingly dismissed.

According to the respondents Article 137 of the Limitation Act was applicable and as per that provision such an application could be made within a period of three years. Article 137 applies in cases where no period of limitation is specifically prescribed. It was submitted that as no period of limitation is prescribed for an application under Sections 31 and 32 of the Act, Article 137 would apply. The Addl. District Judge upheld the contention of the respondents and the application of the Corporation was dismissed as barred by limitation. The appellant Corporation filed an appeal against the said order in the High Court of Judicature at Bombay, Bench at Panaji. The appeal was dismissed by the High Court by the impugned order dated 22nd July, 1998. The High court upheld the reasoning of the Additional District Judge.

The learned counsel for the appellant placing reliance on Article 136 of the Limitation Act argued that the said Article prescribes a limitation period

A of twelve years in cases of execution of decrees and orders passed by civil courts and therefore, the courts below erred in rejecting the application as barred by limitation. Article 136 is reproduced below:

|   | "Description of application   | Period of limitation | Time from which period begins to run   |
|---|---|----------------------|--|
| B | 136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. | Twelve years         | When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: |
| C |   |                      |  |
| D |   |                      | Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."   |
| E |   |                      |  |

F The argument is that an application under section 31 is in the nature of execution proceedings, therefore, Article 136 applies which allows a period of twelve years for execution of decrees and orders and the application was thus within time. It was submitted that the courts have upheld the legal fiction that applications under Section 31 of the State Financial Corporation Act are treated in the nature of execution proceedings. In support of this submission the learned counsel referred to *Gujarat State Financial Corporation v. M/s. Natson Manufacturing Co. (P) Ltd. & Ors.*, [1979] 1 SCR 372. It was observed by this Court in this case that "the substantive relief in an application under Section 31 (1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree."

H Section 31 of the Act contains special provisions for enforcement of claims by State Financial Corporations. It is by way of a legal fiction that the

procedure akin to execution of decrees under the Code of Civil Procedure has been permitted to be invoked. But one cannot lose sight of the fact that there is no decree or order of a civil court when we are dealing with applications under Section 31 of the Act. The legal fiction at best refers to a procedure to be followed. It does not mean that a decree or order of a civil court is being executed, which is a *sine qua non* for invoking Article 136. The proposition set out in the case of *Gujarat State Financial Corporation* (supra) found support in *M/s. Everest Industrial Corporation and Ors. v. Gujarat State Financial Corporation*, [1987] 3 SCC 597. Again in *Maganlal etc. v. Jaiswal Industries Neemach and Ors.*, [1989] 3 SCR 696 this court noticed that an order under Section 32 is not a decree *stricto sensu* as defined in Section 2(2) of the Code of Civil Procedure, the financial Corporation could not be said to be a decree holder. This makes it clear that while dealing with an application under Sections 31 and 32 of the Act there is no decree or order of a civil court being executed. It was only on the basis of a legal fiction that the proceedings under Section 31 are treated as akin to execution proceedings. In fact this Court has observed that there is no decree to be executed nor there is any decree holder or judgment debtor and therefore in a strict sense it cannot be said to be a case of execution of a decree. Article 136 of the Limitation Act has no application in the facts of the present case. Article 136 specifically uses the words "decree or order of any civil court". The application under Sections 31 and 32 of the State Financial Corporation Act is not by way of execution of a decree or order of any civil court.

Article 137 of the Limitation Act applies in the facts of the present case. When Article 137 is applied, the application moved by the appellant-Corporation on 2nd January, 1992 for proceeding against the sureties i.e. the respondents herein, was clearly barred by time and the courts below were correct in holding so. To recall the facts of the present case, the notice demanding repayment of the amount of loan was issued against the borrower, that is, *M/s. Crystal Marketing Private Limited* on 8th March, 1983 and the application under Sections 31 and 32 of the State Financial Corporation was filed against the said borrower on 25th October, 1983. The liability of sureties had crystallised then.

The amendment under Section 31 of the State Financial Corporation Act which authorises the State Financial Corporations to take action under Section 31 of the Act for enforcing the liability against the sureties, was brought about in the year 1985 by introduction of sub-section (aa) in Section 31 (1) of the Act. Even after this amendment the appellant did not wake up to take

- A any step against the sureties in the present case. Notice was issued to the sureties only on 7th December, 1991 and the application for enforcement of liability against them was filed on 2nd January, 1992. The application, therefore, was clearly barred by time and the decisions of the courts below cannot be faulted. The courts below rightly dismissed the application on the ground that it was barred by limitation. The appeal has no merit. It is dismissed with no order as to costs.
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Before parting with the judgment we would like to place on record that since the respondents were not represented in the case, we requested Sh. Ashok Grover, Senior Advocate, to assist the court as *amicus curiae*. We record our appreciation of the services rendered by Shri Grover in this behalf.

C

D.G.

Appeal dismissed.