

IMPORTANT JUDGEMENTS

(Brief Summary)

- 1) **Uttar Pradesh Financial Corporation Vs. Gem Cap (I) Ltd. – AIR 1993 SC 1435** – The Hon'ble Supreme Court of India held that the Financial Corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayment within a period not exceeding 20 years from the date of loan. We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose – the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. “The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others.” The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this fact or cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved.”

In a matter between the Corporation and its debtor 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.

- 2) **A.P.State Financial Corporation Vs. M/s. GAR Re-Rolling Mills, AIR 1994 SC 2151** - The Hon'ble Supreme Court of India held that the Financial Corporation is entitled to take recourse to the remedy available to it under section 29 of the SFCs Act even after having obtained an order or a decree after invoking the provisions of Section 31 of the Act but without executing the decree/order.
- 3) **M/s. Vajra Chemicals (P.) Ltd. Vs. A.P.F.C. - I (1997) BC 115 (PB)** - Doctrine of Election between two remedies available to the Corporation u/s. 29 & 31 of SFC's Act, for some relief option to elect either of them. Doctrine not applicable where scope of two remedies different. The court has further held that the Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and the scope of the two remedies is essentially different.
- 4) **Orissa State Financial Corporation and another Vs. Hotel Jogendra** - The Hon'ble Supreme Court of India held that the loanees defaulted in the repayment of loan and took indulgence of the court to delay the repayment of dues. Dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. The court will not help such loanees.
- 5) **Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd. & Others**

The Hon'ble Supreme Court of India held that the action of the State Financial Corporation in exercise of powers u/s 29 of the SFCs Act, 1951 not liable to be interfered with if it has acted broadly in consonance with the guidelines issued by the Supreme Court of India in the matter of **Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Others, J.T. 1992(2) SC 326 – AIR 1993 935.**

i) -judicial review is confined to two situations viz. there is a statutory violation on the part of the State Financial Corporation, or (ii) where the State Financial Corporation acts unfairly.

-while exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. (Detailed decision has already been circulated vide litigation circular No. 8/96-97 dated 25.07.96).

- 6) **Maharashtra State Financial Corporation Vs. M/s. Surana Board Mills - (JT 1994 (5) S.C. 280)** - The Supreme Court in this case allowed the appeal and quashed the Maharashtra High Court order. The court held that it is well settled that natural justice can not be placed in a straight jacket. Its rules are not embodied and they do vary team to case and from one fact situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensure before one is put on notice that consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law.

The court further observed that an opportunity given by the High Court to defaulter for making the payment of Rs.50,000/- as against dues of more than Rs. 5.00 lacs can not be regarded as reasonable offer.

- 7) **M/s. Shivalik Agro Poly Products Ltd. Vs. Disco Electronics Ltd.**
AIR 2002 Delhi 10 - The appellant company aggrieved by the impugned order of company judge setting aside the sale of property made in its favour by DFC preferred an appeal to DB and the Bench observed that the Corporation was lawfully entitled u/s. 29 to take over possession of hypothecated assets and to sale out the same for recovery of

amount, after notice and observance of complete procedure. Sale of property by the Corporation becoming owner of property and confirming the sale in favour of the purchaser can not be restrained by order of company judge in subsequent winding up petition. Hence, appeal allowed and company judge order liable to be set aside.

8) M/s. Fiber India Division Vs. RFC, Hon'ble Rajasthan High Court, Jaipur - held in S.B.Civil Revision Petition No. 271/2000 that (a) The suit or any legal proceedings against the Rajasthan Financial Corporation can be initiated only where the mortgaged/hypothecated property is situated. (b) The party, who wants to have Temporary Injunction against the Corporation should pay court fees on the total disputed amount.

9) Dogar Tools (P.) Ltd. & Others Vs. MPFC(AIR 2002 MP 53) - An DB appeal was filed against SB Order dated 18.07.2000 in writ petition NO. 2717/2000. The Hon'ble DB of MP High Court has observed that the Corporation is entitled to withdraw the proceedings initiated u/s. 31 of SFC's Act and is not debarred from the proceeding u/s. 29. The Court has further observed that the scope of interference by the High Court in the proceeding u/s. 29 of SFC's Act in writ jurisdiction is not to suit over it as an appellate authority. The jurisdiction of the court is limited and can be exercised in two situations:

(1) Where there is statutory violation on the part of the Corporation

OR

(2) Where the Corporation acts unfairly.

The appeal was dismissed as having no merit.

10) Karnataka State Industrial Investment & Development Corporation Ltd. Vs. Cavalet India Ltd. (JT 2005 (3) SC 570)

In the above case the following legal principles have been laid down :-

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over the administrative authorities.

(ii) In a matter between the corporation and its debtor, 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.

(iii) In commercial matters, the courts should not risk their judgements for the judgements of the bodies to which that task is assigned.

(iv) Unless the action of the financial corporation is malafide, even a wrong decision taken 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 financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

Having regard to the facts of the case and the legal principles above noted, the impugned judgement directing KSIIDC to redo the entire sale process cannot be sustained. Therefore, the impugned judgement is set aside and it is held that on failure of the borrower to comply with the directions of the single Judge, the action of KSIIDC to sell the unit in favour of Vinpack was valid and legal. The appeals are accordingly allowed.

11) Hotel Ajaymeru (P.) Ltd. Vs. RFC - SBCWP No. 648/1985 - In this case Hon'ble Rajasthan High Court

determined the constituted validity of section 29 of SFC's Act. The court observed that taking into consideration the facts & circumstances of the case, it can not be said that the Financial Corporation in taking action against the petitioner company u/s. 29 of the SFC's Act has acted arbitrarily or unreasonably.

The court further observed that from a combined reading of the objects and reasons and section 8, 9, 10, 24, 25 & 27 we are of the opinion that there is a guiding policy and principle available from the State for the Corporation to act in this regard and accordingly we hold that section 29 is not violative of Article 14 of the Constitution.

- 12) **Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr. reported in JT 2002 (SC 482)** - the Hon'ble Supreme Court has decided rights of the Corporation under the provisions of Section 29 of the SFCs Act. While discussing this case the guidelines issued in Mahesh Chandra Vs. U.P. Financial Corporation & Ors. (1993 (2) SCC 279) has been considered contrary to the letter and the intent of Section 29 of the SFCs Act, the Hon'ble Court expressed the view that the said observation in Mahesh Chandra's case do not lay down the correct law and the said decision is over-ruled.

It has also been reiterated by the Hon'ble Court in reference to the judgement of U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd., & Ors. (1993 (2) SCC (299) for the purpose of this case the power of the Court which is reviewing the administrative action is not that of an Appellate Court. The Corporation is an autonomous statutory body. The views it forms and decision it takes are on the basis of information in its possession and the advice it receives and according to its own prospective and calculations. Unless its action is malafide, 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.

- 13) **Gujarat State Financial Corporation Vs. Natson Manufacturing Company Pvt. Ltd. – AIR 1978 SC 1765** – The Hon'ble Supreme Court held that the substantive relief in an application u/s 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.
- 14) **Everest Industrial Corporation Vs. Gujarat State Financial Corpn. -AIR 1987 Supreme Court, 1950** -The Supreme Court has held that the proceedings instituted u/s. 31 (1) of SFC's Act is something akin to an application for attachment of the property in execution of a decree at a stage posterior to the passing of the decree, hence no question of passing any order u/s. 34 of CPC would therefore arise. Since section 34 of CPC would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. The court has further held that the interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed u/s. 32 of SFC's Act.
- 15) **HP Financial Corporation Vs. Tourist Hotel (1989 (2) Bank CLR 199)** - HP High Court has held that the substantive relief in an application filed u/s. 31 of SFC's Act, 1951 is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of a decree. There is no further stage of any execution of the order passed by the Distt. Judge U/S 32 itself is an order akin to an order for attachment of property in execution of a decree which is a stage which automatically comes after the passing of the decree.
- 16) **Delhi Financial Corporation Vs. B.B. Behal** – The Hon'ble Supreme Court held that the relationship between the borrower and the financial corporation is one of the Creditor and the Debtor and that the transaction of advancing loan is covered by the terms of the agreements.

The Creditor cannot be compelled to forgo part of its claim of interest on ground of hardship of a debtor. The Financial Corporation is a statutory institution and it carries of its activities by borrowing amounts. It is far beyond the powers of compel a creditor to forgo part of its claim of interest on the ground of hardship of a debtor. This will upset financial equilibrium and it will create financial crisis making the financial corporation non-viable.

- 17) **Kalpatharu Solvents Pvt.Ltd., Vs. K.S.F Corporation, Bangalore- AIR 2003 KARNATAKA 221-** Karnataka High Court in this case has held that Section 29 of SFCs Act enable recovery of money due and also contemplates the procedure to be followed without intervention of the Court, whereas Section 31 is in the nature of a provision for attachment before judgement and the said provision is without prejudice to the provisions of Section 29 and it is open to the Corporation U/S 29 of the Act to realize its dues in the manner prescribed therein notwithstanding any order obtained by it U/S 31. The Court has further observed that it is not desirable to pursue both the remedies simultaneously by the Corporation.
- 18) **Abdul Gani S/o Allah Noor Vs. RFC & Ors.- Civil Misc. Appeal No. 826/2001** - the Hon'ble Court has dismissed the appeal in favour of the Corporation making it clear that the proceeding pending before the Lower Court U/S 31 of the SFCs Act are in the nature of post decreetal proceedings and required to be dealt accordingly and not to be dealt as a suit under C.P.C.
- 19) **M.S.F.C Vs. M/s. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. (1991) 1 JT (SC) 524-** The Hon'ble Supreme Court of India has held that the object underlying Section 31 and 32 of the SFCs Act appears to be that parliament intended to place the surety on the same footing as the principal debtor in the matter of enforcement of the claims of the Financial Corporation so as to enable the

Financial Corporation to obtain relief against the property of the principal debtor as well as surety.

- 20) **Syndicate Bank Vs. Channa Veerappa Belery & Others JT 2006 (4) SC 579** -The Hon'ble Supreme Court in this case has held that a guarantor's liability depends upon the terms of the contract. A continuing guarantee is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor and a guarantee which does not contain such a condition the liability of guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise on the principal debtor and guarantor at the same time or at different points of time. The parties may agree that a liability of a guarantor shall arise at a later point of time, then that of the principal debtor. The Supreme Court allowed the appeal filed by the bank and set aside the judgements and decree of the High Court of Karnataka and Trial Court and also held that the time began to run not when the operations ceased but on the expiry of 15 days from 12.10.1987 when the demand was made by the bank and the guarantors refused to pay the amount and therefore, the suit filed by the bank was not barred by the limitation. Hence, suit accordingly decreed with cost.
- 21) **Abdul Mobin Ansari Vs. Maharashtra State Financial Corporation (AIR 1993 Bombay 48)** – It has been held by the Hon'ble Supreme Court that Section 32 of SFCs Act is nothing but an execution proceedings.
- 22) **RFC Vs. Shri Babu Lal & Others SBCMA No. 479/1994 decided on 24.07.2006** - In this case an appeal was filed by the Corporation against the order dated 09.02.1994 passed by ADJ-3, Jaipur(City), Jaipur in Civil Suit No.13/1992 whereby the application of the appellant filed under section

31 of SFC's Act was dismissed on the ground that the application has been filed beyond the period of limitation as prescribed under Article 137 of Limitation Act, 1993.

The Hon'ble Court by allowing the appeal and setting aside the Trial Court order dated 09.02.1994 has held that it is a settled position of law that an application u/s. 31 (1) of SFC's Act 1951 is not a plaint for recovery of money but the substantive relief in an application u/s. 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 decree, hence the period of limitation as prescribed under Article 137 of Limitation Act is not applicable to such an application whereas the provisions of Article 136 of Limitation Act are applicable.

- 23) **M/s. N.L.P Organics (P.) Ltd. & Others Vs. RFC - SBCMA No. 208/2005 decided on 21.08.2006** - In this case an appeal u/s. 32(9) of SFC's Act, 1951 was filed before the Rajasthan High Court, Jaipur against the order dated 23.11.2004 passed by ADJ-1, Alwar in CMA No. 01/2001 whereby the Trial Court passed a decree for a sum of Rs. 1,36,04,491/- alongwith interest @ 15% per annum. The appellate court by setting aside the impugned judgement dated 23.11.2004 and allowing the appeal has held that the learned Trial Court has mis-appreciated the entire nature of the proceedings u/s. 31(1) of SFC's Act. He has framed the issues incorrectly and consequently issued directions beyond his jurisdiction. The court has further held that the respondent is free to re-initiate the proceeding u/s. 31(1) of SFC's Act, 1951. In case it does so, then the Trial court is directed to decide the case within a period of six month from the date of filing application u/s. 31(1) of SFC's Act. While deciding the case the Trial Court is directed to keep in mind the principles laid down by the court.
- 24) **Orissa State Financial Corporation vs. Ramesh Chandra Behra- AIR 2003 Orissa 30** - In this case the Orissa High Court has held that the liability of a surety is co-extensive

with that of the principal debtor and a decree can be executed either against the principal debtor or the surety at the discretion of the creditor. In the application filed by the SFC u/s. 31 of SFC's Act the loanee can not be held personally liable for payment of outstanding dues but the mortgaged and the hypothecated assets can be attached and sold. The Court has further observed that the Corporation can seek appropriate relief u/s. 32(G) against the surety by following the procedure prescribed there under.

- 25) **Kerala Fisheries Corporation Limited Vs. P.S.John & Others Company cases 1996 Kerala 104** - Kerala High Court in this case has held that the Government Corporations notified u/s. 71 of the Kerala Revenue Recovery Act, 1968, entitled to recover monies due to them under the Act, would be entitled to do so whether or not the sums could be recovered through a court in view of section 3 of the Limitation Act, 1963. These institutions have been given the right of recovering the moneys due to them without approaching the civil court and that is clearly with the object of enabling them to recover the amounts due to them from their debtors so that public interest could be served and the public purpose for which these institutions have been created further carried forward. This right continues notwithstanding the fact that his right of recovery through a civil court stands barred by limitation.

The Court has further observed that the contention of the petitioner that the recovery under the Revenue Recovery Act is barred by limitation, is not sustainable. By virtue of section 46 B of SFC's Act, that act would override the provisions of the Limitation Act which is the general law.

- 26) **Kailash Nath Agarwal & Ors. Vs. Pradeshia Industrial & Investment Corporation of U.P. Ltd. & Anr. JT 2003 (1) SC 115-Sick Industrial Companies (Special Provisions) Act, 1985-** In this case, a question raised for consideration before the Supreme Court as to whether

Section 22(1) of SICA bars enforcement of demand by the Public Financial Corporations against the guarantors. It has been held by the Supreme Court that Section 22(1) only prohibits recovery against the Industrial Company and there is no protection afforded to the guarantor against recovery 'Proceedings'. The words 'Suit and Proceedings' have not been used inter-changeably in SICA and there is apparent distinction between these two and the legislative intention to make a distinction between the two should be given.

27) Delhi Financial Corporation & Another Vs. Rajiv Anand & Ors. (2004) 11 SCC 625- In this appeal following questions were raised before the Supreme Court:-

(1) Whether the requisition certificate being issued by the officers of Corporation U/S. 32-G is violative of the doctrine of "no man can be a judge in his own cause"?

Held:

(a) MD of the Corporation can be appointed as an authority u/s. 32(G).

(2) Whether it is permissible under the practice and procedure that the respondents supporting impugned order under challenge in the Supreme Court in an appeal filed by the financial corporations through its court below.

Held:

It is permissible on all available points.

(1) Whether the provisions of Section 32(G) are also applicable to the sureties.

Held:

The provisions of Section 32(G) can also be enforced against the sureties, guarantor and mortgagor-guarantor.

(4) It has also been come to be decided as to whether the proceedings u/s. 32(G) is of the nature of execution proceedings.

Held:

That the provisions in the nature of execution proceedings but it is not a recovery proceedings pursuant to a decree of Court.

(5) Whether the provisions of 32-G, 31 and 32 are arbitrary.

- 28) Hanuman Prasad Vs. RFC & Ors.- SBCWP No. 4592/01-** in this case the Hon'ble Rajasthan High Court has held that it is open to the Corporation to opt any remedy available to it under SFCs Act for recovery of its dues. The Corporation is entitled to initiate legal recourse provided U/S 32-G of SFCs Act after complying the due procedure and guidelines as prescribed by the State Govt.
- 29) Shiv Vinay Singhal Vs.State of Rajasthan,RFC,Tehsildar and Ors. SBCWP No.4583 of 2002 -** A question raised before the Rajasthan High Court at Jodhpur in the above captioned writ petition as to whether the person who has purchased the unit from the Corporation in auction in exercise of powers conferred to the Corporation u/s. 29 can be covered under the purview and Section 32(G). It has been held court that the party who purchased the unit from the Corporation u/s. 29 of SFC's Act is an industrial unit and, therefore, it is liable to be enforced by initiating the action u/s. 32(G) of SFC's Act.
- 30) Sitani Textiles and Fabrics (P) Ltd. Vs. Asstt. Collector of Customs and Central Excise and Another – 1(1999) BD 209 (DB) -** It has been held by the Andhra Pradesh High Court that in the case of secured debt, the rights of secured creditor prevail over the excise dues of the Excise

Department. The secured creditor will have preferential claim even against the demand of Central Excise duty by the Government.

A mortgage is a transfer of an interest in immovable property. The owner of the bundle of rights transfers some of those rights to the mortgagor (sic mortgagee) and the remainder of them still with him. The transfer of interest under mortgage is less than ownership which continues with the mortgagor. The characteristic of a mortgage is that it transfers an interest in immovable property. Therefore, the mortgagee has an interest which is less than ownership and therefore a mortgage has a preferential right over other unsecured creditors.

In view of a transfer of an interest in immovable property the mortgagee has a special interest in the property and so long as his claim is not satisfied no other creditor of the mortgagor has a right to take away the property or its price.

The Government cannot claim preferential right for recovery of its excise duty as no charge lies on the property for recovery of the duty. In other words, excise duty is not a secured debt, as for recovery of which no charge lies on the property.

The Industrial Development Corporation being a secured creditor has preferential claim even against demand of Central Excise duty of the Government.

The State Financial Corporation Act, 1951 is a special enactment whereas the Central Excises and Salt Act is a general enactment. However, in view of Sec. 46-B, the State Financial Corporations Act prevails over the other enactments.

- 31) **M/s. Rishab Deo Tax Print Vs. Chairman, RFC & Ors. – WP No.325/2005** - In the matter the Hon'ble High Court, Jodhpur has quashed the demand raised by the Central

Excise Department on the ground that Central Excise Department was not authorised to recover the dues of the petitioner unit in wake of fact that when the petitioner had purchased the land and building of the earlier unit namely M/s. J.M.S.P.Ltd., there was no statutory charge of Central Excise Department. (Copy of the Judgement has been circulated vide Lit. Cir. No. 129 dated 25.01.2006).

- 32) **SICOM Ltd. Vs. Union of India & Ors. – AIR 2007 Bombay 1** - The Hon'ble Bombay High Court has held that in the matter of recovery of debt, the State Financial Corporations was secured creditor holding mortgage property of borrow in its favour. The Customs authority claiming priority preferential charge on property of borrower for recovery of Excise Duty was later in point of time cannot claim priority on basis of Crown's preferential right. The Crown's preferential right to recover dues is confined only to ordinary or unsecured creditors. The dues claimed by the Corporation will have priority over Custom Dues.
- 33) **State of Karnataka Vs. Shreyas Papers (P) Ltd., JT 2006 (1) SC 180-** The Hon'ble Supreme Court has held that Section 15(1) of Karnataka Sales Tax Act 1957 is intended to operate only when there is complete transfer of 'ownership of business' so as to render the transferee as a successor-in-interest of the transferor. The mere transfer of one or more species of assets does not necessarily bring about the transfer of the 'ownership of business'.
- 34) **Isha Marbles Vs. Bihar State Electricity Board JT 1995 (2) SC 626-** In this case the Supreme Court has held that the liability of arrears of old consumer U/S 24(1) of Indian Electricity Act 1910 cannot be put on the auction purchaser U/S 29 (1) of SFCs Act because there is no charge over the sold property. It is impossible to impose on auction purchaser a liability which was not incurred by them. The Court has also held that dishonest consumers cannot be allowed to play with public property and where the purchaser is not a new entity he is liable to pay arrears.

- 35) **S.B.I. Vs. Vasangi Venkateswara Rao reported in JT 1999 (1) SC 145** – the Hon’ble Supreme Court has held that where the Bank loan has been obtained against mortgaging the security and parties have been entered into the contract under the Contract Act, 1872, the court cannot interfere and reduce the interest, as that is a matter of contract between parties. The mortgaging of a property is with a view to secure the loan and has no relation with the quantum of interest to be charged.
- 36) **M/s. Hotel Seaking & Others Vs. Kerala Financial Corporation reported in JT 1999 (9) SC 440** – The Hon’ble Supreme Court decided an important question of Law with regard to applicability of provision of Section 34 of Civil Procedure Code in the proceedings initiated by Financial Corporations U/S 31 of SFCs Act, 1951. The Hon’ble Court has held that District Judge has no power to reduce the contractual rate of interest during pendency of proceedings u/s 31 of the SFCs Act. It has been decided by the Hon’ble Court that the loanee unit will have to pay the interest as per agreement executed with financial corporation.
- 37) **Soldier India Ltd. Vs. Fairgrowth Financial Services Ltd. – II(2001) SC 781** – The Hon’ble Supreme Court has held in this appeal matter that where there are two special statutes, which contain non obstante clauses, the later statute most prevail.
- 38) **RFC Vs. Man Industrial Corporation Ltd.- Civil Appeal No. 16814/1996** - the Hon’ble Court has allowed the appeal and set aside the order of the High Court and held that the Executing Court cannot go beyond the terms of the compromise decree provided for calculation of interest half yearly objection regarding calculation of interest and directing execution of decree. It has also been reiterated by the Hon’ble Court that “in this view of the matter we are unable to sustain the impugned judgement (Judgement of High Court). It is accordingly set-aside and the order of the

Executing Court is restored". The Judgement is also reported in JT 2003 (7) SC 486.

- 39) **S.K. Muthuswamy Vs. Tamil Nadu Industrial Investment Corporation – AIR 2003 Madras 197** – In this case the SFC was given permission to held auction of hypothecated assets of the debtor on the undertaking given by the Corporation that it will deposit surplus amount in court. Auction was held but the Corporation failed to deposit the surplus amount in court. No valid reason shown by the corporation for not depositing the surplus amount in the court, hence the corporation was directed to pay the interest @ 9% p.a. on the surplus amount w.e.f. the date of receipt of sale proceeds till the date of deposition in the court to serve the end of justice within two months from the date of receipt of order.
- 40) **M/s. Ambika Powerloom Factory, Vs. RFC** - Hon'ble Rajasthan High Court, Jaipur held in S.B.Civil Revision Petition No. 752/1999 that the developing tendency of the loanee not to repay the loan deserves to be depreciated. The Corporation was correct in its approach to take appropriate steps for recovery of outstanding amount against the petitioner. In the matter of the dispute of the category to which this case belongs seldom, the Court should come to rescue or give any interim relief to the defaulters, it is money of the Corporation which is to be used for the purpose of development of the industries in the state and that way it is blocked, it will not rotate and entrepreneurs in the filed of establishment of industries will suffer. Grant of T.I. if the matter is looked into from this aspect and angle will result in causing irreparable injury to the public at large. The Courts should take all the care not to pass any order which may adversely affect the public at large.
- 41) **Bihar State Financial Corporation Vs. Santu Lal Gupta – AIR 2003 Jharkhand 44** – Clause substituted in auction notice that if no tender is received on the date of sale so fixed, the corporation has a right to receive tender against the

same notice has been held by Jharkhand High Court as arbitrary. The sale of the unit made after three years from the date fixed for auction sale without issuing fresh notice was also held liable to be set aside.

- 42) **Mahesh Chandra Vs. Regional Manger, UPFC – AIR 1993 SC 935** – In this case the Hon’ble Supreme Court has laid down certain guidelines/direction to be observed by the SFCs by exercising the powers conferred u/s 29 of the SFCs Act and also held that every endeavour should be made to make the unit in default to be viable and to be put on working condition.
- 43) **Magan Lal Vs. Jaiswal Industries (AIR 1989 SC 2113)**
The Hon’ble Supreme Court observed that application u/s 31(1) of the SFCs Act cannot be treated as a plaint for the purposes of payment of court fee.
- 44) **International Coach Builders Ltd. Vs. KSFC – JT 2003(2) SC 395** – In the matter the Hon’ble Supreme Court has held that the right unilaterally exercisable u/s 29 of the SFC’s Act, 1951 is available against a debtor, if a company, only so long as there is no order of winding up. The SFCs cannot act unilaterally to realize the mortgaged property without the consent of the O.L. representing the workmen for the pari-pasu charge in their favour under the proviso to Sec. 529 of the Companies Act. If the O.L. does not consent, the SFC has to move to the Company court for appropriate directions to the O.L., who is the pari-pasu charge holder on behalf of the workmen. The O.L. cannot act without seeking direction from the company court and under its supervision.

The statutory right of the SFCs to sell the mortgaged properties u/s 29 of the SFCs Act is subject to the provisions of sec. 529 & 529 A of the Companies Act.

- 45) **RFC Vs. O.L. of M/s. Baldev Minerals - Company Petition No. 14 of 1996** – An application filed by the Corporation u/s 446 (2) of Companies Act, 1956 for

allowing the applicant Corporation to remain out of the winding up proceeding and to realize its dues from the Company in liquidation under statutory powers given to it u/s 29 of SFCs Act.

The Company Court allowed the application and granted permission to remain out of the winding up proceedings subject to following certain conditions.

- 46) **Kailash Nath Agarwal & Ors. Vs. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. – JT 2003(1) SC 115** – Liability of surety – Power to proceed against the guarantors upon the failure of the borrower to repay the debt, whether sec. 22(1) of SICA bars enforcement of demands. The Supreme Court dismissing the appeals held that there was nothing in the contract which could be construed as contrary to the joint and several liability created under sec. 128 of the Contract Act.
- 47) **Maharashtra State Financial Corporation & M/s. Balapuri India Ltd. Vs. the O.L. Bombay High Court – AIR 1993 Bombay 392** – Hon'ble Bombay High Court in this matter has held that the rights conferred on a financial corporation as a mortgagee u/s 29 of SFCs Act, 1951 are not obliterated with the Company is in winding up. The statutory right u/s 29 has to be exercised with the rights of a pari-pasu charge holder u/s 529 & 529 (A) of the Companies Act when the Company is in liquidation. Therefore such a power can be exercised only with the concurrence of the O.L. and the O.L. is to take the permission of the court.
- 48) **M/s. Agrawal Dying Industries Vs. RFC & Others-** the National Consumer Disputes Redressal Commission, New Delhi has categorically observed that the relationship between RFC and the loanee is that of borrower and debtor, as such the Consumer Forums do not have any jurisdiction over the affairs of Corporation.
- 49) **Shree Kanka Durga Hatcheries Pvt. Ltd. Vs. State Bank of India decided on 22.05.2002** - The Hon'ble National

Consumer Disputes Redressal Commission, New Delhi in the case of Shree Kanaka Durga Hatcheries Pvt.Ltd., Vs. State Bank of India in Original Petition No. 264 of 1994 has dismissed the complaint on 22.05.2002 and held that refusal to rehabilitate or failure to provide credit or refusal to finance have been consistently held to be not amounting to deficiency in service.

50) RFC Vs. Banwari Lal & Ors. SBCMA No. 349/94- The Rajasthan High Court in this appeal matter has held that application filed U/S 31(1) of SFCs Act is not a plaint but one like seeking relief in execution application, hence Article 137 of Limitation Act is not applicable to such application.

51) Orissa State Financial Corporation Vs. DESARI ADI NARAYAN II (1995) BC-366 - Orissa High Court in Civil Revision petition No.167/1990 has held that an application u/s. 31 (1) of SFC's Act is not a plaint as contemplated by article 7 of the Court Fees Act, 1870. The special procedure contained in section 31(1) is not even some thing akin to a suit of a mortgagee to recover mortgaged money by sale of mortgaged property. The corporation can not pray for a preliminary decree for accounts or final decree for payment of money. Proceedings u/s. 31 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 and such relief can not be valued in terms of monetary gain or prevention of monetary loss.

52) M/s. Tony Conductors (P.) Ltd. Vs. RFC SBC Revision Petition No.273 of 1997 - The Hon'ble Rajasthan high Court has held that in the matter of application filed u/s. 31(1) of SFC's Act 1951 the Limitation period of three years as prescribed under article 137 of Limitation Act shall not apply but in these cases limitation period of 12 years as prescribed under article 136 of the Limitation Act shall be applicable to such applications because the applications u/s. 31 are akin to an application for attachment of the property in

execution of a decree at a stage posterior to the passing of the decree.

- 53) **Jitendra Sankhla Vs. RFC (Labour Court, Jodhpur) (Chowkidar Case) in D.B.Special Appeal No. 170/2002** - dismissing the appeal of Jitendra Sankhala, Chowkidar against the order of Single Judge dated 12.02.2002 in S.B.C.W.P. No. 3604/2001 has observed that once the unit taken into possession by the Corporation U/S 29 of the SFCs Act is sold out, the work for which the appellant was employee came to an end. In the circumstances, the appellant cannot claim to have any right in the post. The Learned Single Judge and the Labour Court were entirely right in coming to the conclusion that provisions of Section 25-F of the Industrial Dispute Act were not attracted.
- 54) **Secretary, State of Karnataka and others Vs. Umadevi and Others – JT 2006 (4) SC 420** - The Hon'ble Supreme Court has held that where the employees appointed on daily wages and such employees is continued in employment for long years they have not rights for absorption and regularization. Those appointed is irregularly and not in terms of the prescribed procedure in accordance with the relevant rules and regulations or in adherence to article 14 and 16 have no legal right to be made permanent.
- 55) **Branch Manager State Bank of Hyderabad Vs. Abdul Raheem and Another – (2201 10 Supreme Court Cases 615** – In the matter Hon'ble Supreme Court has held that in any watchman posted by the loanees for taking care of the goods hypothecated by the banks would not become employee of the bank merely because the Bank Manager had in a letter recommended the Regional Manager to provide him with permanent employment.
- 56) **Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others – 1997 LAB.I.C. 2075** – In the matter Hon'ble Supreme Court has held that where the daily wage

employees appointed on the basis of need of work, their services can be terminated on completion of the work. Termination of their services cannot be treated as retrenchment.

- 57) **M/s. Ashok Paper Mills Kamgar Union Vs. Union of India & Ors. JT 1997 (5) SC 458-** The Hon'ble Supreme Court of India has held that Financial Institutions are under duty to ensure industrial growth and are directed to participate in implementation of the scheme so that Mill is rehabilitate only technicalities should not be allowed to stand in the view of the scheme. It has further observed that if any one stands in the way by surreptitious technicalities in the implementation of the scheme, such technicalities would not stand in the way of implementation of the scheme and same will be seriously dealt with.
- 58) **M/s. Fiber India Division Vs. RFC, Hon'ble Rajasthan High Court, Jaipur** - held in S.B.Civil Revision Petition No. 271/2000 that (a) The suit or any legal proceedings against the Rajasthan Financial Corporation can be initiated only where the mortgaged/hypothecated property is situated. (b) The party, who wants to have Temporary Injunction against the Corporation should pay court fees on the total disputed amount.
- 59) **Akshaydeep Mathur Vs. RFC- S.B.Civil Revision Petition No. 410/2000** - filed by the petitioner u/s 115 of C.P.C. against the order of ADJ, Jaipur City, Jaipur for returning the application as being with the purview of the DRT only as the application was for recovery of dues over Rs. 10.00 lac. The Hon'ble Court, Jaipur Bench dismissed the revision stating that "it is an application filed with oblique motive and purpose to delay the recovery of due amount of public money" and the court also imposed penalty of Rs. 2,000/- on the petitioner-defendant.
- 60) **RFV Vs. Raj Kumar Prop. of M/s. Suratgarh Departmental Store Hanumangarh Criminal case No. 110/03 U/S 138(b) of N.I.Act-** The CJM, Hanumangarh

vide order dated 16.09.05 imprisoned to Sh. Raj Kumar Prop. of M/s. Suratgarh Departmental Store Hanumangarh by ordinary imprisonment or two years alongwith penalty of Rs. 1.00 lac U/S 138(b) of N.I.Act for dishonour of cheque of Rs. 72,344/-.

- 61) **State Vs. Ram Chandra & Ors. Criminal Case No. 334/96-** In this case for an offence of cheating U/S 420 of IPC the accused was awarded three years imprisonment.
- 62) **Suo Moto Vs. State of Rajasthan & Ors. SBCWP No. 4635/2005-** The Rajasthan High Court in this matter of PIL has held that after having considered the submissions made on behalf of the State as well as RFC, it is alternative redressal by way of OTS and the RFC can launch alternative redressal. In the interest of public at large I find to understand as to how OTS policy creates any endanger future and survival of RFC Staff & Employees. Hence, Writ Petition stands dismissed as having no merit.
- 63) **M/s. Shiv Shakti Co-operative Housing Socierty Vs. M/s. Swaraj Developers- JT 2003 (4) SC 255-** The Supreme Court has held that the legislative intent behind amended Section 115 of General Clauses Act, 1897 was clear in as much as those orders which are interim in nature cannot be the subject matter of revision U/S 115. Therefore, where the order is interim in nature or does not finally decide the lis, the Revision will not be maintainable. When the order in favour of the party applying for Revision would have given finality to suit or other proceeding, then the Revision U/S 115 is maintainable.
- 64) **(Late) Ram Narain & Others Vs. Radha Kishan Moti Lal Chamaria AIR 1930 Privy Council 66-** The Privy Council in this appeal matter has observed that Section 109 of Companies Act does not avoid the mortgage which is not registered but only so far as any security is given thereby on the company's property or undertaking. The effect, therefore is that if a mortgage is not registered, it is valid as an admission of debt but as against a creditor or liquidator it

cannot be said that a valid change on the company's property has been created.

Proceedings Sec. 22(1) of SICA only prohibits recovery against Industrial Company. There is no protection afforded to the guarantors against recovery proceedings under the U.P. Act.

- 65) **K.T.Sulechana Nair Vs. M.D. Orissa Financial Corporation AIR 1992 Orissa 157-** The Orissa High Court in this matter has held that U/S 29 of SFCs Act, the Corporation has the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged hypothecated or assigned to the Financial Corporation. There is nothing in the provision to indicate that the right U/S 29 of SFCs Act is only in respect of property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation by way of prime security by the loanee as well as by way of collateral security by the guarantor.
- 66) **Haryana Financial Corporation Vs. M/s. Depro Foods Ltd. 1982 TAX. L.R.2537-** In this case Punjab & Haryana High Court has held that when liquidation proceedings against a company have commenced before filing of an application by the Corporation U/S 31(1) of SFCs Act, the Financial Corporation can claim preference over other creditors, in case it has filed the particular of the charge alongwith the instrument creating it with the concerned Registrar of Companies for registration U/S 125 of the Companies Act within the prescribed period. Actual registration of charge by the Registrar is not necessary.

Sec. 46-B of SFCs Act inter alia provides that the provisions of the Act shall have effect notwithstanding inconsistent therewith contend in any other law for the time being in-force.

- 67) **Kerala Financial Corporation, Trivandrum Vs.C.K. Sivasankara Panicker & Ors. 1978 TAX.LR 1850-** In this case Kerala High Court has held that Sec. 46-B of SFCs Act, 1951 provides that the provisions of SFCs Act shall have effect notwithstanding anything contained in any other law for the time being in force but Section 125 of the Companies Act declares that the charge so created by the company will be invalid as against the liquidator and any creditor if it is not registered with the Registrar of Companies. This is inconsistent with the provisions of SFCs Act and therefore, U/S 46-B of the latter Act which is a special Act the legal effect of the order passed will be binding on the liquidator of the company also.
68. **Kumari Archana Chauhan Vs. State Bank of India, Jabalpur- AIR-2007 Madhya Pradesh 45 -** In this case M.P.High Court, Jabalpur has held that with respect to the publication of photographs of the defaulting borrower in the newspaper, in the opinion of this Court publication of the photographs of the borrowers cannot be said to be impermissible mode. Action cannot be said to be arbitrary or illegal in any manner. It cannot be said to be defamatory publication made, hence I find no ground to quash the publication and accordingly writ petition stand dismissed.

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Certified Copy of Order Dated.....

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH JAIPUR

D.B. Civil Special Appeal (Writ) No. 665/2008
In
S.B. Civil Writ Petition No. 5276/1998

M/s. Annavarsha Chemical and Fertilizers
Private Limited Pachapahar Road Bhawani
Mandi, District Jhalawar Through its Director
Anil Kumar Kantiwal

..Appellant/Petitioner

Versus

1. Rajasthan Finance Corporation through the
Managing Director, Udyog Bhawan, Tilak
Marg, Jaipur
2. Branch Manager, Rajasthan Financial
Corporation Branch Office Jhalawar

..Respondents/Non Petitioners

D.B: Civil Special Appeal
(Writ) under Section 18 of
the Rajasthan High Court
Ordinance read with Article
225 of the Constitution of



राजस्थान उद्योगिक विकास निगम लि.
उद्योग भवन, तिलक मार्ग, जयपुर

(Om Prakash Sharma)
OATH COMMISSION
Haj. High Court Bench. JAIPUR

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Antan...

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN BENCH AT JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) No.1665/2008.

M/s.Annavarsha Chemical and Fertilizers
Private Limited

Vs.

Rajasthan Finance Corporation & Anr.

Date of Judgment : December 18, 2012.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

HON'BLE DR.JUSTICE SMT.MEENA V.GOMBER

Shri P.S. Sirohi for the appellants.

Shri N.S. Chouhan for

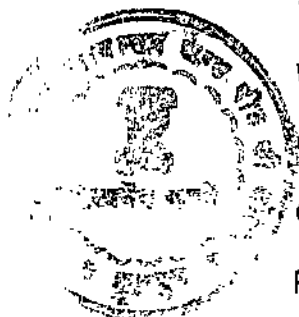
Shri R.D. Rastogi, Senior Advocate and

Shri Vinod Singh for

Smt.Naina Saraf for the respondents.

BY THE COURT (Per Justice Mohammad Rafiq):-

This appeal has been preferred by appellants - M/s.Annavarsha Chemical and Fertilizers Private Limited against the judgment of the learned single judge dated 29/8/2008 by which, writ petition filed by it has been dismissed. In that writ petition, appellants challenged the notice issued by the respondent - Rajasthan Finance Corporation under Section 30 of the State Financial Corporations Act, 1951 dated 30/10/1998 and prayer was made that respondent-RFC

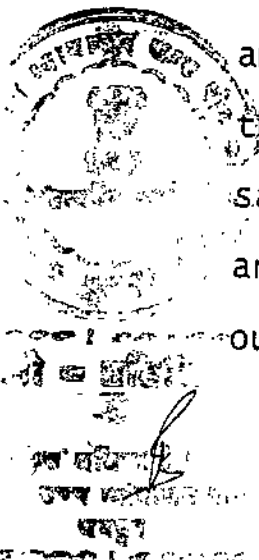


10/12/2012
श्री न.स. चौहान
उपस्थित
श्री प.स. सिरोही

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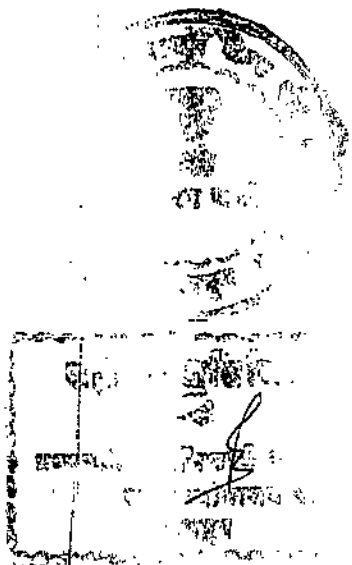
be directed to disburse the balance loan amount of Rs.36,93,550/- as per sanction letter dated 7/2/1997 and not to realize interest and installments before full and final disbursement of the aforesaid sanctioned loan amount to it.

Shri P.S. Sirohi, learned counsel for the appellant has argued that respondent-RFC had sanctioned the loan amount of Rs.70 lacs to the appellant vide order dated 7/2/1997. Appellant on the basis of sanction, made investment of more than rupees one crore in setting up of the industry. Respondent-RFC was required to disburse the entire amount. Appellant deposited the service charge of Rs.35,000/- on 5/3/1997 and processing fee of Rs.70,000/- on 11/8/1997 and created equitable mortgage of valuable property in favour of respondent RFC on 13/8/1997. The security guarantee was given by Anil Kumar Kantiwal, Director of the Company. Respondent-RFC however disbursed the token amount of Rs.5,000/- on 13/8/1997 and later on disbursed the amount of Rs.13,77,000/- to the appellant on 11/9/1997. However, one of the Directors of the company, Shri Arvind Kumar communicated to the RFC on 3/10/1997 for stopping payment citing the reason of disputes amongst the Directors. That issue was clarified to the respondent RFC and 3rd installment of sanctioned loan of Rs.19,24,450/- was disbursed and thus total sum of Rs.33,06,450/- was disbursed out of sanctioned loan of Rs.70,00,000/- and a



subsidy of Rs.5,15,428/- was given to the appellant. RFC thereafter pointed out some irregularities vide letters dated 23/30.7.1998 & 6/8/1998, Ann.5 & Ann.6, respectively, which were also rectified by the appellant. Reference in this connection is made to the letter dated 28/31.8.2008 (Ann.7). Appellant requested for disbursement of loan vide letters dated 31/8/1998 (Ann.9 & Ann.10), 3/9/1998 (Ann.12) & 11/9/1998 (Ann.15).

Learned counsel for the appellant argued that it thereafter again wrote letters to the respondent-RFC on 16/9/1998 (Ann.20) & 17/9/1998 (Ann.21) demanding disbursement of the loan by removing condition payment of sundry creditors before further disbursement. Appellant again wrote letter to the RFC on 18/9/1998 (Ann.23) for making payment to M/s.Avery India Ltd. Despite abovesaid letters, it is argued that respondent-RFC did not release the remaining amount of loan to the appellant. Appellant thereafter requested for release of subsidy vide letter dated 7/10/1998 (Ann.28). Shri Arvind Kumar, Director of the appellant, who had earlier requested for stopping disbursement of the loan amount, vide his letter dated 16/3/1998, requested the RFC for disbursement of the loan amount conveying that disputes between the Directors were settled. Thereupon, the Manager (Disbursement) of RFC asked appellant to furnish certain information/

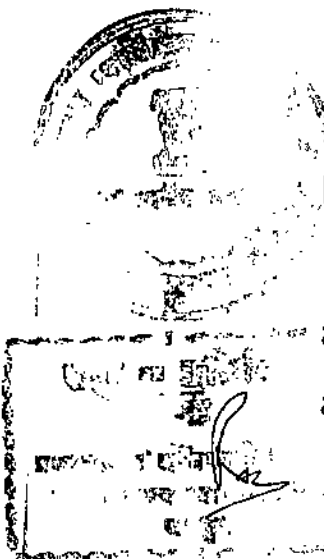


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documents, which were duly supplied.

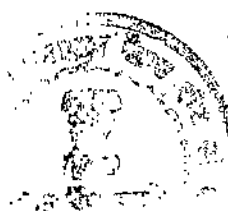
Shri P.S. Sirohi, learned counsel for the appellant further argued that the learned Single Judge was not justified in dismissing the writ petition only on relying on the judgment of Supreme Court on the scope and interference of this Court. If it is shown that the authorities have acted arbitrarily and in collusion with some of the Directors of the appellant-company, their action would be malafide and this Court can certainly interfere in such matters so as to compel the RFC to make payment of full amount of sanctioned loan. It was argued that as far as the allegation of the respondent-RFC that the appellant failed to make payment of the installment due from 1/5/1998 is concerned, learned counsel in this connection referred to the note-sheet of the respondent RFC Ann.37 to show that the appellant requested that commencement of schedule of repayment should be deferred by one year i.e. w.e.f. 1/5/1999, which request of the appellant was accepted and RFC agreed to disburse an amount of Rs.12,75,363/- directly to the creditors of the appellant. Therefore, no malafide can be attached to the appellant in not repaying the loan amount. The factory premise has wrongly been auctioned by the respondents.

Shri N.S. Chouhan, learned counsel appearing for the respondent-RFC has opposed the appeal and submitted that the learned Single Judge



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was justified in dismissing the writ petition because appellant-company defaulted in making repayment of the loan. Even though the RFC has disbursed the amount of Rs.33,06,450/- but the appellant failed to repay the same in time. The loan amount was agreed to be disbursed to the appellant pursuant to the agreement dated 13/8/1997. According to the said agreement, both agreed to comply with the terms of the agreement. According to Condition No.14, clause II sub-clause 'a' of the agreement, if the borrower commits a default in repayment of any installment of the principal sum for more than a period of one month, then the Corporation shall have every right to recall the loan by issuing a notice under Section 30 of the State Financial Corporations Act, 1951. Till date, not a single penny has been paid by the appellant. It is submitted that when the disputes arose amongst the Directors of the company, one of the Directors of the appellant-company, Shri Arvind Kumar requested the RFC for stopping of disbursement of the loan amount, which payment was stopped. It was thereafter that the Manager (Disbursement) of RFC on 5/10/1998 on persuasions of representative of the appellant-company, asked its representative to furnish certain documents, which were necessary action for release of the amount. Appellant was required to give Undertaking that there was no dispute amongst the Directors of the company. Undertaking dated 6/10/1998 was



submitted by Shri Anil Kantiwal, one of its Directors. But that Undertaking was disputed by Shri Arvind Kumar and Upendra Dayal, other Directors of the appellant-company vide letter dated 8/10/1998 saying that their signatures thereon were forged by other Directors and they requested RFC not to release the balance sanctioned loan amount. Sole purpose of the appellant in insisting payment of remaining amount was to grab the public money. Already, Rs.33,06,450/- was disbursed to the appellant. Therefore, impugned order dated 30/10/1998 (Ann.29) recalling the loan agreement was perfectly valid in law. It is therefore prayed the appeal be dismissed.

We have given our anxious consideration to the rival submissions and perused the material available on record.

Condition No.14, clause II sub-clause 'a' of the agreement stipulates that if the borrower commits a default in repayment of any installment of the principal sum for more than a period of one month than the Corporation shall have every right to recall the loan by issuing a notice under Section 30 of the State Financial Act, 1951, which provides, as under:-

"30. Power to call for repayment before agreed period. Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation.--

- (a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or
- (b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or
- (c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or
- (d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or
- (e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or
- (f) if for any reason it is necessary to protect the interests of the Financial Corporation".

The aforesaid clause was noticed by the learned Single Judge, who has rightly held that this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot sit as an appellate authority over the acts and deeds of financial Corporation and seek to correct them. Scope of judicial review extendable only to examining violation of statutory provisions or where State Financial Corporation acts unfairly and unreasonably. As per agreement between the parties, appellant was required to start making quarterly repayment w.e.f. 1/5/1998. Appellant intentionally did not make payment despite repeated opportunities given by the RFC and rather insisted on disbursement of the remaining sanctioned loan amount thus, it violated condition

No.14, clause II sub-clause 'a' of the agreement. Therefore, the RFC had no option except to recall back the loan vide order dated 30/10/1998 (Ann.29). If the RFC decided to recall the loan, it cannot be said to have acted unfairly or unreasonably. RFC even made offer to the appellant to make full & final payment under one-time-settlement but the appellant instead of repaying the loan amount, insisted upon release of the remaining sanctioned loan amount and on that condition, it expressed its willingness to enter into the settlement.

Supreme Court in Karnataka State Industrial Investment and Development Corporation Ltd. vs. M/s.Cavalet India Ltd. (JT 2005(3) SC 570, categorically held that the fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness. It was held that doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities. In a matter between the corporation and its debtor, a writ court has no say except in two situations : (a) there is a statutory violation on the part of the corporation of (b) where the corporation acts unfairly i.e.

unreasonably.

In the present case, Corporation cannot be held to have acted unreasonably in recalling the loan in view of failure of the appellant to honour the condition of the agreement and further in view of continued disputes amongst the Directors of the appellant-company. Appellant even went to the extent of producing Undertaking signed by two of the Directors, who rather alleged that their signatures were forged on such Undertaking.

We therefore do not find any infirmity in the order passed by the learned Single Judge. The appeal is therefore dismissed.

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(DR. MEENA V. GOMBER), J.

Ed
(MOHAMMAD RAJIO), J.

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RAJASTHAN FINANCIAL CORPORATION

Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur-302 005

Ref.No.RFC/F.Law-5/HO/1777/ 297

Dated: 20 June, 2014

CIRCULAR

(Lit. Cir No. 207)

**Sub: Important Court Decision in the case of RFC
Vs. Vinod Kumar Bansal - Civil Suit No. 198-C
(M/s. Sabhyata Plastic (P) Ltd., Churu)**

In the aforesaid case the learned Civil Judge (Junior Division) Hisar vide its order dated 21.04.2014 giving the relief to our Corporation that the mortgaged property cannot be further transferred just to defeat and delay the creditors has held that **“the plaintiff being mortgagee is entitled to sell the property for recovery of its dues and the defendants are also restrained from further disposing off or otherwise alienating and transferring the possession of the property in any manner whatsoever”**.

A photo copy of the Judgement is being enclosed for ready reference, which may be used in the similar type of cases pending before the different Courts and may also apprise the concerned advocates about this Judgement.



EXECUTIVE DIRECTOR

Encl: a/a

Copy to:

1. All BOs/SOs/A&I
2. Standard Circulation at HO

Certified copy of order dt. 21.4.2014 and decree sheet
in the court of Shri Sohan Lal Malik (J.D), Hisar
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IN THE COURT OF SHRI SOHAN LAL MALIK, CIVIL
JUDGE (JUNIOR DIVISION), HISAR.

Civil Suit No. 198-C

Date of institution: 26.3.12/20.7.13

Date of decision: 21.4.2014

Rajasthan Financial Corporation a body corporate constituted under
State Financial Corporation Act 1951 having its Head office Udyog
Bhawan, Tilak Mark, New Sanik Vishramgarah, Churu.

.....Plaintiff.

Versus

1. Vinod Kumar Bansal s/o Harish Chander Bansal (since
expired) through his legal heirs:-
 - (i) Smt. Manju Bansal-widow
 - (ii) Ms. Ekta Bansal-daughter
 - (iii) Ms. Sabhtya Bansal-daughter
 - (iv) Ms. Bhawna Bansal-daughter
 - (v) Chetanya Bansal-minor sonAll residents of H. No.1669, Urban Estate-2, Hisar
2. Manju Bansal w/o Vinod Kumar Bansal,
3. Ekta Bansal d/o Vinod Kumar Bansal, all residents of House
No.1669, Urban Estate-2, Hisar.

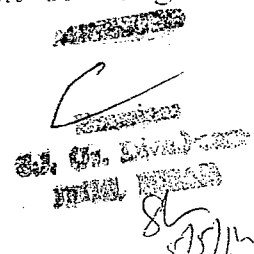
.....Defendants.

SUIT FOR DECLARATION & INJUNCTION

Present:- Sh. T.C.Goel, counsel for the plaintiff.
Sh. Subhash Gupta, counsel for defendants.

JUDGMENT

1. The brief facts of the case are that M/s Subhyata Plastic
Pvt. Ltd. D-12, Sadulpur Industrial Area, District Churu(Raj.)
obtained a loan of Rs.9000000/- from the plaintiff corporation on
30.3.1994. The defendants No.1 and 2 to secure its repayment together
with interest, costs, expenses etc. guaranteed the loan. They being joint
owners in equal shares also created mortgage of their property house
No.1669, Urban Estate-II, Hisar by deposit of original deed of


Sh. T.C. Goel
21/4/14

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conveyance registered at Sr.No.3659 dated 16.3.1994 in the office of Sub-Registrar, Hisar, alongwith original re-allotment letter dated 16.3.1994 in their favour and permission to create mortgage in favour of the plaintiff corporation issued by Estate Officer, HUDA, Hisar. The defendants No.1 and 2 vide their affidavit confirmed and declared that the property offered for creation of equitable mortgage is their joint property, which is free from all encumbrances and undertake that the same shall be kept free from all encumbrances till complete repayment of the above loan of Rs.90,00,000/- of the Corporation by M/s Sabhyata Plastic Pvt. Ltd. M/s Sabhyata committed defaults in payment of dues of the corporation. A sum of Rs.101,25,250/- was due and payable on 14.4.2007 from the said concern which the defendants No.1 and 2 being guarantors and mortgagors are liable for payment. The corporation issued recovery certificate under Land Revenue Act, 1890 and sent it to the Collector, Hisar, through Collector, Churu to recover the amount by way of sale of their properties including the property mortgaged with the corporation. The recovery certificate was received with the endorsement that Vinod Kumar Bansal is detained in Central Jail, Hisar and that there is no property in the names of defendant's No.1 and 2. Thereafter, the plaintiff came to know that Sh. Vinod Kumar Bansal, defendant No.1 transferred his share in the property to his wife Manju Bansal, defendant No.2 by way of consent decree dated 28.11.1995 passed by Sh.Subhash Goyal, Sub Judge, Hisar. The decree is registered at Sr. No.3799 dated 3.1.1996 in the office of Sub-Registrar, Hisar. Smt. Manju Bansal, transferred the suit property in

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15/11/14

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the name of her daughter Ekta Bansal, defendant No.3 by way of consent decree dated 21.12.2002 passed by Sh.Jaibir Singh, Civil Judge (JD), Hisar, and the decree is registered at Sr. No.7100 dated 4.3.2003 in the office of Sub Registrar, Hisar. The above described transfers of the property by the defendants No.1 and 2 in favour of defendant No.3 is against the undertaking and declaration made by them. The transfer of the property House No.1669, by way of consent decrees are fraudulent, without consideration, intended to defeat & delay the creditors and that the plaintiff being mortgagee is entitled to sell the property for recovery of its dues. Hence, this suit.

2. In the written statement filed on behalf of defendants No.2 and 3 preliminary objection certain preliminary objections regarding mis-joinder of parties, maintainability, cause of action have been raised. It is further stated that the suit of the plaintiff is barred by limitation. The alleged loan was taken on 30.3.1991 and the alleged mortgage took place on 16.3.1994 and the suit property was transferred by way of Civil Court decree dated 8.11.1995, therefore the suit of the plaintiff is time barred. On merits, it is submitted that no such loan was ever taken by M/s Sabhatya Plastic from the plaintiff corporation. It is further submitted that there is a great contradictions in the stand of the plaintiff. On one hand, the loan is alleged to have been taken by the borrower company on 30.3.1991 while the conveyance deed of the house in question was registered on 16.3.1994, therefore, there was no question of deposit of the original conveyance deed of the house in question by the defendants No.1 and 2 with the plaintiff on 30.3.1991. It shows that either ~~alleged~~ alleged


J. J. (Jr. Dir.)
8/5/11

mortgage deed is a false and fabricated document or that it has been prepared in the later dated with a view to defeat the rights of the defendants. Moreover, no consent of HUDA was obtained by the plaintiff or by the defendants No.1 and 2 before mortgaging the house in question in favour of the plaintiff which was mandatory, therefore, the alleged mortgage of the house in question does not confer any title on the plaintiff. Remaining other allegations of the plaint are denied as wrong. In the end, prayer for dismissal of suit with costs is made.

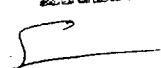
Defendant No.1 Vinod Bansal, adopted the written statement of defendants No.2 and 3 vide his statement dated 8.12.2012.

3. From the pleadings of the parties, the following issues were framed on 5.2.2013:

1. Whether the transfers of the property of house No.1669, Urban Estate-II, Hisar, are fraudulent, without consideration, intended to defeat and delay the rights of creditors, null and void and is not binding upon the plaintiffs, if so, its effect?OPP
2. Whether the suit is bad for mis-joinder of the parties?OPD
3. Whether the suit is barred by limitation?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the suit is under valued for the purpose of court fee and jurisdiction of the court?OPD
6. Relief.

4. Plaintiff in order to prove his case has examined the following witnesses:

PW1	Sajjan Singh Rathore, Assistant Manager Of Rajasthan Financial Corporation.
PW2	Banwari Lal Gupta
PW3	Babu Ram, Assistant, EO, HUDA

ATTACHED

 Executive
 C.A. Dr. P. K. Singh
 8/5/14

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In documentary evidence, the plaintiff has placed the following documents on record:

- Ex.P1 Authority letters
& P2
- Ex.P3 Authority letter to recover arrear of land revenue
- Ex.P4 Letter written by Tehsildar Hisar, to the Branch Manager, Rajasthan Financial Corporation
- Ex.P5 Statement of account
- Ex.P6 Conveyance deed
- Ex.P7 Registered decree dt. 4.3.03
- Ex.P8 Registered decree dt. 3.9.1996
- Ex.P9 Notification
- Ex.P10 Guarantee deed
- Ex.P11 Power of attorney
- Ex.P12 Affidavit
- Ex.P13 Guarantee deed
- Ex.P14 Power of attorney
- Ex.P15 Affidavit
- Ex.P16 List of title deeds
- Ex.P17 Reallotment letter
- Ex.P18 Letter to V.K. Bansal and Manju Bansal, from E.O. Hisar.

Thereafter, counsel for plaintiff, vide his separately recorded statement, closed the evidence on behalf of plaintiff.

On the other hand in evidence of defendants, they have examined the following witnesses:

DW1 Ekta Bansal, (tendered affidavit Ex.DW1/A)

In documentary evidence, defendants have placed on record the following documents:

- Ex.D1 Registered deed dt. 4.3.03
- Ex.D2 Registered deed dt. 3.1.1996
- Ex.D3 Copy of letter issued by RFC to Vinod Kumar.

Thereafter, counsel for the defendants vide his separately recorded statement closed the evidence of defendants.

5. No witnesses was examined in rebuttal evidence.

Signature
Date
8/5/14

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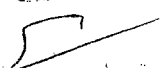
6. I have heard learned counsel for the parties and have gone through the case file carefully.

My issuewise findings with reasons are as under:-

Issue No.1

7. Onus to prove this issue was on the plaintiff.

In order to prove this issue, plaintiff has examined Sajjan Singh Rathore, Assistant of plaintiff Corporation, who stepped into the witness box as PW1 and tendered affidavit Ex.PW1/A reiterating the stand they have taken in the plaint. He also tendered documents Ex.P1 to Ex.P18 in his examination-in-chief. In his cross-examination, he has stated that the loan documents of this case were neither dealt by him nor by their branch. This file was dealt by the head office of RFC at Jaipur. He has admitted that on authority letter Ex.P1 Yadvender Mathur had not put his signatures in his presence. He has seen the authority letter dated 4.5.2013 and Sh. Yadvender Mathur had not put his signatures on it in his presence. He has brought the original loan documents of this case. The borrower or guarantor had not signed the loan documents in his presence. He further stated that in the present case RFC had taken possession of the building and machinery of Sabhyata Plastic Private, at Rajgarh in the year 2000 under Section 29 of the State Financial Corporation Act, 1951. At that time, some machines of the unit were missing and in this regard, they lodged a case against Sabhyata Plastic in Rajgarh Police station. That land and building was sold by RFC in open auction in the year April, 2013 for Rs.13 lakhs and five thousand only. The auction purchaser deposited only


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Rs.25% of the amount and that money was deposited by them in the account of Sabhyata Plastic. 25% comes to Rs.326500/-. In Ex.P5 there is no entry in respect of Rs.326500/-. He has admitted that till date they had not filed any civil suit for recovery against borrower firm or defendants No.1 and 2. In the present case, the RFC and defendants No.1 and 2 arrived at one time settlement in the year 2005 for Rs.65 lakhs. He has admitted that in case defendants No.1 and 2, would deposit the amount of one time settlement i.e. Rs. 65 lakhs to RFC which they were asking for deposit in five installments, then RFC could full and final settle the case and could issue NOC. He has denied the suggestion that he had given false affidavit. He has denied the suggestion that he is deposing falsely.

PW2 Banwari Lal Gupta, also tendered affidavit Ex.PW2/A in his examination-in-chief. In cross-examination, he has stated that he has brought the original documents copies of which are already exhibited.

PW3 Babu Ram, Assistant E.O. has proved the conveyance deed Ex.P6, re-allotment letter Ex.P17, permission to mortgage Ex.P18.

On the other hand in the evidence of defendants, defendant No.3 Ekta Bansal, stepped into the witness box as DW1 and tendered his affidavit Ex.DW1/A reiterating the stand they have taken in the written statement. She also tendered documents Ex.D1 to E2 in her evidence. In cross-examination, she identified signatures of her parents on documents Ex.P10 to P17. She does not know whether prior to decree dated 28.11.1995 and 21.12.2002 her

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parents had taken permission from financial corporation or not or after decree corporation was informed or not. Her parents are directors of Sabhyata Plastics. She does not know whether her parents mortgaged the original trial deed No.1659 dated 16.3.1994 of house No.1669 Urban Estate with the Financial Corporation. She has denied the suggestion that she is deposing falsely.

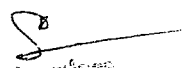
8 Learned counsel for the plaintiffs has argued that M/s Subhyata Plastic Pvt. obtained a loan of Rs.9000000/- from the plaintiff corporation and defendants No.1 and 2 guaranteed the loan. He further argued that they being joint owners in equal shares also created mortgage of their property house No.1669, by deposit of original deed of conveyance registered at Sr. No.3659 dated 16.3.1994 in the office of Sub-Registrar, Hisar, alongwith original re-allotment letter dated 16.3.1994 in their favour and permission to create mortgage in favour of the plaintiff corporation issued by Estate Officer, HUDA, Hisar. He further argued that the defendants No.1 and 2 vide their affidavit confirmed and declared that the property offered for creation of equitable mortgage is their joint property, which is free from all encumbrances and undertake that the same shall be kept free from all encumbrances till complete repayment of the above loan, however, M/s Sabhyata committed defaults in payment of dues of the corporation. He further argued that a sum of Rs.101,25,250/- was due and payable on 14.4.2007 from the said concern which the defendants No.1 and 2 being guarantors and mortgagors are liable for payment. L.d. Counsel for plaintiff further averred that the corporation issued recovery certificate and sent it to

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the Collector, Hisar, through Collector, Churu to recover the amount by way of sale of their properties including the property mortgaged with the corporation and that recovery certificate was received with the endorsement that Vinod Kumar Bansal is detained in Central Jail, Hisar and that there is no property in the names of defendant's No.1 and 2. He further argued that thereafter, the plaintiff came to know that defendant No.1 transferred his share in the property to defendant No.2 by way of consent decree and defendant No.2 transferred the suit property in the name of her daughter defendant No.3 by way of consent decrees. Id. Counsel further submitted that the consent decrees are fraudulent. In the end, a prayer for decree of the suit with costs is made.

On the other hand, Id. counsel for the defendants argued that the suit is time barred as the alleged loan was taken on 30.3.1991 and the alleged mortgage took place on 16.3.1994 and the suit property was transferred by way of Civil Court decree dated 8.11.1995, and the present suit was filed in the year 2012. He further argued that on one hand the loan is alleged to have been taken by the borrower company on 30.3.1991 while the conveyance deed of the house in question was registered on 16.3.1994, therefore, there was no question of deposit of the original conveyance deed of the house in question by the defendants No.1 and 2 with the plaintiff on 30.3.1991. He further averred that it shows that either the alleged mortgage deed is a false and fabricated document or that it has been prepared in the later date with a view to defeat the rights of the defendants. Further, it is argued that no consent of HUDA was


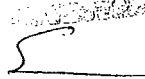

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obtained by the plaintiff or by the defendants No.1 and 2 before mortgaging the house in question in favour of the plaintiff which was mandatory, therefore, the alleged mortgage of the house in question does not confer any title on the plaintiff. L.d. Counsel also argued that the present suit is liable to be dismissed because it was not filed by an authorized person. He submitted that there was no valid resolution of the corporation in favour of V.N.Deshraj, who has filed the present suit. In the end, a prayer for dismissal of the suit with costs is made.

9. I have given due consideration to the rival submissions made before me.

10. In the present suit, plaintiff has challenged the transfers regarding the house No.1669, Urban Estate-II, Hisar. This plot was transferred by way of consent decree dt. 28.11.1995 and 21.12.2002. It was not in dispute that plaintiff have advanced a loan to M/s Sabhyata Plastic Private Limited, Sadalpur Industrial Area, Churu, Rajasthan on 30.3.1994 and the original defendant No.1 and defendant No.2 have stood guarantee for the repayment of the loan. The guarantee deed Ex.P10 confirms that Vinod Bansal stood the guarantor for M/s Sabhyata Plastic Private Limited. Similarly, defendant No.2 Manju Bansal also stood guarantor by way of guarantee deed Ex.P13. Defendant No.1 Vinod Bansal also sworn an affidavit Ex.P12 and Manju Bansal defendant No.2 has also sworn affidavit Ex.P15 at the time of standing guarantee for M/s Sabhyata Plastic Private Limited. In both the affidavits, both these have declared that they were owner of plot No.1669, Urban Estate-II,



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Hisar which is free from all encumbrances and they will keep this property free from all encumbrances till the complete of repayment of above loan. Despite of abovesaid undertakings Vinod Bansal has transferred his share in faovur of Manju Bansal through Civil Suit No. 1159C of 1999 and further registering this decree at Sr. No.3799 dt. 3.1.1996. The defendant No.2 Manju Bansal further transferred her share in favour of deft. No.3 by way of consent decree passed on 21.12.2002 and registered with Sub Registrar Hisar at Sr. No.7100 dt. 4.3.2003. It was alleged by plaintiff that these two transfers were null and void because these were only executed in order to defeat the repayment of loan outstanding against defendants. The question which needs to be determined is whether the transfer by way of these consent decrees are fraudulent transfers in view of section 53 of Transfer of Property Act, 1861. For ready reference the relevant portion of section 53 of the Act is reproduced herebelow:

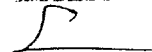
“53. Fraudulent transfer. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.”

11 In the present suit it is quite obvious and clear that defendant No.1 i.e. Vinod and his wife defendant No.2 Manju Bansal has stood guarantor on behalf of M/s Sabhyata Plastic Private Limited in regard to the loan taken by the said Enterprise from the plaintiff. The perusal of the guarantee deeds shows that these were executed on

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Notary

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30.3.1994. The transfer in question i.e. the consent decrees by which Vinod Bansal has passed his share in favour of Manju Bansal was passed on 28.11.1995 and that suit was filed on 24.11.1995. Similarly, the second consent decree by way of which Manju Bansal transferred all her rights in favour of defendant No.3 Ekta Bansal in respect of House No.1669, Urban Estate-II, Hisar was passed on 21.12.2002. The relevant dates of guarantee deed and the dates of consent decrees shows that the transfers regarding the suit property was made after the taking of the loan. Both defendant No.1 Vinod and defendant No.2 Manju have given affidavits with the guarantee deeds in which they have given an undertaking that they will keep the property free from all encumbrances till the complete repayment of the loan taken by M/s Sabhyata Plastic Private Limited. Due to these transfers a clog was created on the property and the mortgagee right of plaintiff are also effected. This fact was cleared from the document Ex.P3 and Ex.P4. Ex.P3 is a letter issued from the Collector Hisar to Tehsildar, in which a recovery as arrears of land revenue is ordered against V.K.Bansal and on this Tehsildar, Hisar, sent a reply Ex.P4 to the plaintiff in which it was stated that the defendant No.1 was confined in Central Jail, Hisar and there was no immovable or immovable property in his name. So, recovery was not possible. This letter was issued by Tehsildar, Hisar on 7.4.2011. This shows that the abovesaid transfers was only to defeat the repayment of loan taken by M/s Sabhyata Plastic Private Limited from the plaintiff. It is the duty of the guarantor to make the repayment of the loan in case the principal does not pay the loan and in the present

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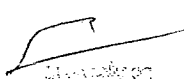
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case the principal is a company so the creditor can approach the guarantor to get his loan repay. There was no explanation given by the counsel for the plaintiff that why these transfers were made after the taking of the loan. The Id. Counsel for the plaintiff is submitting that the mortgagee right of the plaintiff have come to an end when a one time settlement was agreed between the plaintiff and defendants. The Id. counsel submitted that document Ex.D3 gives the complete detail of one time settlement and witness of plaintiff PW1 Sajjan Singh Rathore has admitted in his cross that a one time settlement between the plaintiff and defendant was carried out in the year 2005 for Rs. 65 lakhs which they were bound to pay in five instalments and the defendants have also deposited two instalments of Rs. 13 lakhs each. The Id. Counsel submitted that in view of this one time settlement the mortgagee right of the plaintiff goes and they cannot recover the amount more than what was settled in one time settlement scheme. He has placed his reliance on case titled as Bharat Industries V. Punjab Financial Corp. 2009(1) ISJ (Banking) 58 P&H. The facts of the authority cited by the counsel for the plaintiff is not similar as to the facts of the present case because in that case financial corporation has issued a notice of recovery of more than the amount what was settled in the one time settlement but the present suit was not a recovery suit. Rather, a declaratory suit in which the transfer made by the defendant are challenged because they are creating clog over the rights of the plaintiff.

12 The submission of Id. Counsel that one time settlement has ended the mortgagee rights of the plaintiff is devoid of merits


 Advocate
 C.A. Ch. Chhabra
 8/5/17

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and the mortgage can only be satisfied in case of redemption and there was no redemption of the mortgage by the defendants.

13. In view of the above discussions this court is of considered opinion that the transfer made by the defendant by way of consent decrees are only to defeat the mortgagee rights and the repayment of the loan. Therefore, these are fraudulent transfers as envisaged u/s 53 of Transfer of Property Act and does not affect the rights of the plaintiff in any way.

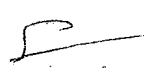
14. In view of the above discussions, issues No.1 is decided in favour of plaintiff and against defendants.

Issue No.2 and 5

15. Onus to prove these issues was also on the defendants. However, during the course of arguments, these issues were not pressed on behalf of defendants and hence, these issues are decided against the defendants and in favour of plaintiff.

Issue No.3

16. Onus to prove this issue was on the defendants. I.d. Counsel for the defendant has submitted that the suit of the plaintiff is time barred because they have challenged the registered deeds after the passing of three years from the date of registration. On the other hand, I.d. counsel for the plaintiff has submitted that the period of limitation shall start from the date of knowledge. In the present case, the transfers are between the family members of the defendants and these transfers only came within the knowledge of the plaintiff when the letter Ex.P4 was received by them from Tehsildar, Hisar in which it was stated that there is no movable or immovable property in the


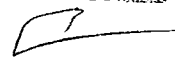

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The other submission of the Id. Counsel for the defendant is that the suit was not filed by the authorized person. He has submitted that the authority letter Ex.P1 does not fulfill the legal requirement for V.N.Deshraj to appear on behalf of the plaintiff. He has further submitted that there was no resolution in which the authority was given to V.N.Deshraj for filing the present suit. I am also not in agreement with submission of Id. counsel for the defendant because Ex.P9 submitted by plaintiff shows that there is a general notification in term of the State Financial Corporation Act 1951 in which Deputy Manager is always authorized to put in appearance in the court and file suit on behalf of corporation. Therefore, I come to the conclusion that suit is filed by the authorized person.

18. In view of the above discussions, issue No.4 is decided against the defendants and in favour of plaintiff.

Issue No.6 (Relief)

19. In the sequel of my findings on the above issues, the suit of the plaintiffs succeeds and the same is hereby decreed with costs. It is declared that the transfers of the property House No.1669, Urban Estate-II, Hisar, by way of consent decrees dated 28.11.1995 and 21.12.2002, registered in the office of Sub-Registrar, Hisar at Sr. No.3799 dated 3.1.1996 and 7100 dated 4.3.2003 respectively whereby the defendant No.1 transferred his share to his wife defendant No.2 who further transferred the entire property to her daughter defendant No.3 are fraudulent, without consideration, intended to defeat and delay the creditors, null and void and is not binding upon the plaintiffs and the plaintiff being mortgagee is entitled to sell the



8/7/14

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property for recovery of its dues and the defendants are also restrained from further disposing off or otherwise alienating and transferring the possession of the property in any manner whatsoever. Decree sheet be drawn accordingly. File be consigned to record room after due compliance.

Announced in open court

Sohan Lal Malik
(Sohan Lal Malik)
Civil Judge (Junior Division)
Hisar 21.4.2014

Note:- All the pages of this judgment have been signed by me.

Sohan Lal Malik
(Sohan Lal Malik)
CJ(JD)/Hisar 21.4.2014

Application No. 5974
Date of Presentation of applications 1-5-14
Date of Receipt of Record 1-5-14
Number of pages of copies 17P
Cost of Copy 347
Urgent Fee _____
Search Fee _____
Name of the officer 86
Date of Copy 5/5/14
Date on which the Copy was examined and altered 5/5/14
Date on which the copy was delivered _____

86
2/5/14

Office of the Civil Judge
Senior Division, Hisar
Hisar
Sohan
Authorized U/S 76 of the
Indian Evidence Act. 1973

86
5/5/14

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Decree- Sheet

IN THE COURT OF SHRI SOHAN LAL MALIK, CIVIL JUDGE (JUNIOR DIVISION), HISAR

Civil Suit No. 198-C
Date of Institution: 26.0312 /2013

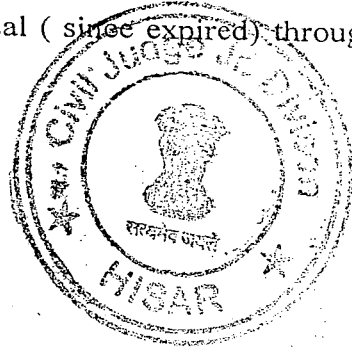
Rajasthan Financial Corporation a body corporate constituted under State Financial Corporation Act 1951 having its Head Office Udyog Bhawan, Tilak Mark, New Sanik Vishramgarah, Churu.

.....Plaintiff.

Versus

1. Vinod Kumar Bansal S/o Harish Chander Bansal (since expired) through his legal heirs :-

- (i) Smt. Manju Bansal- Widow
- (ii) Ms. Ekta Bansal-daughter
- (iii) Ms. Subhtya Bansal- daughter
- (iv) Chetanya Bansal- daughter.



2. Manju Bansal W/o Vinod Kumar Bansal.

3. Ekta Bansal D/o Vinod Kumar Bansal all residents of H. No. 1669, Urban Estate-II, Hisar.

.....Defendants.

Suit for declaration to the effect that the transfers of the property- House No. 1669, Urban Estate-II, Hisar- by way of consent decrees dated 28.11.1995 and 21.12.2002, registered in the office of Sub-Registrar, Hisar at Sr. No. 3799 dated 03.01.1996 & 7100 dated 04.03.2003 respectively whereby the defendant No. 1 transferred his share to his wife defendant No. 2 who further transferred the entire property to her daughter defendant No. 3 are fraudulent, without consideration, intended to defeat and delay the creditors, null and void and is not binding upon the plaintiffs and that the plaintiff being mortgagee is entitled to sell the property for recovery of its dues. And also for injunction restraining the defendants from further disposing off or otherwise alienating and transferring the possession of the property in any manner whatsoever- on the basis of evidence, documentary and oral of every kind.

Plaint presented on 26.03.12

[Handwritten signature]
 C. J. (J. D.)
 HISAR
 26/3/12

Jurisdiction value of the suit : Rs. 200/-

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This suit is coming today i.e. 21.04.2014 for final disposal before me (Sh. Sohan Lal Malik, Civil Judge (Jr. Div.), Hisar in the presence of Sh. T.C.Goel, counsel for the plaintiff and Sh. Subhash Gupta, counsel for the defendants.

It is ordered that the suit of the plaintiff is hereby decreed with costs. It is declared that the transfers of the property House No. 1669, Urban Estate-II, Hisar, by way of consent decrees dated 28.11.1995 and 21.12.2002, registered in the office of Sub-Registrar, Hisar at Sr. No. 3799 dated 03.01.1996 and 7100 dated 04.03.2003 respectively whereby the defendant No. 1 transferred his share to his wife defendant No. 2 who further transferred the entire property to her daughter defendant No. 3 are fraudulent, without consideration, intended to defeat and delay the creditors, null and void and is not binding upon the plaintiffs and the plaintiffs being mortgagee is entitled to sell the property for recovery of its dues and the defendants are also restrained for further disposing off or otherwise alienating and transferring the possession of the property in any manner whatsoever.

Memo of Costs.

		Plaintiffs	Defendants
1.	Stamp of Plaint	50.00	0.00
2.	Stamp on Power	2.00	15.00
3.	Stamp of Exhibits	0.00	0.00
4.	Sub of Witnesses	150.00	0.00
5.	Pleader's Fee	Fee certificate not Attached	0.00
6.	Process Fee	53.00	0.00
7.	Misc. Applications	0.00	10.00
	Total	255.00	25.00

Application No. 5974
Date of Presentation of applications 25/4/14
Date of Receipt of Record. Given under my hand and seal of the court this on 21th day of April, 2014
Number of pages of copies 24
Cost of Copy 5/-
Urgent Fee 5/-
Secret. Fee
Name of Advocate
Date of Filing 21/4/14
Date of Disposal 21/4/14

Judge of the Civil Judge
(Senior Division), HISAR
Certified to be True Copy
EXAMINER
Authorized U/S 76 of the
Indian Evidence Act, 1908

Sohan Lal Malik

21/4/14

21/4/14

(1) 28.10.14

S.B. Civil Regular First Appeal No. ___/2014 In
Mohd. Hanif Vs. Rajasthan Finance Corporation & Ors.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. CIVIL REGULAR FIRST APPEAL NO. 158/2014



APPELLANT/PLAINTIFF:

Mohammed Hanif S/o Ahmed ji, by caste Nilgar. Musalman, aged 69
years, resident of Hamirgarh, District Bhilwara

VERSUS

RESPONDENTS/DEFENDANTS:

1. Rajasthan Financial Corporation, Head Office, Udhyog Bhawan,
Tilak Marg, C-Scheme, Jaipur (Rajasthan)
2. Rajasthan Financial Corporation, Branch Office, Shri Ram Colony,
Civil Lines, Ajmer Chouraha, Bhilwara
3. Akil Ahmed Sheikh S/o Badruddin Sheikh through Vishal Cloth
Centre, Gol Peao Chouraha, ^{Bhupalgarh} Bhilwara.

S.B. CIVIL REGULAR FIRST APPEAL UNDER
SECTION 96 CPC AGAINST THE JUDGMENT AND
DECREE DATED 4.3.2014 PASSED BY SHRI RAVI
SHARMA ^{R.H.S} / ADDITIONAL DISTRICT JUDGE NO.2,
BHILWARA IN CIVIL ORIGINAL SUIT
NO. ~~107/2014~~ ^{117/2011} (53/2008) MOHD. HANIF VS.

सहा प्रतिलिपि RAJASTHAN FINANCIAL CORPORATION ETC.)
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प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय, जोधपुर

VALUATION: RS.90,400/-
COURT FEES PAID: RS.5955/-



S.B. CIVIL FIRST APPEAL NO. 158/2014.
Mohd. Hanif Vs. R.F.C. & Ors.

Judgment, Monday, dated 26.10.2015

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

:: J U D G M E N T ::

S.B. CIVIL FIRST APPEAL NO. 158/2014.

Mohammed Hanif S/o Ahmed .li
Vs.
Rajasthan Financial Corporation & Ors.

Date of Judgment : Monday, 26th October, 2015.

P R E S E N T

HON'BLE Dr. JUSTICE VINEET KOTHARI

Appearance:

Mr. Arvind Samdariya, for the appellant.
Mr. Rakesh Sinha, for the respondents.

<<>>

BY THE COURT: (Oral)

1. The appellant-plaintiff Mohd. Hanif S/o Ahmedji has filed the present first appeal under Section 96 of the Code of Civil Procedure aggrieved by the rejection of his suit by the learned Additional District Judge No.2, Bhilwara on **04.03.2014** dismissing the **Suit No.117/2011 (53/2008)** which was filed by the plaintiff-appellant Mohd. Hanif seeking cancellation of the sale deed of his industrial unit which was executed by the defendants-Rajasthan Financial Corporation ('RFC') in favour of the defendant No. 3- Akil Ahmed Sheikh S/o Badruddin Sheikh on **15.09.2006**. The unit in question was taken over by the defendant-RFC while exercising its powers under Section 29 of

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राजस्थान उच्च न्यायालय जोधपुर
जुडिसियल मैजिस्ट्रेट, जोधपुर



S.B. CIVIL FIRST APPEAL NO. 158/2014.
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the State Financial Corporation Act, 1951 ('the SFC Act') and the same was put to public auction and was ultimately sold to the defendant No.3-Akil Ahmed Sheikh, since the appellant-plaintiff had defaulted in re-payment of the loan amount taken by him.

2. The facts leading to filing of the present suit, as noticed by the learned Trial Court in the impugned order dated 04.03.2014 are quoted herein below for ready reference:-

"2- वाद के सुसंगत तथ्य संक्षेप में इस प्रकार है कि वादी ने चिशितया चूना भण्डार, हमीरगढ के नाम से चूना उत्पादन कार्य हेतु प्रतिवादी सं. 2 के यहां दिनांक 15.12.1982 को 24,000/- रूपए, दिनांक 22.06.1983 को 13,000/- रूपए एवं दिनांक 25.04.1984 को 10,000/- रूपए का ऋण हेतु आवेदन प्रस्तुत करने पर भुगतान किया। वादी डायबिटीज रोग से गम्भीर रूप से ग्रस्त होने से व्यवसाय को सुव्यवस्थित नहीं चला पाया और प्रतिवादी सं. 02 को ऋण की अदायगी समय पर नहीं कर सका इसलिए प्रतिवादी सं. 02 ने दिनांक 22.12.1994 को वादी की रहनशुदा संपत्ति को धारा 29 एस.एफ.सी. एक्ट के तहत कागजों में कर लिया। वादी ने प्रतिवादी सं. 02 को प्रस्ताव कर राशि एक मुश्त जमा कराने का अनुरोध किया किन्तु कोई संतोषप्रद प्रत्युत्तर नहीं दिया एवं प्रतिवादी सं. 03 को सांठगांठ कर रहनशुदा संपत्ति को कोड़ियों के मोल विक्रय करने की साजिश कर दिनांक 26.06.2006 की निलामी विधि विरुद्ध सुनियोजित योजना तैयार कर निलामी 90,000/- रूपए में प्रतिवादी सं. 03 के नाम छोड़ दी। उसके अनुसार विवादित भूखण्ड 4800 वर्ग फीट क्षेत्रफल का होने से तत्कालीन डी.एल.सी. रेट के अनुसार 11 लाख रूपए होती है जिसे प्रतिवादी सं. 02

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ने मात्र 90 हजार रूपए में प्रतिवादी सं. 03 को अनुचित लाभ पहुंचाने व स्वयं के हितार्थ निलामी कर विक्रय विलेख दिनांक 15.09.2006 निष्पादित कर दिया जो निरस्त एवं अपास्त किए जाने योग्य है । इन आधारों पर निलामी दिनांक 26.06.2006 एवं विक्रय विलेख दिनांक 15.09.2006 को अवैध व शून्य घोषित किए जाने एवं प्रतिवादीगण के विरुद्ध स्थाई निषेधाज्ञा पारित किए जाने का निवेदन किया ।"

3. The reasons assigned by the learned Additional District Judge No. 2, Bhillwara for dismissal of the suit aforesaid, while deciding issue No.1 and the other relevant findings are also quoted herein below for ready reference:-

"12- पत्रावली का ध्यानपूर्वक अवलोकन करने पर यह तथ्य भी उभरकर सामने आया है कि दिनांक 26.06.2006 को प्रतिवादी सं. 01 व 02 द्वारा की गई औद्योगिक ईकाई की निलामी पर बेचे जाने की प्रक्रिया के तहत निलामी कार्यवाही सम्पन्न होनी थी । इस दिवस को भी वादी ने प्रार्थना पत्र प्रदर्श.22 निलामी स्थल पर स्थित प्रतिवादी सं. 02 के कार्यालय में प्रस्तुत करते हुए 47 हजार रूपए जमा करावाने की तत्परता प्रकट की । प्रतिवादी सं. 02 की ओर से इस संबंध में वादी को पत्र प्रदर्श.23 लिखकर मूल राशि का 15 प्रतिशत, एक हजार पंजीयन शुल्क तत्काल जमा कराने के आदेश दिए गए परन्तु यह राशि भी वादी द्वारा जमा करवाना प्रतीत नहीं होता है । ऐसी स्थिति में वादी का यह कहना कि दिनांक 26.06.2006 को प्रतिवादी सं. 01 व 02 द्वारा निलामी की कार्यवाही प्रतिवादी सं. 03 से अवैध सांठ-गांठ करते हुए गुपचुप तरीके से की

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गई माने जाने योग्य नहीं है क्योंकि जहां एक ओर वादी स्वयं प्रार्थना पत्र प्रदर्श.22 के माध्यम से रूपये 47 हजार जमा कराने हेतु स्वयं इच्छुक-तत्पर होना बताता है वहीं दूसरी ओर रूपए 14,700/- जैसी राशि तक जमा नहीं करवाई गई । इससे यह तथ्य प्रमाणित होता है कि वादी ने दिनांक 26.06.2014 को भी पूर्व की भांति निलामी की कार्यवाही को टालने की गरज मात्र से प्रार्थना पत्र प्रदर्श.22 प्रस्तुत किया था अन्यथा वह ना तो इस संपत्ति को खरीदने का इच्छुक था एवं ना ही इस संबंध में ठोस-सार्थक प्रयास कर रहा था । यदि वास्तव में प्रतिवादी सं. 01 व 02 ने अवैध रूप से गुपचुप कार्यवाही की होती तब वादी इसके संबंध में प्रतिवादी सं. 01 व 02 के उच्चधिकारियों को अविलम्ब शिकायत करता परन्तु ऐसी कोई शिकायत नहीं करना भी वादी ने अपनी जिरह में स्वीकार किया है । अतः प्रकृति के सामान्य अनुक्रम के विपरीत प्रकृति का जो वादी का आचरण प्रकरण के तथ्यों-परिस्थितियों एवं पत्रावली पर आई साक्ष्य से उभरकर सामने आया है उससे वादी की विश्वसनीयता-सदाशयता पर्याप्त रूप से संदिग्ध हो जाती है ।

13- इस संबंध में पत्रावली का ध्यानपूर्वक अवलोकन करने पर तथ्य भी उभरकर सामने आया है कि वादी ने दिनांक 22.12.1994 के पश्चात् अपनी औद्योगिक ईकाई पर कब्जों के संबंध में किसी प्रकार का कोई विश्वसनीय-सुदृढ़ प्रकृति का कोई दस्तावेजी प्रमाण अर्थात् बिजली का बिल, व्यवसाय करने के संबंध में अन्य शासकीय दस्तावेज आदि प्रस्तुत कर प्रमाणित नहीं करवाए है । वादी ने अपनी जिरह में गह भी स्वीकार किया है कि दिनांक 22.12.1994 के पश्चात् उसने अपनी ईकाई के चलने बाबत लाईसेंस का नवीनीकरण नहीं करवाया है । ऐसी स्थिति में वादी का यह कथन अविश्वसनीय-संदिग्ध हो जाता है कि

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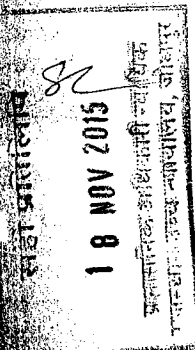
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दिनांक 22.12.1994 के पश्चात् वादी इस औद्योगिक ईकाई पर अपना कब्जा होना कहता है। जहां तक वादी की औद्योगिक ईकाई को बेचान किए जाने के संबंध में अपनाई गई प्रक्रिया का प्रश्न है, वादी एवं उसके गवाहन ने अपने बयानों में यह स्वीकार किया है कि विवादित संपत्ति की निलामी की जानकारी उसी दैनिक भास्कर समाचार पत्र से हुई थी। इस न्यायालय की विनम्र राय में दैनिक भास्कर समाचार पत्र राजस्थान के बड़े एवं प्रतिष्ठित समाचार पत्रों में से एक है। ऐसी स्थिति में प्रतिवादी सं. 01 व 02 द्वारा विवादित संपत्ति की निलामी के संबंध में इस समाचार पत्र में जो विज्ञप्ति जारी करवाई है उससे इन प्रतिवादीगण की इस प्रक्रिया के संबंध में पारदर्शिता प्रमाणित होती है। यहां यह तथ्य गौर तलब है कि स्वयं वादी इस प्रकार की किसी सूचना के आधार पर दिनांक 26.06.2006 को निलामी स्थल पर पहुंचा था। अतः वादी का यह कहना कि प्रतिवादी सं. 01 व 02 ने गुपचुप तरीके से गलत व फर्जी आधारों पर विवादित संपत्ति को बेचने की निलामी प्रक्रिया अपनाई थी स्वयं वादी एवं उसके गवाहन द्वारा दी गई साक्ष्य से ही प्रमाणित नहीं होती है।

14- इस संबंध में पत्रावली का ध्यानपूर्वक अवलोकन करने पर यह तथ्य भी उभरकर सामने आया है कि प्रतिवादी ने वादी को लगभग 13-14 वर्ष जैसी अत्यधिक लम्बी अवधि में तीन पत्र प्रदर्श.5 लगायत प्रदर्श.7 लिखे एवं इन पत्रों के माध्यम से वादी से जो अपेक्षा की थी उस अपेक्षा को भी वादी ने पूरा नहीं किया। इस तथ्य को स्वयं वादी ने अपनी जिरह में स्वीकार किया है। पत्रावली पर आई साक्ष्य से यह तथ्य भी उभरकर सामने आया है कि प्रतिवादी सं. 01 व 02 ने विवादित संपत्ति को दिनांक 22.06.2006 से पूर्व सार्वजनिक निलामी से बेचे जाने के लिए कई-कई





बार प्रयास किए परन्तु उन परिस्थितियों के तहत उचित कीमत नहीं मिलने, कभी निलामी के लिए खरीदारों के उपस्थित नहीं होने तथा कभी स्वयं वादी द्वारा बकाया राशि जमा कराने के आवधासन देने के कारण निलामी कार्यवाही सम्पन्न नहीं हो सकी। कुल मिलाकर इस संबंध में जो दस्तावेजी साक्ष्य प्रतिवादी सं. 01 व 02 ने प्रस्तुत की है एवं इसके समर्थन में प्रतिवादी सं. 01 की ओर से गवाह डीड 1 ओमप्रकाश व डीड 2 प्रेमदयाल ने जो मौखिक साक्ष्य दी है उसे यह बात बखुबी प्रमाणित हो जाती है कि विवादित संपत्ति को बेचे जाने के लिए 8-10 वर्ष जैसी अत्यधिक लम्बी अवधि गुजरी थी, इस दौरान वादी ने प्रतिवादी सं. 02 के समक्ष उपस्थित होकर प्रार्थना पत्र प्रदर्शण 1 से प्रदर्शण 3 प्रस्तुत किए परन्तु राशि जमा नहीं करवाई तथा अन्त में दैनिक भास्कर समाचार पत्र में प्रकाशित विज्ञप्ति के आधार पर विवादित संपत्ति का बेचान कर दिया।

15- जहां तक विवादित संपत्ति को काफी कम कीमत पर बेचने के संबंध में वादी द्वारा लिए गए आधार का प्रश्न है, इस संबंध में वादी द्वारा दी गई साक्ष्य का ध्यानपूर्वक अवलोकन करने पर ऐसा कोई दस्तावेजी प्रमाण वादी ने प्रस्तुत नहीं किया जो यह प्रमाणित करें कि विवादित संपत्ति की डी.एल.सी. रेट 64 रूपए प्रति वर्गफीट तात्कालीन समय में रही हो इस आशय का कोई दस्तावेजी प्रमाण जिस प्रकार साक्ष्य में प्रस्तुत नहीं किया तब केवल इस आधार पर जुबानी साक्ष्य को पर्याप्त नहीं माना जा सकता है। इसके अतिरिक्त जब वादी को दिनांक 26.06.2006 को निलामी की कार्यवाही की समस्त जानकारी हो गई थी एवं अपनी आर्थिक परिस्थिति अथवा अन्य विषम परिस्थिति की वजह से यदि वह स्वयं इस संपत्ति को खरीदने में अथवा विक्रय होने से रोकने में समर्थ नहीं था तब वह स्वयं सुदृढ

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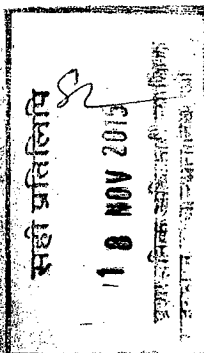
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आर्थिक स्थिति के खरीददार को खड़ा कर इस संपत्ति को अधिकतम कीमत पर निलामी को सम्पन्न करवा सकता था परन्तु ऐसा भी कोई कदम उठाया जाना वादी की साक्ष्य में उभरकर सामने नहीं आया है। पीड 3 अजीज मोहम्मद ने अपनी जिरह में इस आशय की महत्वपूर्ण स्वीकारोक्ति की है कि निलामी तो हुई थी परन्तु संपत्ति किसे बेची इसकी उसे जानकारी नहीं है। यहां यह तथ्य गौर तलब है कि जहां वादी एवं उसके गवाहान रामेश्वर लाल भट्ट, अजीज मोहम्मद अपने मुख्य परीक्षण में निलामी कार्यवाही होने से ही इंकार करते हैं वहीं दूसरी ओर गवाह पीड 3 अजीज मोहम्मद ने अपनी जिरह में इस आशय की महत्वपूर्ण स्वीकारोक्ति की है। इसके अतिरिक्त इन गवाहान को निलामी में हिस्सा लेने से प्रतिवादी सं. 01 व 02 द्वारा रोके जाने का कोई ठोस व न्यायसंगत आधार प्रकट नहीं किया गया है। यदि वास्तव में ऐसा होता तब इन दोनों गवाहान द्वारा भी प्रतिवादी सं. 01 व 02 के भीलवाड़ा स्थित कार्यालय पर पदस्थापित ऐसे अधिकारियों-कर्मचारियों के विरुद्ध उच्चधिकारियों को अवश्य ही शिकायत की जाती परन्तु ऐसा नहीं किया गया है। इस प्रकार वादी के उपरोक्त दोनों गवाहान द्वारा निलामी की प्रक्रिया की संदिग्धता के संबंध में जो साक्ष्य प्रस्तुत की गई है वह लेशमात्र भी माने जाने योग्य नहीं पाई जाती है।

16- इस संबंध में विद्वान अधिवक्ता प्रतिवादीगण की ओर से प्रस्तुत न्यासिक दृष्टांतों का ध्यानपूर्वक अवलोकन किया गया। उपरोक्त सभी न्यायिक दृष्टांतों में निलामी की प्रक्रिया, पारदर्शिता आदि के संबंध में मत व्यक्त किए गए हैं। हस्तगत मामलें में निलामी प्रक्रिया, पारदर्शिता को संदिग्ध नहीं माना गया है। ऐसी स्थिति में उपरोक्त सभी न्यायिक दृष्टान्त हस्तगत मामलें पर पूर्णरूप से लागू नहीं पाए जाते हैं।





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और इनसे विद्वान अधिवक्ता प्रतिवादी सं. 01 व 02 की ओर से बहस में उठाए गए तर्कों का सम्बल मिलता है।

17- इस प्रकार उपर लिए गए विवेचन के अनुसार वादी इस विवाद्यक बिन्दु का साबित करने में पूर्णरूप से विफल रहा है। अतः यह विवाद्यक बिन्दु वादी के विरुद्ध तय किया जाता है।

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-: आदेश :-

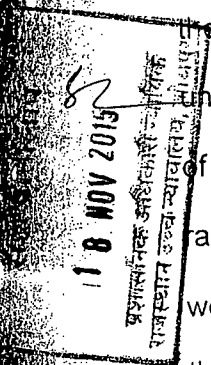
25- फलस्वरूप वादी का यह दावा विरुद्ध प्रतिवादीगण बाबत घोषणा एवं निरस्त कराए जाने निलामी दिनांक 26.06.2006, विक्रय विलेख दिनांक 15.09.2006 एवं स्थाई निषेधाज्ञा एतद्वारा अस्वीकार कर खारिज किया जाता है। खर्चा पक्षकारान अपना-अपना वहन करेंगे। तदनुसार डिक्री पर्चा बनाया जाए।

sd/-

(रवि शर्मा)

अपर जिला एवं सेशन न्यायाधीश
सं. 2, भीलवाड़ा (राज.)"

4. The learned counsel Mr. Arvind Samdariya appearing for the plaintiff-appellant vehemently submitted that the industrial unit in question of the plaintiff has been sold at throwaway price of Rs.90,000/- only even though the land rate as per the DLC rates itself would go over Rs. 2,00,000/- and besides this, there were some constructed portions on the land in question and, therefore, the sale deed dated 15.09.2006 which was executed by the defendant-RFC at Rs.90,000/- in favour of the defendant No.3 deserves to be set aside. The learned counsel





also submitted that the other aspirants who sought to purchase the industrial unit in question were not even allowed by the defendant-RFC and their offers were not entertained by the defendant-RFC and, therefore also, for this reason, the present first appeal filed by the plaintiff-appellant deserves to be allowed. The learned counsel read the statements of the witnesses DW-1 and DW-2 before the Court in the present first appeal.

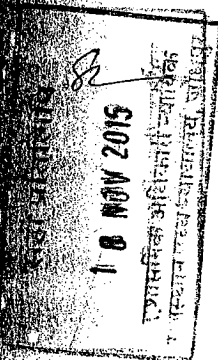
5. On the other hand, the learned counsel Mr. Rakesh Sinha appearing for the respondents-defendants-RFC, as nobody appeared for the defendant No.3-Akil Ahmed despite service of notice, contended that the respondents-RFC has exercised its statutory powers conferred by the SFC Act. The learned counsel submitted that the defendants-respondents-RFC had taken over the possession of the industrial unit on **22.12.1994** upon the plaintiff-appellant having failed to re-pay the loan amount which given to him in the years in between 1982 to 1984. The learned counsel also submitted that several efforts were made to fetch the reasonable price of the said industrial unit and the same has been put to public auction approximately for 20 times but ultimately, by negotiations only, the defendant No.3-Akil Ahmed could be brought to the level of Rs.90,000/- and since there was no other purchaser available with the respondents-RFC, they sold the industrial unit in question to the defendant No.3 at the price of Rs.90,000/- in accordance with

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the provisions of the SFC Act. The learned counsel also read out the detailed examination-in-chief and cross-examination of Mr. Om Prakash S/o Tara Chand Jain, General Manager (Technical) of the respondent-RFC. The learned counsel Mr. Rakesh Sinha further submitted that the respondents-RFC had put the industrial unit in question to auction after due publication of notices in the newspapers and even after finalising the auction, the plaintiff was given an opportunity to bring buyers of higher price but he failed to do so. The learned counsel submitted that as per the Exhibit-22, a letter addressed by the plaintiff to the Manager on 26.06.2006 would indicate that the plaintiff was ready to pay Rs.47,000/- only, as one-time settlement ignoring the interest altogether, whereas even after realising the amount of Rs.90,000/- from the defendant No.3 for the aforesaid industrial unit, according to the respondents-RFC, the dues including the interest against the plaintiff were found to be Rs.2,62,318/-, as stated in para 9 of the affidavit dated 30.08.2013 of DW-1 Om Prakash Jain. The relevant para Nos. 5 to 9 of the affidavit dated 30.08.2013 of Shri Om Prakash Jain are quoted herein below for ready reference:-



"5. मैं शपथपूर्वक निवेदन करता हूँ कि राजस्थान वित्त निगम को वादी में फंसी हुई समस्त बकाया राशि की वसूली हेतु ईकाई की अधिग्रहित सम्पत्ति समाचार पत्रों में विज्ञापन देकर निर्धारित प्रक्रिया के अनुसार निगम रिकॉर्ड के अनुसार 21 बार निलामी आयोजित



की गई चूंकि 20 बार की निलामी में कोई खरीददार नहीं आया अथवा बोली कम आने से निलामी कमेटी में स्वीकृति नहीं दी अन्त में 21 वीं बार निलामी में कमेटी ने श्री अकील अहमद की अन्तिम बोली 90,000/- रुपये उचित मानते हुए ईकाई की बिक्री की अनुमति प्रदान कर दी क्योंकि 20 बार के प्रयास के बाद एवं वादी को भी इस बाबत सूचना देकर अधिकतम बोली लाने का अवसर भी दिया गया, फिर भी 90,000/- रुपये से अधिक की बोली प्राप्त नहीं हुई ।

6. मैं शपथपूर्वक निवेदन करता हूँ कि खरीददार श्री अकील अहमद प्रतिवादी नम्बर-3 द्वारा सम्पूर्ण विक्रय मूल्य 90,000/- रुपये जमा कराये जाने के कारण दिनांक 15.09.2006 को पंजीकरण कार्यालय में विक्रयपत्र निष्पादित किया गया एवं दिनांक 03/11/2006 को श्री चिमनलाल खूबवानी नोटेरी पब्लिक की मौजूदगी में श्री नन्दलाल बाहेती/महेश जोशी द्वारा अकील अहमद, खरीददार को ईकाई का वास्तविक कब्जा भौतिक रूप से सम्भाला दिया गया ।

7. मैं शपथपूर्वक निवेदन करता हूँ कि निगम के सक्षम अधिकारियों द्वारा ईकाई के बाजार मूल्य की गणना की गई, जिसमें भूमि का मूल्य 22,000/- रुपये, भवन का मूल्य 83,000/- रुपये एवं भट्टे का मूल्य 10,000/- रुपये यानि कुल 1,15,000/- रुपये आंका गया, परन्तु 1996 से लेकर सन् 2006 तक 20 नीलामियों में बोली वास्तविक मूल्य प्राप्त नहीं होने से 20 वीं निलामी में 90,000/- रुपये की बोली सही एवं सत्य मानते हुए कमेटी द्वारा स्वीकार की गई ।

8. मैं शपथपूर्वक निवेदन करता हूँ कि निलामी में भाग लेने के इच्छुक व्यक्ति धरोहर राशि जमा कराकर निलामी की प्रक्रिया में भाग ले सकता था चूंकि वादी द्वारा प्रस्तुत अन्य किसी व्यक्ति ने धरोहर राशि जमा

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नहीं कराई, अतः नीलामी में भाग लेने के लिए योग्य नहीं थे।

9. मैं शपथपूर्वक निवेदन करता हूँ कि नीलामी के पश्चात् पत्र दिनांक 30/03/2007 के द्वारा शेष डेफिसियेट राशि 2,62,318/- रुपये + ब्याज की राशि का मांगपत्र जारी किया गया। वादी की प्रार्थनापत्र पर सम्पूर्ण बकाया डेफिसिट राशि का निपटारा योजना में दिनांक 11.08.2011 को 22,000/- में कर दिया गया है, जिसे स्वीकार करते हुए वादी ने निगम में जमा करा दिया है। दिनांक 11.08.2011 के समझौता की शर्त के अनुसार वादी को कोर्ट से ये प्रकरण वापस लिया जाना था, लेकिन प्रकरण नहीं उठाने की दशा में निगम द्वारा नो ड्यूज प्रमाणपत्र जारी नहीं किया गया है। प्रकरण वापस नहीं लिया जाने पर निगम द्वारा समझौता निरस्त कर दिनांक 30.03.2007 को बकाया 2,62,318/- रुपये + ब्याज + समस्त कोर्ट खर्चा की मांग की जाकर निगम राशि प्राप्त करने का अधिकारी है।

भीलवाड़ा

Identified by me sd/-

दिनांक : 30.8.2013

sd/- Om Prakash Jain"

6. The letter Exhibit-22 of the plaintiff-Mohd.Hanif dated 26.06.2006 is also quoted herein below for ready reference:-

" सेवा मे

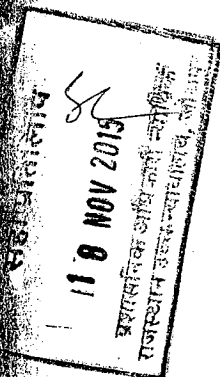
श्रीमान मैनेजर साहब
आर.एफ.सी. विभाग भीलवाड़ा

प्रार्थी:-

हनीफ मोहम्मद S/o अहमद जी नीलगर
नि. हमीरगढ़

विषय:-

आपके पत्र क्रमांक 1391 दि. 3.6.06 के
जवाब के सम्बन्ध में।





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महोदयजी,

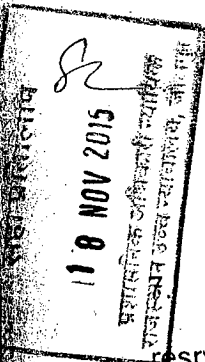
उपरोक्त विषय में निम्न निवेदन है

- (1) यह है कि मैंने कुल 47000/- के तीन ऋण लिये थे ।
- (2) यह है कि मैं 10-12 वर्ष से बेरोजगार हूँ । तथा 4 वर्ष से मैं विकलांग हो गया हूँ जिसका प्रमाण पत्र मैंने पूर्व में पेश कर रखा है ।
- (3) यह है कि मैंने पूर्व में एक मुश्त योजना के तहत 72000/-बहतर हजार रुपये में निस्तारण हेतु लिखा था ।
- (4) यह है कि अब मैं विकलांग हूँ तथा बेरोजगार हूँ एवं सम्पूर्ण कर्ज नहीं चुका सकता । मैं 47000/- सेतालिस हजार रुपये मुल रकम देने को तैयार हूँ जो भी मैं व्यवस्था करके दे सकता हूँ । मेरी परिस्थितियों को एवं मैं डाईबिटिज का मरीज भी हूँ को देखते हुये मुल रकम जमा कराने का आदेश दिया जावे ।

अतः श्रीमान् से प्रार्थना है कि मेरी परिस्थितियों को देखते हुये मुल रकम 47000/- रु जमा कर निस्तारण किया जाने का आदेश प्रदान किया जावे ।

भीलवाड़ा
दि. 26.6.06

sd/-
मोहम्मद हनीफ



The learned counsel Mr. Rakesh Sinha appearing for the respondents-defendants-RFC submitted that upon perusal of the record, it cannot be said that the industrial unit of the plaintiff-appellant had been sold out by the defendants at an thrown-away price and rather it can be said that the best possible price was realised by the respondents-defendants-



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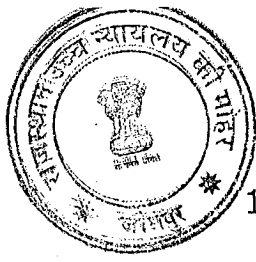
Judgment, *Monday*, dated 26.10.2015

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RFC from the defendant No.3-Akil Ahmed after making several efforts for auction of the said unit and, therefore, the learned counsel submitted that the suit of the plaintiff seeking cancellation of the sale deed dated 15.09.2006 has rightly and correctly rejected by the learned Trial Court and no interference is called for in the present first appeal. The learned counsel also submitted that the possession of the unit in question has already been handed over to the bona fide purchaser, the defendant No.3 way back in the year 2006 when the sale deed was executed in his favour.

8. I have heard the learned counsels for the parties at length and upon perusal of the record of the case including the impugned judgment and decree dated **04.03.2014**, this Court is of the opinion that there is no contra evidence available on record to declare the legitimate sale-deed in question as null and void. It is noticed that several efforts for fetching the reasonable price of the unit in question were made by the respondents-RFC after due publication of the auction notices in the newspapers in between the period of 1994 to 2006 and even the unit in question was put to auction for 20 times, therefore, it cannot be believed that the plaintiff-appellant would know all these developments but at the same time, he was supposed to square-up the loan account with the respondents-RFC in the year 1994 when his unit was taken over by the respondents-RFC in accordance with Section 29 of the SFC

प्रमाणित की जायेगी
जम्मू और कश्मीर हाईकोर्ट
जम्मू

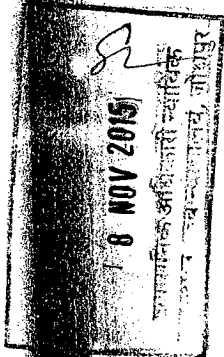


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Act. The exercise of the statutory powers cannot be held to be illegal just for askance of the defaulter, the plaintiff-Mohd. Hanif. This Court is of the view that merely because of the possession of the unit in question had been taken over by the respondents-RFC and the full price, as per the DLC Rates of the land, may not have been realised by the respondents-RFC that does not become a ground for the borrower/defaulters for annulling the sale-deed, which was validly executed in favour of the respondent-defendant No.3. It is also noticed that for ten years, the unit in question and its assets were remained in a junk position with the defaulter, the plaintiff Mohd. Hanif and the same was ultimately taken over by exercising the statutory powers under Section 29 of the SFC Act by the respondents-RFC. It is also noticed that, as stated in the affidavit of the Manager, DW-1 Shri Om Prakash Jain, even the price offered by the defendant No.3-Akil Ahmed at the initial stage of the auction proceedings was much less (Rs.60,000/- only) and only after negotiations, the price of the unit in question could be brought up to the level of Rs.90,000/- and as there were no other purchaser available with the respondents-RFC, the auction was struck in favour of the defendant No.3 and the sale-deed dated 15.09.2006 was executed in the office of Sub-Registrar and the possession of the unit in question had been handed over to the bona fide purchaser, the defendant No.3-Akil Ahmed. Upon perusal of the record of the case, the non-





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appearance of the defendant No.3-Akil Ahmed before the learned Trial Court for contesting the suit cannot enure to the benefit of the plaintiff-appellant, the defaulter. The defendant No.3-Akil Ahmed is a bona fide purchaser of the unit in question from a public authority, like the RFC. The respondents-defendants-RFC had put the unit in question into auction and finalise the same in favour of the defendant No.3 as per the statutory provisions contained in the SFC Act. Therefore, this Court is of the opinion that the reasons assigned by the learned Trial Court on the basis of evidence led before it for upholding such auction proceedings and consequent sale in favour of the defendant No.3 is unassailable and the same is not liable to be set aside in the present appeal and the appeal of the plaintiff is thus found to be devoid of merit and, therefore, the same is liable to be dismissed.

9. Accordingly and in view of the above, the present First Appeal filed on behalf of the plaintiff-appellant-Mohd. Hanif S/o Ahmed stands dismissed. No costs. A copy of this order be sent to the Trial Court concerned and to the parties concerned forthwith.


(Dr. VINEET KOTHARI), J.

/Mohan/
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