Supreme Court of India Haryana Financial Corporation & ... vs M/S Jagdamba Oil Mills & Anr on 28 January, 2002 Author: A Pasayat Bench: B.N. Kirpal, K.G. Balakrishnan, Arijit Pasayat CASE NO.: Appeal (civil) 607 of 2002

PETITIONER: HARYANA FINANCIAL CORPORATION & ANR.

Vs.

RESPONDENT: M/S JAGDAMBA OIL MILLS & ANR.

DATE OF JUDGMENT: 28/01/2002

BENCH: B.N. Kirpal, K.G. Balakrishnan & Arijit Pasayat

JUDGMENT: ARIJIT PASAYAT, J. Haryana Financial Corporation (hereinafter referred to as 'Corporation') assails judgment dated 6.10.2000 of the Punjab and Haryana High Court in regular second appeal No. 3801/2000 whereby judgment and decree in Civil Suit no. 86 of 1995 instituted before the Civil Judge (Senior Division), Ambala and judgment and decree in Civil Appeal no.37 of 1998 before the Addl. District Judge, Ambala affirming them were upheld. Respondents filed the suit seeking a decree for permanent injunction restraining the Corporation and its functionaries from auctioning the unit of the respondents which was seized by the Corporation. The factual background of the case in a nutshell is as under: Respondent no.1 a concern represented by its proprietor (respondent No.2) applied to the Corporation for grant of loan and in terms of the sanction letter dated 16.10.1992 a sum of Rs.7,48,000/- was sanctioned. The loan was to be repaid in 8 years, to be counted from the date of execution of the mortgage deed. The repayment of the loan was to be made in 15 half yearly instalments. Said repayment was to commence within 13 months from the first disbursement of the loan. The first 13 instalments of payment were to be of Rs.50,000/- each and the last two instalments were to be of Rs.49,000/- each, towards principal. Apart from the repayment of principal amount, the respondents were required to pay, inter alia, interest which became due along with the respective instalment towards the principal amount. Respondent no.1 mortgaged its land, building and machinery in favour of the Corporation. In the mortgage deed it was categorically mentioned that loan instalments were to be disbursed on the basis of securities created by the borrowers and as and when enough securities were created, the loan amount was to be disbursed. According to the Corporation, the said method was adopted so as to safeguard the interest of the Corporation and also to ensure that the money taken as a loan from the Corporation is being utilized for the purpose for which it was sanctioned as per the loan agreement. The Corporation disbursed the first instalment of loan on 25.2.1993 upon creation of the mortgage. The last instalment was disbursed on 26.2.1994. The total loan availed by the respondent no.1 was Rs.7.45 lacs. As per the terms and conditions stipulated in the loan agreement, respondent no.1 was required to deposit a sum of Rs.1,29,551/- on 1.3.1994. But there was failure to deposit the same. Respondent no.1, however, requested the Corporation to reschedule the repayment schedule. The request was accepted and reschedule-

ment was done. Thereafter on 1.9.1994 Rs.1,24,409/- fell due. There was again default in making the deposit. Respondent no.1 again requested to reschedule the instalment. The request was again accepted. Notwithstanding such change in the schedule of payments, respondent did not make any payment. Thereafter on 1.3.1995 an instalment of Rs.1,31,046/- fell due. As in the past, the respondent defaulted in making the payment of the said instalment. As the respondent no.1 was a chronic defaulter in making payment of the instalments action under Section 29 of The State Financial Corporation Act, 1951 (in short 'the Act') was taken, after recalling the loan under Section 30 of the Act. Possession of the unit of the respondents was taken by the Corporation. Respondents instituted Civil Suit no.86 of 1995 in the court of the Civil Judge (Senior Division), Ambala seeking a decree for permanent injunction restraining the Corporation and its functionaries from auctioning the unit which was seized. The said suit was decreed by the trial court. It was, inter alia, observed that since the defendants (meaning the Corporation and its functionaries) did not give breathing time to the unit and its possession was taken within the period of one year from the date of last instalment, the action cannot be sustained. Reliance was placed on the decision of this Court in Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation and Ors. (1993 (2) SCC 279). The matter was carried in appeal. The Addl. District Judge, Ambala in Civil Appeal No. 37 of 1998 upheld the view of the trial court. Reliance was also placed by the first Appellate Court on the decision in Mahesh Chandra's case (supra). The matter was again carried in Second appeal before the Punjab & Haryana High Court. In the said appeal, by the impugned judgment, the challenge was negatived. It was held that there was no merit in the appeal in view of what has been stated by this Court in Mahesh Chandra's case (supra). In support of the appeal, learned counsel for the Corporation submitted that the courts below erred in placing reliance on the decision in Mahesh Chandra's case (supra) without noticing the distinguishing factual backgrounds. It was submitted that the courts below did not apply the decision of this Court in U.P. Financial Corporation vs. Gem Cap (India) Pvt. Ltd. & Ors. (1993 (2) SCC 299) which was squarely applicable. The principles to be applied in a case where action under Section 29 of the Act is sought to be taken by the Corporation have been elaborately dealt with in the said case. It is also submitted that the decision in Mahesh Chandra's case (supra) requires reconsideration in view of what has been stated in latter decisions, more particularly, in Gem Cap's case (supra). It is submitted that on the facts as noted by the courts below, ample opportunity was granted to the respondents to make payment. Requests for rescheduling the instalments were accepted. Notwithstanding such adjustments, respondents did not bother to make payment, and till date, not even a minor fraction of the principal amount has been paid. Learned counsel for the respondents submitted the Corporation and the borrower unit have a fiduciary relationship and are really partners in a business enterprise. Corporation stands in the position of a trustee and is not expected to act like any other individual moneylender. Keeping in view the object for which the statute in question was enacted, any other interpretation would be against the legislative intent. The object for which the Act was

enacted needs to be noted. Central Industrial Financial Corporation was originally set up under the Industrial Financial Corporation Act, 1948 with a view to provide medium and long term credit to industrial undertakings which fall outside the normal activity of commercial banks. Several State Governments desired to set up in the States similar Corporations with a view to supplement the work of Industrial Financial Corporation. The intention was that the State Financial Corporations shall confine to the medium and small industrial units and as far as possible to such cases as are outside the scope of the Industrial Financial Corporation. Since the incorporation, regulation and winding up of such Corporations fall within the purview of Parliament by Entry No.43 of the Union List, request was made to the Government of India to enact necessary enabling legislation, and that is how the Act was enacted. The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by unsurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand on the way of a deserving borrower getting financial assistance. As was observed by this Court in Gem Cap's case (supra), the legislative intent in enacting the statute in question was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of creditor and debtor. That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write if off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization which is the intended object can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As was rightly observed in Gem Cap's case (supra), promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to private account. In Mahesh Chandra's case (supra), this Court issued directions which were required to be observed by the Financial Corporation while exercising power under Section 29. In this regard, it was observed at pages 297 and 298 as follows: "Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable: (1) Sale of a unit should always be made by public

auction. (2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price. (3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder. (4) (a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount. (b)If he brings third parties with higher offer it would be tested and may be accepted. (5) Sale by private negotiation should be permitted only in very large concerns where investments runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by (sic many) normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers. (6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account." The guidelines were stated to be necessary to ensure fair play. That decision, as the factual position would go to show was rendered in a case where the borrower intended to repay the debt and was anxious to do so. While not insisting upon the borrower to honour the commitments undertaking by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. In matters like the present one, fairness cannot be a one- way street. Corporations borrow money from the Government or other financial corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that Corporation was not acting fairly, even if requisite procedures have been followed. The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak V. Union of India [1969 (2) SCC 262]. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". [As per Lord Diplock in Secretary of State for Education and Science v. Metropolitan Borough Counsel of Tameside (1977 AC 1014)]. The Court cannot substitute

its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1947 (2) ALL ER 680]: "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority." While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the Courts while reviewing the administrative action is not that of an appellate court. The aforesaid position was succinctly stated in Gem Cap's case (supra). The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may, for the decision of the Corporation. As was observed by this Court in U.P. Financial Corporation and Ors. vs. Naini Oxygen & Acetylene Gas Ltd. and Anr. (1995 (2) SCC 754), in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corporation vs. Micro Cast Rubber & Allied Products (P) Ltd. & Ors. (JT 1996 (6) SC 37), in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or, (b) where the State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short 'the Constitution'), the High Court does not sit as an appellate authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist. As was observed in The Chairman

and Managing Director, SIPCOT, Madras 8 and Ors. vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and Anr. (JT 1995 (6) SC 283) in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which Corporations have to keep in view while dealing with disposal of seized units. The view in Mahesh Chandra's case (supra) appears to have been too widely expressed without taking note of ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, 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. The view expressed in Gem Cap's case (supra) appears to be more in line with the legislative intent. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight by the courts below. It is one thing to assist the borrower who has intention to repay, but is prevented by unsurmountable difficulties in meeting the commitments. That has to be established by adducing material. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in Mahesh Chandra's cases (supra), the matter has been decided. Section 29 gives a right to the Financial Corporation inter alia to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. This right accrues when the industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives the Financial Corporation in the event of default the right to take over the management or possession or both

and thereafter deal with the property. The aforesaid guidelines issued in Mahesh Chandra's case place unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra's case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will 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. The subsequent decisions of this Court in Gem Cap's (supra), Naini Oxygen (supra) and Micro Cast Rubber (supra) run counter to the view expressed in Mahesh Chandra's case. In our opinion, the issuance of the said guidelines in Mahesh Chandra's case are contrary to the letter and the intent of Section 29. In our view, the said observations in Mahesh Chandra's case do not lay down the correct law and the said decision is overruled. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statues, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at P. 761), Lord Mac Dermot observed: "The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge." In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech..is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board, (1972) 2 WLR 537 Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case." Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicks: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against

the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." xxx xxx xxx "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it." Learned counsel for the respondents during the course of hearing submitted that unit is in the possession of the Corporation. They will make effort to make payment of the amount due to the Corporation, if a reasonable time is granted. Though their stand has always been different, and the Corporation opposes the prayer, we grant the prayer in the peculiar circumstances of the case. To test the bona fides of the respondents, we direct that the Corporation shall intimate the respondents within a month from to-day upto date amount due. Within six months from the date of such intimation, the respondents shall repay the amount in full. In case of failure to make the payment, it shall be open to the Corporation to dispose of the seized unit in accordance with law in such manner as would bring in the highest price. The appeal is allowed to the extent indicated above. ....J. (B.N. Kirpal) ...J. (K.G. Balakrishnan) ..J. (Arijit Pasayat) January 28, 2002