

## **Asnew Drums Private Ltd. & Ors vs Maharashtra State Finance Corporation ... on 24 August, 1971**

**Equivalent citations: 1972 AIR 801, 1972 SCR (1) 351, AIR 1972 SUPREME COURT 801, 1973 MADLJ1011, 1972 (1) SCR 351, 1972 2 SCJ 223, 1975 BOM LR 352**

**Author: S.M. Sikri**

**Bench: S.M. Sikri, A.N. Ray, D.G. Palekar**

PETITIONER:

ASNEW DRUMS PRIVATE LTD. & ORS.

Vs.

RESPONDENT:

MAHARASHTRA STATE FINANCE CORPORATION & ORS.

DATE OF JUDGMENT 24/08/1971

BENCH:

SIKRI, S.M. (CJ)

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SIKRI, S.M. (CJ)

RAY, A.N.

PALEKAR, D.G.

CITATION:

1972 AIR 801                      1972 SCR (1) 351

1971 SCC (3) 602

ACT:

State Financial Corporation Act (Maharashtra Act, 63 of 1951)--Appeal whether lies to High Court against order of sale of mortgaged property by District Judge under s. 38(2)-District Judge whether persona designata-summary dismissal of appeal whether justified.

HEADNOTE:

Section 32(8) of the State Financial Corporation Act, 1961 provides "An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were

the decree-holder". The appellant's properties which were mortgaged under a registered deed to the Maharashtra State Financial Corporation were ordered to be sold by an order passed by the District Judge under s. 32(8) of the aforesaid Act. The High Court dismissed the appeal filed against the order of the, District Judge on the ground that no appeal lay. On merits also the appeal was dismissed summarily. In appeal to this Court by special leave,

HELD : (i) The High Court erred in holding that no appeal lay.

(a) There is no doubt that under the Code of Civil Procedure an order setting aside or refusing to set aside a sale in execution of a decree is appealable under Order XLIII r. 1(j). It is difficult to understand why the scope of the language should be cut down by not including appeals provided under the Code of Civil Procedure within the ambit of the words "in the manner provided in the Code of Civil Procedure". "Manner" means method of procedure and to provide for an appeal is to provide for a mode of procedure. The State Financial Corporation lends huge amounts and it could not be imagined that it was the intention of the Legislature to make the order of sale of property, passed by the District Judge, final and only subject to an appeal to the Supreme Court under Art. 136 of the Constitution. [354 H-355 B]

The fact that an appeal to the High Court has been expressly provided in s. 32(9) could not lead to a different conclusion., The reason why an appeal has been expressly provided therein is that if there had been no specific provision in sub-s. (9), no appeal would lie otherwise because it is not provided in sub-s. (5) or sub-s. (7) that the District Judge should proceed in the manner provided in the Code of Civil Procedure. [355 D]

(b) On a correct reading of s. 32(11) it cannot be said that the Act confers jurisdiction on the District Judge as *persona designata*. [355 E-F]

(c) The contention that the whole idea of the Act was to have expeditious execution as otherwise large funds of the State Financial Corporation would be locked up during execution proceedings could not be accepted. If this was the intention of the legislature it would have expressly provided that no appeal would lie against, an order made under sub-s. (8) of s. 32. [355 G]

(ii) On the facts of the case the High Court was not justified in dismissing the appeal summarily. [356 A]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1021 and 1022 of 1971 and 1852 of 1970.

Appeals by special leave from the orders dated February 16, 1970 and August 20, 1970 of the Bombay High Court in First Appeal No. 152 of 1970 and Civil Application No. 2183 of 1970 and from the judgment and order dated January 16, 1970 of the Distt. Court, Thana, Bombay in Misc. Applications Nos. 111 of 1969 and 75 of 1965, respectively. V.M. Tarkunde, B. Datia and B. R. Agarwal, for the appellants (in all the appeals).

M.N. Phadke and A. G. Ratnaparkhi, for respondents Nos. 1 and 2 (in all the appeals).

C. K. Daphtary, Bishan Narain, Harish Chandra, S. Jalan and H. K. Puri, for respondent no. 3 (in all the appeals). The Judgment of the Court was delivered by SIKRI, C. J.-Civil Appeal No. 1021 of 1971, by special leave is directed against the judgment of the Bombay High Court, dated February 16, 1970, dismissing First Appeal No. 152 of 1970, summarily. The judgment of the High Court reads "No appeal lies.

Even on merits we do not find any substance. Dismissed."

This First Appeal was purported to be filed under sub-s. (9) of s. 32 of the State Financial Corporation Act (63 of 1951) hereinafter referred to as the Act-from the judgment and order dated January 16, 1970, passed by Gopal U. Rijhsinghani, Joint Judge, Thana, in Miscellaneous Application No. 111 of 1969. Two points arise in this appeal : (1) Whether an appeal lies to the High Court under s. 32(9) of the Act ? (2) if the appeal lay, was it a case for a summary dismissal ?

In order to appreciate these points it is necessary to set out a few facts. One of the appellants, Asnew Drums Private Ltd., hereinafter referred to as the appellant company, made an application to the Bombay (now Maharashtra) State Financial Corporation for a loan of Rs. 10 lakhs for installing and erecting machinery plant and other fixtures for its drum reconditioning factory at Kalve, Thana District, Bombay. The appellant Company executed a registered deed of mortgage by, way of security, pledging all lands, buildings, machineries etc. On August 10, 1965, the Finance Corporation filed Miscellaneous Application No. 75 of 1965 against the appellant company and two of its Directors under 35 3 s.31 of the Act for sale of company properties mortgaged and for issue of interim injunction restraining the company from dealing with these properties.

The relevant part of Section 31 (1) of the Act provides " 31(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof..... then without prejudice to the provisions of s. 29 of this Act and of section 69 of the Transfer of Property Act, 1882, any officers of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance. or

(b).....

(c)for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended."

On August 18, 1965, the District Judge issued an interim injunction restraining the company from transferring or removing its machinery, plant or equipment. On April 11, 1966, the District Judge confirmed the order of injunction and attachment and ordered the sale of attached machinery and plant of the company and passed an order for issue of sale proclamation as required under s. XXI r. 66, C.P.C. Section 32 of the Act lays down the procedure to be adopted by the District Judge in respect of 'applications under s. 31(1)(a) and (c) of the Act. Sub-s. (6) of s. 32 provides that "if cause is shown, the district judge shall proceed to, investigate the claim of the Finance Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto." It is under this sub-section that the District Judge investigated the claim although we were informed that no rules had been framed containing the provisions of the Code of Civil Procedure to be applied for this purpose. The relevant part of sub-s.(7) provides that after making an investigation under sub-s.(6) the District Judge may confirm the order of attachment and direct the sale of the attached property. It is under this sub-section that the District Judge confirmed the order of attachment and directed the sale of the attached property.

Sub-section (8) of s. 32 calls for interpretation in this appeal. It provides :

"32(8). An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder."

The District Judge applying the relevant provisions of the Code of Civil Procedure issued various proclamations for sale. The last one was issued in pursuance of the order dated June 30, 1969 of the District Judge directing that the properties be again put up for sale. On July 28, 1969 a fresh proclamation for the fifth time for sale was issued and on August 20, 1969 a public notice was published in the Times of India only. On August 28, 1969, the highest bid for lot No. 1 was Rs. 5,70,000/- and for lot No. 2 Rs. 5,40,000/-. The sale was adjourned to September 3, 1969 but no public notice of this adjournment was given. The District Judge directed the Financial Corporation to get the evaluation of the property made by some expert. It is stated that M/s. Corona Electrical valued land at Rs. 3,04,610/-, building at Rs. 7,41,486/- and machinery at Rs. 7,02,000/-total Rs. 17,47,096/-. On September 2, 1969, the appellant company protested against this hurried valuation, but on September 3, 1969 the whole property was sold for Rs. 11,50,000/- to M/s. Kayjay Industries Private Ltd., auction purchasers, who deposited in Court Rs. 2,87,500/- being 1/4th of the amount of the bid. On September 12, 1969, the remaining was paid by the auction-purchasers and on October 3, 1969 the appellant company applied for setting aside the sale. On January 16, 1970. this application was dismissed. On February 13, 1970 the appellant company filed F.A. No. 152/70 in the Bombay High Court. The Bombay High Court, as already stated, rejected the appeal on February 16, 1970 on the ground had no appeal lay and also on the ground that there was no merit in the appeal.

The question which really arises is whether by using the words "in the manner provided in the Code of Civil

-Procedure" in s. 32(8) the Legislature intended to include the provisions in the Code dealing with appeals. There is, no doubt that under the Code of Civil Procedure an order setting aside or refusing to set aside a sale in execution of a decree is appealable under O. XLIII r.I (j). It is difficult to understand why the scope of the language should be cut down by not including appeals provided under the Code of Civil Procedure within the ambit of the words "in the manner provided in the Code of Civil Procedure". "Manner" means method of procedure and to provide for an appeal is to provide for a mode of procedure. The State Financial Corporation lends huge amounts and we cannot for a moment imagine that it was the intention of the Legislature to make the order of sale of property, passed by the District Judge, final and only subject to an appeal to the Supreme Court under art. 136, of the Constitution. The learned counsel for the respondents contended that, wherever the Legislature wanted to provide for an appeal to the High Court, it did so specifically. In this connection he pointed out that sub-s.(9) of s. 32 provided that "any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper." It is true that an appeal has been expressly provided in this case but the reason for this is that if there had been no specific provision in sub-s. (9), no appeal would lie, otherwise because it is not provided in sub-s. (5) or sub-s. (7) that the District Judge should proceed in the manner provided in the Code of Civil Procedure.

We are not impressed by the argument that the Act confers jurisdiction on the District Judge as *persona designata* because sub-s. (11) of s. 32 provides that "the functions of a district judge under this section shall be exercisable (a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and (b) elsewhere, also by an additional district Judge." These provisions clearly show that the District Judge is not a *persona designata*.

It was contended that the whole idea of the Act was to have expeditious execution as otherwise large funds of the State Financial Corporation would be locked up during execution proceedings. If this was the intention -of the Legislature, it would have expressly provided that no appeal would lie against an order made under sub-s. (8) of s. 32. In the result we hold that an appeal lay to the Bombay High Court and the High Court erred in holding that no appeal lay.

The next question is whether it was a case in which the appeal should have been dismissed summarily. This Court gave special leave against the order of the District Judge, dated January 16, 1970, (Civil Appeal No. 1852 of 1970). *Prima facie* this Court thought that there was something to be said on the merits of the case. We accordingly hold that the High Court was not justified in dismissing the appeal summarily. We accordingly allow Civil Appeal No. 1021 of 1971, set aside the judgment and order of the High Court, dated February 16, 1970, and remand the case to it for disposal according to law.

Civil Appeal No. 1852 of 1970 was filed after this Court granted special leave against the order of the District Judge, dated January 16, 1970. As we have remanded Civil Appeal No. 1021 of 1971, directing the High Court to hear and dispose of the appeal from the same order of the District Judge, according to law, Civil Appeal No. 1852 of 1970 becomes infructuous.

Civil Appeal No. 1022 of 1971, by special leave, was filed against the order of the Bombay High Court rejecting the application of the appellants for leave to appeal to this Court against their judgment and order dated February 16, 1970. In view of our decision in Civil Appeal No. 1021 of 1971, remanding the case to the High Court, this appeal also becomes infructuous.

There will be no order as to costs in these three appeals. We have no doubt that the High Court will dispose of the appeal, we have remanded, expeditiously, if possible within three months, as the auction purchasers have already deposited the full Toney and delay will prejudice them a great deal. In the meantime, the purchase money lying in deposit in the District Court be allowed to be withdrawn by the Maharashtra State Finance Corporation. The learned counsel for the Corporation, on instruction, undertakes that the Corporation will refund the money if directed by the High Court.

Civil Appeal No. 1021 of 1971 remanded.

Civil Appeals Nos. 1852 of 1970 and 1022 of 1971 held infructuous.

G.C. 3 5 7