Mah. State Financial Corpn vs Suvarna Board Mills on 18 August, 1994

Equivalent citations: 1994 AIR 2657, 1994 SCC (5) 566, AIR 1994 SUPREME COURT 2657, 1994 (5) SCC 566, 1994 AIR SCW 3745, 1994 (2) UJ (SC) 730, (1995) 2 IJR 894 (SC), 1995 (2) IJR 894, 1994 UJ(SC) 2 730, (1994) 4 COMLJ 427, (1994) 5 JT 280 (SC), (1995) 82 COMCAS 364, (1994) 1 BANKLJ 20, (1994) 2 LANDLR 451, (1994) 3 SCJ 456, (1995) 1 APLJ 9, (1995) 1 MAH LJ 4, (1995) 1 BANKCAS 367, (1995) BANKJ 403, (1995) 2 BOM CR 369

Author: B.L Hansaria

Bench: B.L Hansaria, A.M. Ahmadi

PETITIONER:
MAH. STATE FINANCIAL CORPN.

Vs.

RESPONDENT:
SUVARNA BOARD MILLS

DATE OF JUDGMENT18/08/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
AHMADI, A.M. (J)

CITATION:
1994 AIR 2657 1994 SCC (5) 566
JT 1994 (5) 280 1994 SCALE (3)837

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- M/s Suvarna Board Mills, hereinafter, the respondent, approached the appellant seeking "bridge loan"

towards State Capital Incentive and for purchase of some machinery etc. A sum of Rs 3 lakhs was disbursed by the appellant sometime in September 1990 laying down the repayment schedule. The respondent did not repay as agreed upon. A small amount of Rs 11,588 was once paid and cheques given thereafter bounced. In December 1990 the appellant reminded the respondent to clear arrears, but to no effect. Reminders of April and May 1991 also bore no fruit. In January 1992 the arrears on account of principal, interest and expenses became about Rs 2.5 lakhs. The appellant, a State Financial Corporation, decided to invoke power conferred by Section 29 of the State Financial Corporation Act and did so on 7-1-1992 by issuing a notice contemplated by this section stating, inter alia, that the Corporation has become entitled because of the failure and neglect of the respondent to clear the dues, to recover the entire outstanding loan amount of about Rs 5 lakhs and called upon the respondent to pay the same by 21-1-1992 failing which it was stated that the possession of the factory premises of the respondents shall be taken on 22-1-1992. On payment not being made possession was taken on 22nd January. A letter was issued thereafter on 29th January stating that if the respondent was interested in getting back possession, it should clear the dues as desired earlier within 15 days. On failure to do so, the respondent was informed, the Corporation would be at liberty to dispose of the property.

2. The respondent approached the Nagpur Bench of the Bombay High Court by filing a petition under Article 226 of the Constitution making grievance that the appellant took over possession of the factory without considering its representation made pursuant to notice of the appellant dated 7-1-1992. The High Court found fault with the action taken with the aid of Section 29, not on this ground, but because, according to it, before doing so a show-cause notice was required to be given as to why action under Section 29 should not be taken to satisfy the requirement of natural justice. The same not having been done, in view of the High Court, notice of 7th January was quashed and the appellant was directed to restore possession. Hence this appeal by the Financial Corporation.

3.It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a strait-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the 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. All will depend on facts and circumstances of the case.

4. Let it be seen whether the respondent was sounded in advance that if it would not clear the arrears within a fixed period, the hammer of Section 29 would fall. This was abundantly done, according to us. Of course, for this we shall have to ignore what had been stated in letters of the Corporation issued in April and May 1991 requiring clearance of dues, as what natural justice requires is to give opportunity to represent against the proposed action, as stated in paragraph 16 of S.L. Kapoor v. Jagmohan1. The letters of April and May 1991 did not speak about contemplated

action with the aid of Section 29. (The letter of December 1990 stands on the same footing, besides being too remote). But then, the Section 29 notice did call upon the respondent to repay the dues by 21-1-1992, failing which the respondent was put to notice that possession of its factory premises would be taken. This did meet the requirement of natural justice, according to us. No separate show-cause notice was required, as held by the High Court. Section 29 action 1 (1980) 4 SCC 379: AIR 1981 SC 136 could not have therefore been set at naught because of absence of an independent show-cause notice.

5. We may now deal with the grievance of the respondent made before the High Court. This was non-consideration of its representation filed pursuant to Section 29 notice. This representation is dated 20-1-1992 and it narrates the difficulties faced by the respondent in repaying the loan as agreed to and contains a proposal how the respondent would like to liquidate the dues. A request is finally made to extend time till March 1992 and not to take the proposed action.

6. The representation it is alleged was not at all attended to, not to speak of the same receiving due consideration. We should have thought that the appellant being a public body should have acted fairly and should have communicated its response to the representation. May be, because of the respondent being almost a chronic defaulter and its earlier cheques having even bounced, the assurances contained in its representation did not carry weight. Even so, before taking recourse to the drastic action of taking over possession, another assessment would have added credibility to its decision; it would have been better to do so.

7. As the representation of the respondent was not shown to have been considered by the appellant, we thought that we should ourselves allow the respondent to make a reasonable offer which could be taken as a sort of giving post- decisional hearing by us, which would in some cases meet the call of natural justice. The case was adjourned for this purpose to 2-8-1994 after the hearing on other points was over on 27-7-1994. The learned counsel for the respondent submitted to us on 3-8-1994 that the possession of the factory should be handed over back to his client and out of the profit to be earned it would clear the dues. As to cash to be paid, about which also we had asked to get instructions, we were informed that a sum of Rs 50,000 alone could be paid because of the present bad financial position of the respondent. We do not regard this stand as reasonable, as there, is no knowing if the unit would at all become profitable in the hands of the respondent in view of how it had functioned earlier when it was, being operated by it. The offer to pay Rs 50,000 as against more than Rs 5 lakhs which had become due by January 1992 cannot also be regarded as reasonable.

8. In view of the aforesaid, this appeal is allowed by setting aside the impugned judgment, leaving the parties to bear their own costs. It would be open to the appellant to take such further action(s) in the matter as permitted by Section 29.
