

Punjab-Haryana High Court

Hemyog Hotels Pvt. Ltd. vs Delhi Financial Corporation on 28 September, 1992

Equivalent citations: 1994 79 CompCas 74 P H

Author: Majithia

Bench: G Majithia, A Mehra

JUDGMENT Majithia, J.

1. The petitioner has moved this court for issuance of a mandate to the respondent not to proceed against it under Section 29 of the State Financial Corporations Act, 1951, in this petition under Article 226/227 of the Constitution of India.

2. The petitioner moved the respondent for a loan of Rs. 15 lakhs in the year 1981, with a view to construct a hotel building on plot No. 22, Sector 26, Chandigarh. The respondent agreed to advance a loan of Rs. 14.75 lakhs. Out of this, loan facility to the extent of Rs. 15.64 lakhs was availed of and the loan was repayable in 21 half-yearly instalments commencing from July 15, 1982, together with the stipulated interest. The petitioner defaulted in making payment of the instalment of loan. The respondent filed an application under Section 31 of the State Financial Corporations Act, 1951 (for short, "the Act") on July 19, 1983. The application was allowed by the learned Additional District Judge, Chandigarh, on April 2, 1985. The United Bank of India filed a civil suit against the petitioner and the respondent was made a party defendant. In that suit, in the application under Order 38, Rule 5 read with Order 39, Rule 1, Civil Procedure Code, the petitioner made the following statement on October 18, 1986 :

"We shall keep on making the payment to the Delhi Financial Corporation as already settled, i.e., Rs. 45,000 per month for the time being and in future as per rescheduling of the loan and consequent instalments."

3. In the light of the aforesaid statement, counsel for the respondent made the following statement :

"In view of the statement of counsel for defendants Nos. 1 and 6, my client will not sell the mortgaged property without prior permission of the court and without associating the plaintiff-bank."

4. And the court passed the following order :

"Statement recorded. In view of their statements defendants Nos. 1 and 6 will continue paying Rs. 45,000 per month for the time being to defendant No. 5 and in future as per rescheduling of the loan and instalments and in the meantime, defendant No. 5 would not sell the mortgaged property without prior permission of the court and without associating the plaintiff-bank. Accordingly, stay order dated April 5, 1986, is confirmed. Now to come up for reply to the application moved by the plaintiff under Order 6, Rule 17 of the Civil Procedure Code, on November 7, 1986."

5. After the order dated October 18, 1986, passed by the subordinate Judge, the respondent moved the court under Section 29 of the Act. Learned counsel for the petitioner submits that after the

decision of the court on a petition under Section 31 of the Act, the respondent could not initiate proceedings under Section 29 of the Act, and in support of his submission, he relied upon a Full Bench decision of the Andhra Pradesh High Court in *K. Subba Reddy v. Andhra Pradesh State Financial Corporation*, AIR 1987 AP 119. Their Lordships of the Full Bench of the Andhra Pradesh High Court, after analysing the provisions of Sections 29 and 31 of the Act, held thus (at p. 125) :

"In the matter before us, the undisputed fact of the case is that the financial corporation has invoked, after due consideration of the facts of the case, the remedy available to it under Section 31 of the Act and has obtained a decree in O.P. No. 211 of 1969. Having thus invoked the jurisdiction of the District Judge under Section 31 of the Act and obtained a decree the Corporation cannot invoke the provisions of Section 29 of the Act. It is true that at the threshold of an action against the defaulting industrial concern the financial corporation has got the two remedies available to it, one under Section 29 and another under Section 31 of the Act, Once the choice is made and necessary steps are taken, which in this case have culminated in the passing of a decree, the financial corporation cannot resort to the remedies available under Section 29 of the Act, which will result in a complete negation of what has been done after taking steps for enforcement of the claims by the financial corporation under Section 31 of the Act. In a given case, a situation may arise where the financial corporation has ultimately failed to secure an order under Section 31 of the Act on the basis of the facts and evidence in the case and an order may have been passed to that effect by the District Court. Can it be said that in the event of such a failure the financial corporation can still resort to Section 29 and bring the property of the industrial concern to sale ? It is no doubt true that the power contained under Section 29 of the Act available to the financial corporation seems to be somewhat wider than the remedies available under Section 31 of the Act. But, as stated earlier, it is for the financial corporation to make up its mind about the remedy which it wishes to pursue against the erring industrial concern and if the provisions of Section 31 have been invoked culminating in an order passed by the court, it cannot turn back to the remedies available to it under Section 29 of the Act."

6. A similar view was taken by a Division Bench of the Orissa High Court in *Gulf Fishing and Co. v. Orissa State Financial Corporation*, AIR 1987 Orissa 119. It was held in that case that when two remedies are available for the same relief, a person to whom the remedies are available has the option to elect either of them and cannot pursue both simultaneously.

7. We are in respectful agreement with the view taken in *K. Subba Reddy's case*, AIR 1987 AP 119 [FB]. Once the respondent corporation has pursued action against the erring industrial concern under Section 31 of the Act, it cannot invoke the remedy available under Section 29 of the Act. The financial corporation has two remedies available against the erring industrial concern. It can invoke the provisions of Section 29 of the Act and seek the remedy provided thereunder or the one under Section 31 of the Act. Both these Sections operate independently of each other and the choice is that the financial corporation could resort to any of the remedial actions provided for in Section 29 or Section 31 of the Act, but having availed of the remedies under Section 31, it cannot invoke the remedies under Section 29 of the Act.

8. The parties are bound by the statements made in the suit filed by the Union Bank of India. It is unfortunate that because of non-rescheduling of the payment of loan, further instalments after April, 1987, had not been paid by the petitioner. The petitioner does not dispute the liability. It only says that it is willing to pay the loan instalments provided the payment of the loan is rescheduled. We, accordingly, direct that the respondent-corporation will reschedule the loan within two months. The rescheduling will be done after associating the petitioner. The petitioner will make payment of the rescheduled instalments thereafter and till the rescheduling is done, the petitioner will deposit a sum of Rs. 3,00,000. The same will be deposited within two months and this amount will be adjusted in the rescheduled instalments of the loan.

9. The writ petition is disposed of accordingly, but with no order as to costs.