

Supreme Court of India

Maharashtra State Financial ... vs Jaycee Drugs And Pharmaceuticals ... on 19 February, 1991

Equivalent citations: 1991 SCR (1) 480, 1991 SCC (2) 637

Author: N Ojha

Bench: Ojha, N.D. (J)

PETITIONER:

MAHARASHTRA STATE FINANCIAL CORPORATION

Vs.

RESPONDENT:

JAYCEE DRUGS AND PHARMACEUTICALS PVT. LTD.AND ORS.

DATE OF JUDGMENT19/02/1991

BENCH:

OJHA, N.D. (J)

BENCH:

OJHA, N.D. (J)

RANGNATHAN, S.

AGRAWAL, S.C. (J)

CITATION:

1991 SCR (1) 480

1991 SCC (2) 637

JT 1991 (1) 524

1991 SCALE (1)276

ACT:

State Financial Corporation Act, 1951: Sections 31 and 32 Scope of-Presidency town-jurisdiction to entertain-Whether a petition under sections 31 and 32 is to be made before a City Civil Court or the High Court. Liability of a surety -Enforcement of-Whether in such a petition a money decree for repayment of loan can be passed against a party who stood surety personally without any security. Held if the claim is upto Rs. 50, 000 the application would lie to City Civil Court and if it is more than to the High Court-Amending Act 43 of 1985. By majority held that after the amendment introduced by Act 43 o.f 1985 such an application shall lie for enforcing the liability of a surety who has given only personal guarantee.

HEADNOTE:

Respondent No. 1 a Private Limited Company, was sanctioned a loan of Rs.30 lakh by the Appellant-Corporation for the setting up of a factory. To secure this loan a mortgage deed of certain properties was executed by the Company and Respondents 2 to 4 as its directors had executed a personal Surety Bond without any security for its repayment. After obtaining a part of the sanctioned loan,

which was to be given in phases, the Company became disinterested in availing of the balance amount. Consequently the Corporation demanded back the amount ahead taken together with interest and on the company's failure to do so, it took over the Industrial Concern under section 29 of the Act and initiated steps to realise its dues by putting the property to sale. Having failed to recover the amount as no adequate offer was forthcoming despite repeated advertisements, it filed a petition before the Bombay High Court under sections 31 and 32 of the Act both against the Company as well as its directors-sureties praying for a decree in the sum of Rs. 15,87,391.20 to be passed against them jointly and severally.

The respondents contested the petition contending (a) that a petition under sections 31 and 32 of the Act could be filed only before the City Civil Court and the High Court had no jurisdiction to entertain it, (b) that no money decree can be passed under sections 31 and 32 of the Act, and (c) that the provision in the Act relating to enforcement of the

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liability of surety were ultra vires of Article 149 of the Constitution. The learned single judge relying on an earlier decision of the Bombay High Court reported in 1987 Mah. L.J- 243 held that the High Court had to entertain the petition but on merits took the view that no money decree could be passed under sections 31 and 32 even against the sureties and since in the instant case the sureties had not given any security except their personal guarantee, the same could be enforced only in the ordinary course and not under the special machinery provided under the Act. In view of his findings on the first two pleas no arguments were entertained on the last plea and accordingly the petition was dismissed. The Division Bench while dismissing the appeal not only upheld the finding of the single Judge on merits but also overruled the decision reported in 1987 Mah. L.J. 243 and held that the High Court had no jurisdiction to entertain a petition under sections 31 and 32 of the Act. The Corporation came up in appeal before this court by special leave against this decision of the High Court of Bombay.

The impugned judgement was assailed by the Appellant Corporation both on merits and on the plea of jurisdiction. The respondents in reply asserted that the findings of the High Court on both pleas were unassailable.

Allowing the appeal, by a majority decision,

HELD: A. By the Full Court

(i) The extent of the liability stated in the application as contemplated by sub-section (2) of section 31 of the Act would represent the value of the claim of the Corporation and if since value is upto Rupees Fifty Thousand, the application would lie in the City Civil Court and if it is more than that amount it would lie in the High

Court. This interpretation would give meaning and relevance to the words "having jurisdiction" used in sub-section (11) of section 32. A different interpretation would render superfluous or otiose not only the words "having jurisdiction" but also the words and in the absence such court, by the High Court, occurring in the said sub-section (11) inasmuch as in a Presidency-town, in terms of territorial jurisdiction, the jurisdiction of the City Civil Court and of the High Court is co-terminus- [495D-F]

(ii) In the instant case the extent of liability of the surety being more than Rupees fifty thousand, the application could only have been filed and was rightly filed in the High Court and the finding in the

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judgment under appeal to the contrary for holding that the High Court had no jurisdiction to entertain the application cannot be sustained. [497A]

B. Per N. D. Ojha, J. for himself and Ranganathan, J.

(iii) There can be no doubt that the term, "any surety" used in clause (aa) in sub-section (1) of section 31 of the Act, will include not only a surety who has given some security but also one who has given only a personal guarantee. In our opinion, in a case where the relief claimed in the application under section 31(1) of the Act is for enforcing the liability of a surety who has given only a personal guarantee, sub section 4(A) of section 32 where no cause is shown and clause (da) of sub-section (7) where cause is shown, contemplate cutting across and dispensing with the provisions of the Code of Civil Procedure from the stage of filing a suit to the stage of obtaining a decree against the surety, the passing of an order which can straightaway be executed as if it were a decree against the surety which may be passed in the event of suit being filed. [498F, 499E]

(iv) In the absence of any provision such as sub-section (8) of section 32 of the Act applying the manner provided in the Code for the execution of a decree against a surety only "as far as practicable" the entire provision contained in this behalf in the Code shall be applicable. This would be so in view of the use of the expression "any other law for the time being applicable to an industrial concern" used in section 46B of the Act. That the Code is applicable to an industrial concern also is not in dispute and cannot be doubted. [500H-501A]

(v) Even in the absence of section 46B of the Act the provisions of the Code would have been attracted in the matter of enforcing the liability of a surety in view of the decision of this Court in National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd., [1953] SCR 1028 inasmuch as the District Judge while exercising jurisdiction under sections 31 and 32 of the Act is not a persona designate but a court of ordinary

civil jurisdiction. [501B-D]

(Per S. C. Agrawal, J. Dissenting.)

It cannot be comprehended that while making provision which would enable passing of an order in the nature of a money decree against a surety on an application under section 31 of the Act, Parliament would have refrained from making a corresponding provision prescribing the procedure for carrying into effect such an order. It

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appears to be more in consonance with the scheme of the Act and the object underlying sections 31 and 32 that by introducing the amendments in sections 31 and 32 of the Act the Parliament intended to place the surety on the same footing as the principal debtor so as to enable the Financial Corporation to obtain relief against the properties of the principal debtor as well as the surety- [515E-G]

If considered in this perspective, the expression "enforcing the liability of any surety" in clause (aa) of section 31(1) would mean enforcing the liability of a surety in the same manner as the liability of principal debtor is enforced, by attachment and sale of property keeping in view that the proceedings under sections 31 and 32 of the Act are akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. The relief of a money decree sought against the sureties-respondents 2 to 4 was not maintainable and the said relief could not be granted to the appellant in proceedings under section 31 of the Act. As a result, the petition filed by the appellant must be dismissed and for the same reason this appeal must fail. [515G-516A, 516D-E]

Munnalal Gupta v. Uttar Pradesh Financial Corporation & Anr., A.I.R. 1975 Allahabad 416; Thressiamma Varghese v. K. S. F. Corporation, A.I.R. 1986 Kerala 222; Maharashtra State Financial Corporation v. Hindtex Engineers Pvt. Ltd., [1987] M.L.J. 243; Kayastha Training & Banking Corporation Ltd- v. Sat Narain Singh, [1921] I.L.R. 43 All. 433; M. K. Ranganathan & Anr. v. Government of Madras & Ors., [1955] 2 S.C.R. 374; The Central Talkies Ltd., Kanpur v. Dwarka Prasad, [1961] 3 S.C.R. 495, referred to.

Maganlal V. MIS. Jaiswal Industries, Neemach & Ors., [1989] 4 S.C.C. 344; M/s. Everest Industrial Corporation & Ors. v. Gujarat State Financial Corporation, [1987] 3S.C.C. 597; Parkash Playing Cards Manufacturing Co. v. Delhi Financial Corporation, A.I.R. 1980 Delhi 48; Gujarat State Financial Corporation V. Natson Manufacturing Co. Pvt. Ltd. & Ors., [1979] 1 S.C.C. 193, distinguished.

West Bengal Financial Corporation v. Gluco Series Pvt. Ltd., A.I.R. 1973 Cal. 268, approved.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 782 of 1991.

From the Judgment and Order dated 10.7.1990 of the Bombay High Court in Appeal No. 423 of 1987.

Ashok H. Desai, Vinay Tulzapurkar, Raghu Kothare and Rajiv Dutta for the Appellant.

Soli J. Sorabjee, D.R. Poddar, Ms. Purnima, Atul Sharma, A.V.Palli, E.C.Agrawala and V.B.Joshi for the Respondents.

The Judgments of the Court was delivered by OJHA, J. Special leave granted.

This appeal by special leave has been preferred against the judgment dated 10th July, 1990 of the Bombay High Court in Appeal No. 423 of 1987. Respondent No. 1 is a private limited company whereas Respondents 2 to 4 are its Directors. Respondent No. 1, for setting up a factory, sought financial assistance from the appellant and the appellant sanctioned a loan of Rupees thirty lakhs. In order to secure the loan Respondent No. 1 executed a deed of mortgage of certain properties on 29th June, 1979 and Respondents 2 to 4 on the same date by executing a deed of guarantee stood surety for repayment of the said loan. It was a case of personal guarantee only as no property was given in security. For the sake of brevity the appellant, Respondent No. 1 and Respondents 2 to 4 shall hereinafter be referred to as the Corporation, the Company and the sureties respectively. The amount of loan was to be advanced in phases and after the Corporation had advanced a part of the total sanctioned loan, the Company did not want to avail of the balance of the amount as it seems to have lost interest in setting up the factory for reasons with which we are not concerned. The Corporation consequently called upon the Company to repay the amount already advanced together with interest and on its failure to do so took possession under Section 29 of the State Financial Corporations Act, 1951 (for short the Act) over the industrial concern, a term defined under Section 2(c) of the Act and took steps to realise its outstanding dues by transfer of property in the manner provided therein. However, notwithstanding advertisement for sale thereof having been made on several occasions the Corporation could not get an offer of more than about Rupees five lakhs.

Having failed to recover the amount due to it in the manner stated above, the Corporation proceeded to recover the same from the sureties whose liability was coextensive and for this purpose it filed a petition in the High Court under Sections 31 and 32 of the Act arraying the Company as Respondent No. 1 and the sureties as Respondents 2 to 4, with the prayer that "the respondents be jointly and severally ordered and decreed to pay the petitioners the sum of Rs- 15,87,391.20 as per particulars hereto annexed and marked Ex. H. with further interest at the rates of 14-1/2% per annum till payment and may further "be ordered to pay to the petitioners costs of the petition". Thus, according to the relief claimed in the petition the liability of the respondents with regard to the amount payable to the Corporation on the date of making of the petition was for a sum which was more than Rupees fifty thousand which, as will be presently shown, represents maximum

amount over which the Bombay City Civil Court has pecuniary jurisdiction.

The respondents contested the petition and raised three pleas in defence: (1) A petition under Sections 31 and 32 of the Act could be filed only in the Bombay City Civil Court and the High Court had no jurisdiction to entertain it, (2) the relief claimed in the petition could not be granted under Sections 31 and 32 of the Act inasmuch as these sections did not contemplate passing of a money decree not only against the principal debtor but also against the sureties; and (3) the provisions in the Act relating to enforcement of the liability of a surety were ultra vires Article 14 of the Constitution.

The learned Single Judge of the High Court before whom the petition came up for hearing did not, in view of his finding on the first two pleas, entertain any argument on the last plea nor has the said plea been raised before us and as such the same does not need to be gone into. As regards the second plea it was conceded before the learned Single Judge on behalf of the Corporation by its learned counsel that no such money decree could be passed against the Company as was claimed in the petition. It was, however, asserted that such a decree could be passed as against the sureties. In this view of the matter the petition was treated and decided as being confined against the sureties only. In regard to the plea of jurisdiction the learned Single Judge took the view that since an appeal was pending before a Division Bench of the High Court against the judgment of a Single Judge in Misc-Petition No. 357 of 1985, Maharashtra State Financial Corporation v. Hindtex Engineers Pvt. Ltd., decided on 3rd December, 1986 (since reported in 1987 Maharashtra Law Journal 243), in which it had been held that such a petition was maintainable in the High Court, he would proceed to decide the petition on merits on the assumption that he had jurisdiction to entertain it. On merits, he took the view that no money decree could be passed in a petition under Sections 31 and 32 of the Act even against the sureties and since in the instant case sureties had admittedly not given any security except their personal guarantee the said surety could be enforced only in the ordinary course and not under the special machinery provided under the Act. The petition was accordingly dismissed.

Aggrieved by the judgment of the learned Single Judge the Corporation preferred an appeal before a Division Bench which has been dismissed by the judgment under appeal. The Division Bench not only upheld the finding of the Single Judge on merits but also over ruled the decision reported in 1987 Maharashtra Law Journal 243 and held that the High Court had no jurisdiction to entertain a petition under Sections 31 and 32 of the Act.

Shri Ashok Desai, Senior Advocate appearing for the Appellant Corporation has assailed the findings of the High Court in the judgment under appeal both on merits and on the plea about jurisdiction. Shri Soli J. Sorabjee, Senior Advocate appearing for the respondents has in reply asserted that the findings of the High Court on both the pleas were unassailable. An application for intervention being I.A. No. 3 of 1990 has been made on behalf of Nav Bharat Udyog, a partnership firm having its office at Mehta Building, 2nd Floor, 47, Nagindas Marg, Bombay, confined to the plea with regard to jurisdiction and it has been urged by learned counsel for the intervenor also, in line with the submission made by learned counsel for the respondents, that it is only the Bombay City Civil Court and not the High Court which has jurisdiction to entertain a petition under sections 31 and 32 of the Act.

For the sake of facility in considering the respective submissions made by learned counsel for the parties we find it useful to refer to the statutory provisions relevant in this behalf. Section 2 of the Bombay City Civil Court Act, 1948 contains definitions and inter alia provides:

"2. In this Act unless there is anything repugnant in the subject or context,-

(1) "City Court" means the Court established under Section 3;

(2) "High Court" means the High Court of Judicature at Bombay"

Section 3 in its turn provides:

"3. The State Government may by notification in the Official Gazette, establish for the Greater Bombay a court, to be called the Bombay city Civil Court. Notwithstanding anything contained in any law, such court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding fifty thousand rupees in value, and arising within the Greater Bombay, except suits or proceedings which are cognizable-

(a) by the High Court as a Court of Admiralty or Vice-Admiralty or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial jurisdiction, or

(b) by the High Court for the relief of insolvent debtors, or

(c) by the High Court under any special law other than the Letters Patent; or

(d) by the Small Cause Court:

Provided that the State Government may, from time to time, after consultation with the High Court, by a like notification extend the jurisdiction of the City Court to any suits or proceedings which are cognizable by the High Court as a court having testamentary or intestate jurisdiction or for the relief of insolvent debtor." The other Section which is relevant is Section 12 which reads:

"12. Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court;

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the City Court."

As regards Sections 31 and 32 of the State Financial Corporations Act, 1951, since the submissions made by learned counsel for the parties referred to most of the provisions contained therein these two Sections may be quoted in their entirety. They read:

"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 or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882 any officer of the Financial Corporation, generally or specifically 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 (aa) for enforcing the liability of any surety; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(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.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

32. (1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(IA) When the application is for the relief mentioned in clause (aa) of sub-section (1) of section 31, the district judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment

and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub- section I) or sub-section (2) or issuing a notice under sub-section (IA), the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(4A) If no cause is shown on or before the date specified in the notice under sub-section (IA), the district judge shall forthwith order the enforcement of the liability of the surety.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may-

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction;

(da) direct the enforcement of the liability of the surety or reject the claim made in this behalf, or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf;

Provided that when making an order under clause (c) or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e), the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the-costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(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.

(8A) An order under this section
transferring the management of an
industrial concern to the Financial

Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908, for the possession of immovable property or the delivery of immovable property in execution of a decree, as if the Financial Corporation were the decree- holder.

(9) Any party aggrieved by an order under sub-section (4A), 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.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) 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 or by any judge of the principal court of civil jurisdiction.

(12) For the removal of doubts it is hereby declared that any court competent to grant an ad interim injunction under this section shall also have the power to appoint a Receiver and to exercise all the court powers incidental thereto.

At this place it may be pointed out that with regard to the enforcement of the liability of a surety it was held by a Full Bench of the Allahabad High Court in *Munnalal Gupta v. Uttar Pradesh Financial Corporation and Another*, A.I.R. 1975 Allahabad 416 that from the scheme of the Act it is clear that the speedy remedy contained in Section 31 is available not against the surety but against the borrower only. In arriving at this conclusion reference was made inter alia to the reliefs

(a), (b) and (c) contained in sub-section (1) of Section 31 and to sub-section (4) of Section 32 of the Act as it then stood. It was pointed out that this sub-section (4) contemplated a notice to the borrower industrial concern after an interim order had been passed to show cause why the ad interim injunction should not be made absolute but did not contemplate a notice to the surety and that it would be unthinkable that the Legislature intended that the property of the surety may be attached and put to sale without even a notice to him.

It appears that in order to meet the difficulty in enforcing the liability of a surety as pointed out in the case of *Munnalal Gupta* (supra) Parliament found it necessary to make specific provisions in this behalf and passed the State Financial Corporations (Amendment) Act, 1985 (hereinafter referred to as Act 43 of 1985). Among other amendments made by Act 43 of 1985 were the following:

(i) In sub-section (1) of Section 31 clause (aa) was inserted.

(ii) In Section 32 a new sub-section (1A) and in sub-section (3) thereof the words "or issuing a notice under sub-section (1A)" were inserted.

(iii) Sub-section (4) of Section 32 was substituted with an inclusion of sub-section (4A).

(iv) The word "or" occurring at the end of clause (d) of sub-section (7) was omitted and a new clause (da) was inserted.

(v) In the first proviso after sub-section (7) the words "or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e)" and in the second provision the words "or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation" were inserted and in sub-section (9) the words "under sub-section (4A), sub-section (5)" were substituted for "under sub-section (5)"

By the same Act 43 of 1985 a new Section 32G was inserted which reads:

"32G. Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

Having extracted the relevant statutory provisions we now take up the question of jurisdiction. Sub-section (1) of Section 31 of the Act contemplates making of the petition thereunder "to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business". A petition so made is to be decided in the manner provided by Section 32 of the Act, subsection (11) whereof inter alia provides that the functions of a district judge under the said Section shall be exercisable, in a Presidency town, where there is a City Civil Court having jurisdiction, by a judge of the court and in the absence of such court, by the High Court.

It has been urged by learned counsel for the appellant that in a case to which the provisions contained in sub-section (1) of Section 32 of the Act and of the Bombay City Civil Court apply, if the extent of the liability sought to be enforced against a surety is upto Rupees fifty thousand a petition under Section 31 read with Section 32 of the Act would lie before the Bombay City Civil Court and if the liability is more than the said amount it would lie before the High Court. This, according to him is apparent from the use of the words "having jurisdiction" in sub-section (11) of Section 32 of the Act and the extent of the pecuniary jurisdiction of the Bombay City Civil Court as contained in Section 3 of the Bombay City Civil Court Act. According to him since in the instant case the liability sought to be enforced against the sureties was for a sum of more than Rupees fifty thousand the petition made by the appellant was maintainable in the High Court alone and not in the Bombay City Civil Court. On the other hand, it has been urged on behalf of the respondents and the intervenor by their learned counsel that word "jurisdiction" used in sub-section (1) of Section 31 and sub-section (11) of Section 32 of the Act connotes territorial jurisdiction alone and that the concept of pecuniary jurisdiction is beyond the scope of Sections 31 and 32 in view of the decision of this Court in *Gujarat State Financial Corporation v. Natson Manufacturing Co. Pvt. Ltd. and Ors.*, [1979] 1 SCC 193 relied on in *M/s. Everest Industrial Corporation and Ors. v. Gujarat State Financial Corporation*, [1987] 3 SCC 597 and *Maganlal v. M/s. Jaiswal Industries, Neemach and Ors.*, [1989] 4 SCC 344 which lays down that an application under Section 31(1) of the Act is neither a plaint as contemplated by Article I of Schedule I nor an application in the nature of a plaint as contemplated by Article 7 of the Court Fees Act, 1870, that the special procedure contained in Section 3 1(1) was not even something akin to a suit of a mortgagee to recover mortgage money by sale of mortgaged property, that even if the Corporation- applicant so chooses it cannot pray for a preliminary decree for accounts or final decree for payment of money nor can it seek any personal liability, that the Corporation cannot pray for a decree of its outstanding dues, that the reliefs contemplated by

Section 31(1) on being granted do not result in a money decree or decree for recovery of outstanding loans or advance, that a substantive relief in an application under Section 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 and that such relief cannot be valued in terms of the monetary gain or prevention of monetary loss.

Having given our anxious consideration to the question we are inclined to agree with the submission made by learned counsel for the appellant. The three decisions of this Court referred to above and relied on by learned counsel for the respondents were not cases relating to the enforcement of a liability of a surety made possible by the amendments by Act 43 of 1985. In our opinion, what has been laid down therein does not in any way militate against ascertaining in monetary terms value or the extent of the liability of a surety, which is sought to be enforced and there is intrinsic evidence in Sections 31 and 32 themselves to support this view. Sub-section (2) of Section 31 makes it obligatory to state the "extent of -the liability (1) of Section 32 refers to "an amount equivalent in value to the outstanding liability". Sub-section (1A) of Section 32 contemplates notice to the surety to show cause "why his liability" should not be enforced. Sub-section (6) of Section 32 contemplates investigation and determination of "the claim" of the Financial Corporation which is to be recovered. If the application under Section 31(1) is made before the district judge, there is no difficulty because he has unlimited pecuniary jurisdiction. The difficulty arises, as in the instant case, when such application is to be made either before the city Civil Court or the High Court as contemplated by sub-section (11) of Section 32. In our opinion, the extent of the liability stated in the application as contemplated by sub-section (2) of Section 31 of the Act would represent the value of the claim of the Corporation and if such value is upto Rupees fifty thousand the application would lie in the City Civil Court and if it is more than that amount it would lie in the High Court. This interpretation would give meaning and relevance to the words "having jurisdiction" used in sub-section (11) of Section 32. A different interpretation would render superfluous or otiose not only the words "having jurisdiction" but also the words "and in the absence of such court, by the High Court" occurring in the said sub-section (11) inasmuch as in a Presidency-town, in terms of territorial jurisdiction, the jurisdiction of the City Civil Court and of the High Court is co-terminus. That it is so is clear from Section 3 of the Bombay city Civil Court Act and the definition of the term "Presidency- town" contained in Section 3(44) of the General Clauses Act, 1897 according to which "Presidency- town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be.

It is a settled rule of interpretation of statutes that if the language and words used are plain and unambiguous, full effect must be given to them as they stand and in the garb of finding out the intention of the Legislature no words should be added thereto or subtracted there from. Likewise, it is again a settled rule of interpretation that statutory provisions should be construed in a manner which subserves the purpose of the enactment and does not defeat it and that no part thereof is rendered surplus or otiose. The aforesaid interpretation of sub-section (II) of Section 32 of the Act is not only in conformity with the rule of interpretation referred to above, it also does not militate in any way with the concept of an application under Section 31(1) of the Act, not being a plaint in a suit for recovery of money.

Reliance in this behalf has been placed by learned counsel for the intervenor on a decision of the Delhi High Court in *Parkash Playing Cards Manufacturing Company v. Delhi Financial Corporation*, AIR 1980 Delhi 48. In our opinion, however, the said decision is of little assistance in resolving the plea of jurisdiction raised in the instant case, namely, whether in a Presidency-town an application under Section 31(1) of the Act is to be made before a City Civil Court or High Court. In the case of *Parkash Cards Manufacturing Company* (supra), the provision which came up for consideration in the forefront was Section 5 of the Delhi High Court Act, 1966 and the question of jurisdiction was largely considered on that basis. Sub-section (11) of Section 32 with pointed reference to the jurisdiction exercisable by a City Civil Court in a Presidency-town and the High Court did not fall for consideration in that case.

The case which throws some light on the point is a decision of the Calcutta Court in *West Bengal Financial Corporation v. Gluco Series Private Limited*, AIR 1973 Cal 268) where it was held:

"Section 32 sub-section (1) does not say that the City Civil Court will have exclusive jurisdiction but states "in the Presidency Town where there is City Civil Court having jurisdiction, by a Judge of that Court and in the absence of such Court by the High Court." The words "in the absence of such Court" mean in the absence of such Court having jurisdiction in the matter. The City Civil Court has no jurisdiction to entertain and try suits and proceedings of Civil nature exceeding Rs.50,000 in value. Here the value of the claims in the proceedings exceeds much more than Rs.50,000 and, therefore, under Section 32, sub-section (11) this proceeding has been duly instituted in the High Court.

In the instant case the extent of the liability of the surety being more than Rupees fifty thousand, the application could only have been filed and was rightly filed in the High Court and the finding in the judgment under appeal to the contrary for holding that the High Court had no jurisdiction to entertain the application cannot be sustained.

Now we come to the second plea raised on behalf of the respondents, namely, that the relief claimed in the petition could not be granted under Sections 31 and 32 of the Act inasmuch as these sections did not contemplate passing of a money decree not only against the principal debtor but also against the sureties.

In so far as the special machinery provided under Sections 31 and 32 of the Act being applied to a surety who has given some property in security, it has been pointed out by learned counsel for the appellant that even before the amendment introduced in these sections by Act 43 of 1985 a Division Bench of the Kerala High Court had, in *Thressiamma Varghese v. K. S. F. Corporation*, AIR 1986 Kerala 222, taken the view that the provisions contained in these sections would be applicable. According to learned counsel, in any view of the matter, after the amendment of these sections by Act 43 of 1985 introducing specific provisions for enforcement of the liability of a surety, the matter is now beyond doubt that the procedure contained in these sections shall be applicable for the enforcement of the liability of such surety who has given some property in security. According to him even in the judgment under appeal the High Court has accepted this proposition and has expressed its reservation with regard to enforcement of the liability of a surety who has not given any property in security and has given only a personal guarantee. Reference in this connection has

been made to the following observations in the judgment under appeal:

"Even if the Corporation is now entitled to obtain relief also against any property which might have been given a security by the surety, the further question would remain whether the Corporation is entitled under Section 31(1)(aa) to obtain any relief personally against such a surety."

Indeed, the submission even before us which was made by learned counsel for the appellant has been that the only effect of the 1985 amendment is that it enables proceedings to be taken for the realisation of the security given by the surety in respect of his own liability whereas such proceedings could not be taken before the amendment. He, however, asserted that the Act even after the amendment does not enable a monetary decree to be passed against the surety any more than a decree can be passed against the principal debtor. According to him, in this view of the matter, in the instant case, the liability of the sureties could not be enforced under Sections 31 and 32 of the Act in as much as they had given only personal guarantee and had not given any property in security.

In the background of the rules of interpretation of statutes adverted to earlier and the specific provisions with regard to enforcement of the liability of a surety introduced in Sections 31 and 32 of the Act by Act 43 of 1985 we find it difficult to agree with the submission made by learned counsel for the respondents. It is true, as has been indicated above, that this Court has in the case of Gujarat State Financial Corporation (*supra*) taken the view that Sections 31 and 32 of the Act do not contemplate the passing of a money decree and the principle laid down in that case has been relied on in two later decisions referred to above. The said principle would, in our opinion, not come in the way of enforcing the liability under Sections 31 and 32 of the Act even against the surety who has given only a personal guarantee. As indicated earlier those were not cases dealing with the question of enforcement of the liability of such a surety and naturally, therefore, the provisions in this behalf specifically introduced in Sections 31 and 32 of the Act by Act 43 of 1985 were not considered in those cases. However, in this connection what is of significance is that clause (aa) inserted in sub-section (1) of Section 31 of the Act by Act 43 of 1985 uses the words "any surety". On its plain grammatical meaning there can be no doubt that the term "any surety" will include not only a surety who has given some security but also one who has given only a personal guarantee. If the submission made by learned counsel for the respondents is accepted the words "who has given property by way of security" will have to be added after the words "any surety". Such a course not only militates against the normal rule of interpretation but also tends to defeat the very purpose of the amendment introduced by Act 43 of 1985 enabling the Financial Corporation to make an application under Section 31(1) of the Act "for enforcing the liability of any surety", inasmuch as it would have the effect of restricting or qualifying the amplitude of the term "any surety" which the Legislature has in its wisdom thought it fit to use in its widest sense. The procedure, in our opinion, for enforcing the liability of a surety who has given only a personal guarantee would, after the amendment introduced by Act 43 of 1985, be that an application under Section 31(1) shall lie for enforce-

ing the liability of such surety as contemplated by clause (aa) of the said section. On such an application being made notice shall be issued to the surety as contemplated by sub-section (1A) of

Section 32. This may, in view of sub-section (3), be done after examining the officer making the application. If no cause is shown in pursuance of the notice served on him by the surety sub-section (4A) of Section 32 contemplates passing of an order forthwith for the enforcement of the liability of surety. If, on the other hand, cause is shown the claim of the Financial Corporation shall be determined as contemplated by sub-section (6) of Section 32 and thereafter a direction as contemplated by clause (da) of sub-section (7) shall be issued for the enforcement of the liability of the surety or rejecting the claim made in this behalf. In the case of Maganlal (*supra*) which related to the relief contemplated by clause (a) of Section 31(1) of the Act it was pointed out that the purpose of enacting Sections 31 and 32 of the Act was apparently to provide for a speedy remedy for recovery of the dues of the Financial Corporation and that these sections had the effect of cutting across and dispensing with the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) from the stage of filing a suit to the stage of obtaining a decree in execution whereof such properties as are referred to in clause (a) of sub-section (1) of Section 31 could be sold. In our opinion, on the same principle, even in a case where the relief claimed in the application under Section 31(1) of the Act is for enforcing the liability of a surety who has given only a personal guarantee, sub-section (4A) of Section 32 where no cause is shown and clause (da) of sub-section (7) where cause is shown contemplate cutting across and dispensing with the provisions of the Code from the stage of filing a suit to the stage of obtaining a decree against the surety, the passing of an order which can straightaway be executed as if it were a decree against the surety which may be passed in the event of a suit being filed. As seen above, sub-section (2) of Section 31 enjoins upon the Financial Corporation to state the "extent of the liability of the industrial concern" in the application to be made under sub-section (1) thereof. Since the liability of the surety is co-extensive the same shall, in the absence of anything contrary in the surety bond, be the liability of the surety also. In a case where there is any provision confining the liability of the surety, the extent of the liability to be shown in the application shall be such as is in conformity with the surety bond. When no cause is shown by the surety on being served with the show cause notice the order which will be passed under sub-section (4A) of Section 32 would be for the enforcement against the surety of that liability which is stated in the application. Where, however, cause has been shown by the surety the extent of his liability shall be determined as contemplated in sub-section (6) of Section 32 and it is the liability so determined which shall be enforced under clause (da) of sub-section (7) of Section 32. It does not require any elucidation that the extent of the liability referred to above will necessarily have to be in the very nature of things in terms of monetary value even though it may not be possible to call it a decree *stricto sensu* defined in Section 2(2) of the Code for recovery of money.

Here, Section 46B of the Act may be usefully extracted: "46B. The provision of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern. On its plain language, in the absence of anything inconsistent in the Act, the provisions of the Code shall obviously be applicable for the enforcement of the liability of the surety directed to be enforced as aforesaid in the same manner as a decree is enforced in a suit instituted in this behalf. It is true, as has been emphasised by learned counsel for the respondents, that there is no provision

corresponding to sub-section (8) of Section 32 for the enforcement of the liability of a surety who has given only personal guarantee but, in our opinion, keeping in view the amendments introduced by Act 43 of 1985, it is not very significant. To us it appears that in view of Section 46B of the Act and for the reasons to be stated shortly even if Section 46B was not there, in the absence of any provision to the contrary in the Act, that order also, which was passed in a case where relief contemplated by clause (a) of Section 31(1) of the Act was claimed, could have been enforced in the manner provided in the Code. The purpose of yet inserting sub-section (8) in Section 32 seems to be that it was not intended to apply the provisions of execution of a decree for attachment or sale of property as contained in the Code in its entirety and to achieve this purpose the words "as far as practicable" were used in that sub-section. To us it appears that in the absence of any provision such as sub-section (8) of Section 32 applying the manner provided in the Code for the execution of a decree against a surety only "as far as practicable" the entire provision contained in this behalf in the Code shall be applicable. this would be so in view of the use of the expression "any other law for the time being applicable to an industrial concern". That the Code is applicable to an industrial concern also is not in dispute and cannot be doubted.

We may now state our reasons for holding that even if Section 46B of the Act was not there the provisions of the Code for the execution of a decree against a surety who had given only personal guarantee would, in the absence of any provision to the contrary in the Act, be applicable. In view of the decision of this Court in *The Central Taikies Ltd. Kanpur v. Dwarka Prasad*, [1961] 3 SCR 495, where it was held that a *persona designata* is a person selected as an individual in his private capacity, and not in his capacity as filling a particular character or office, since the term used in Section 31(1) of the Act is "district judge" it cannot be doubted that the district judge is not a *persona designata* but a court of ordinary civil jurisdiction while exercising jurisdiction under Sections 31 and 32 of the Act. In *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.*, [1953] SCR 1028 while repelling the objection that an appeal under the Letters Patent against the judgment of a Single Judge passed in an appeal against the decision of the Registrar under Section 76(1) of the Trade Marks Act, 1940 was not maintainable it was held at pages 1033-34 of the Report:

"Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane L.C. in *National Telephone Co. Ltd. v. Postmaster-General*, in these terms:

"When a question is stated to referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."

The same view was expressed by their Lordships of the Privy Council in *R.M.A.R.A. Adaikappa Chettiar v. Ra. Chandrasekhara Thevar*, wherein it was said:

"Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

Again in *Secretary of State for India v. Chellikani Rama Rao*, when dealing with the case under the Madras Forest Act their Lordships observed as follows:

"It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code apply."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.

And it is in view of this decision that we are of the opinion that the provisions of the Code would have, even in the absence of Section 46B of the Act, been attracted in the matter of enforcing the liability of a surety. In view of the foregoing discussion, the finding of the High Court even on this point cannot be sustained. Since, however, the High Court has not made a determination of the liability of the sureties as contemplated by sub-section (6) of Section 32 of the Act, the matter has to be sent back to it for doing so and thereafter to pass an order as contemplated by clause (da) of sub-section (7) of Section 32 of the Act and to proceed to enforce the liability so determined against the sureties.

In the result, this appeal succeeds and is allowed with costs and the judgment of the Division Bench and also of the Single Judge of the High Court are set aside. The High Court shall now decide the application made by the appellant in accordance with law and in the light of the observations made above.

S.C. AGRAWAL, J. Special leave granted.

In this appeal two questions arise for consideration:

1) whether a petition under sections 31 and 32 of the State Financial Corporations Act, 1951 (hereinafter referred to as 'the Act') can be filed only in the Bombay Civil City Court and the Bombay High Court, on its original side, has no jurisdiction to entertain it? and 2) whether in such a petition, a decree/order can be passed directing payment of money by respondents nos. 2 to 4 who stood surety for repayment of the loan advanced by the appellant, Financial Corporation to respondent no. 1? The Division Bench of the Bombay High Court has answered both these questions against the appellant. My learned brother Ojha, J. has disagreed with this view of the Bombay High Court on both the questions. He has held that as the extent of the liability of the surety is more than Rupees fifty thousand the application could only have been filed and was rightly filed in the High Court which had the jurisdiction to entertain it. He has also held that in view of the amendments introduced in the Act by the Amending Act 43 of 1985, an order for payment of money can be passed against the surety who has given only a personal guarantee. While I am fully in agreement with the decision of my learned brother on the first question with regard to the jurisdiction of the Bombay High Court to entertain the petition filed by the appellant, I have not been able to persuade myself to agree with the view taken by him on the second question.

Section 31 of the Act has been described in the marginal note as special provisions for enforcement of claims by the Financial Corpora-

tion. It deals with a situation where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 of the Act and the industrial concern fails to make such repayment. It enables an officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, to 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:

(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 (aa) for enforcing the liability of any surety; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(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.

Clause (aa) was inserted in sub-section (1) of section 31 by section 19 of Act 43 of 1985.

Section 32 of the Act prescribes the procedure to be followed by the District Judge in respect of applications under section 31 of the Act. Prior to the amendments introduced in it by Act 43 of 1985, the said section read as under:

"32. Procedure of district judge in respect of applications under Section 31. (1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the district judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment. (2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the district judge shall grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2) the district judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district judge shall forthwith make the ad interim order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil procedure, 1908, in so far as such provisions may be applied thereto. (7) After making an investigation under sub-section (6), the district judge may-

(a) confirm the order of attachment and direct the sale of the attached property:

(b) Vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause

(c) the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(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.

(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908, for the possession of immovable property of the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.

(9) 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.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(11) 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 or by any judge of the principal court of civil jurisdiction.

(12) For the removal of doubts it is hereby declared that any court competent to grant an ad interim injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental thereto." By Act 43 of 1985, the following amendments have been introduced in section 32 of the Act:

(1) Sub-section (1A) which reads as under was inserted:

"(1A) When the application is for the relief mentioned in clause (aa) of sub-section (1) of section 31, the district judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced."

(2) In sub-section (3), the words, or issuing a notice under sub-section (1A) "were inserted after the words" "or sub-section (2)".

(3) Subsection (4) was substituted by sub-sections (4) and (4A), which read as under:

"(4) At the same time as he passes an order under subsection (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed. (4A) If no cause is shown on or before the date specified in the notice under sub-section (1A), the district judge shall forthwith order the enforcement of the liability of the surety.

(4) In sub-section (7), clause (da) was inserted which provides as under:

"(da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or"

(5) In the first proviso to sub-section (7), the words "or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause

(e)" were inserted after the words "order under clause (c)".

(6) In the second proviso to sub-section (7), the following words were inserted after words "any property from attachment":

or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation."

(7) In sub-section (9), for the words "sub-section (5)", the words "under sub-section (4A), sub-section (5)" were substituted.

In order to find an answer to the second question, it is necessary to construe the words "for enforcing the liability of any surety" which were introduced by way of clause (aa) in sub-section (1) of section 31 by the Act 43 of 1985, and also find mention in sub-sections (IA), (4A) and (7) of section 32. The learned counsel for the appellant has urged that the said words are wide in their amplitude and would cover a case where the surety has given a personal guarantee only and his liability is purely monetary. The learned counsel for the sureties, viz., respondents Nos. 2, 3 and 4, has, on the other hand, submitted that the said words must be construed in a more limited sense to cover only those cases where surety has given security of property to guarantee the repayment of loan and in such an event the remedy provided by sections 31 and 32 of the Act can be invoked against the surety and that the said provisions do not enable passing of an order for payment of a monetary sum against the surety who has given personal guarantee only. In order to deal with these rival contentions, it would be of relevance to take note of the state of law existing on the date of the enactment of Act 43 of 1985 whereby amendments were introduced in sections 31 and 32 of the Act.

The provisions contained in sections 31 and 32 of the Act came up for consideration before this Court in *Gujarat State Financial Corporation v. M/s Natson Manufacturing Co. (P) Ltd. & Ors.*, [1979] 1 SCR 372. That case related to payment of court fee on an application submitted under section 31(1) of the Act and the question for consideration was whether such an application should be treated on par with a suit by a mortgagee to enforce the mortgage debt by sale of the mortgaged property which is being treated as a money suit falling within the purview of Article 1 of Schedule I to the Bombay Court Fees Act, 1959 or it should bear a fixed court fee under the residuary Article 1(c) to Schedule II of the said Act. This Court disagreeing with the view of the Gujarat High Court, held that an application under section 31(1) of the Act would be covered by the residuary Article 1(c) of Schedule II to the said Act and it should bear a fixed court fee. In this context, this Court has examined the nature of the proceedings contemplated by section 31(1) of the Act. After referring to the provisions of the Act, this Court has held that "it would be inappropriate to say that an application under section 31(1) is something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property" and that "in an application under section 31(1), the Corporation does not and cannot pray for a decree for its outstanding dues" and that none of the three reliefs mentioned in sub-section (1) of section 31, if granted, "results in a money decree or decree for recovery of outstanding loans or advance" (pages 378-379). After referring to the provisions contained in sub-section (6) of section 32, which provides for investigation of the claim of the Financial Corporation in accordance with the provisions contained in the code of Civil Procedure, 1908, this Court has laid down:

"The claim of the Corporation is not the monetary claim to be investigated though it may become necessary to specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or instalment thereof and, therefore, the mortgaged property should be sold. It is not a money claim. The contest can be that the jurisdictional fact which enables the Corporation to seek the relief of sale of property is not available to it or no case is made out for transfer of management of the industrial concern." (p.381) This Court

has further emphasised that sub-

section (7) of section 32 "prescribes what reliefs can be given after investigation under subsection (6) is made, and it clearly gives a clue to the nature of contest under sub-section (6)" and further that sub-section (8) of section 32 "only prescribes the mode and method of executing the order of attachment or sale of property as provided in the Code of Civil Procedure". According to this Court, "the provision contained in sub-section (6) does not expand the contest in the application under s. 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property" (p.381). This Court has held that "the substantive relief in an application under 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" (p.382).

In Everest Industrial Corporation & Ors. v. Gujarat State Financial Corporation, [1987] 3 SCR 507 this Court was examining the question whether the rate of interest on the amount payable under an order passed under s. 32 of the Act from the date said order is governed by s. 34 of the Code of Civil Procedure, 1908 or whether it is payable at the contractual rate. This Court held that s. 34 CPC was not applicable to these proceedings. After referring to the earlier decision in Gujarat State Financial Corporation v. M/s Natson Manufacturing Co. (P) Ltd. & Ors. case (supra), this Court has reiterated that the proceedings instituted under s. 31(1) of the Act 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, therefore, no question of passing any order under s. 34 CPC would arise since s. 34 CPC would be applicable only at the stage of the passing of the decree and not to a stage posterior to the passing of the decree.

In Maganlal etc. v. Jaiswal Industries Neemach & Ors., [1989] 3 SCR 697, after referring to the decisions mentioned above, this Court has observed:

"In view of these two decisions, the law seems to be settled that an application under section 31(1) of the Act cannot be put on par to a suit for enforcement of a mortgage nor the order passed thereon under section 32 of the Act be put on par as if it was an order in a suit between a mortgagee and the mortgagor for sale of mortgaged property. On the other hand the substantive relief in an application section 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." (p.710) The question whether the provisions of ss. 31 and 32 of the Act could be invoked against the property of the surety came up for consideration before a full bench of the Allahabad High Court in Munnalal Gupta v. Uttar Pradesh Financial Corporation & Anr., AIR 1975 ALL 416. In that case, the surety had mortgaged his house by way of collateral security for the loan granted to the borrower industrial concern and the Financial Corporation had moved an application under s. 31 of the Act for sale of the property of the surety which had been mortgaged as well as the property of the principal debtor which had been mortgaged and the question was whether an order for sale of the property of the surety could be passed on an application under s. 31(1) of the Act. It was held that the relief which can be granted by a District Judge under s. 32 of the Act must be

confined against the borrower industrial concern and its property and that the District Judge can pass an ad-interim order attaching the security or so much of the property of the industrial concern as would be sufficient in his opinion to satisfy the outstanding liability. It was laid down that the order of attachment is restricted to the property of industrial concern given to the Corporation by way of surety and he is not empowered to attach the property of a person other than an industrial concern. According to the said decision, a surety, who is not a partner or otherwise interested in the industrial concern, cannot be proceeded against under s. 31 so that his property, even if mortgaged with the Corporation, cannot be attached by the District Judge. In this context, the teamed Judges pointed out the sub-section (4) of s. 32 contemplates a notice to the borrower industrial concern after an interim order has been passed to show cause why the ad interim injunction should not be made absolute and the said provision does not contemplate a notice to the surety and that it would be unthinkable that the legislature intended that the property of the surety may be attached and put to sale without even a notice to him.

The amendments introduced in ss. 31 and 32 by Act 43 of 1985 seek to remove the lacunae in those provisions as pointed out in the aforesaid judgment of the Allahabad High Court and with that end in view clause (aa) has been inserted in sub-section (1) of section 31 whereby a Financial Corporation can move an application under s. 31(1) for enforcing the liability of any surety and amendments have been made in s. 32 to prescribe the procedure for grant of the said relief on such application. Express provision has been made in sub-section (1A) of s. 32 for issuing a notice to the surety requiring him to show cause why his liability should not be enforced.

It is argued on behalf of the appellant that the words "for enforcing the liability of any surety" are wide in their amplitude to cover the monetary liability of a surety who has given personal guarantee only and has not given his property as security for repayment of the loan by the borrower industrial concern, though it is not disputed that in so far as the borrower industrial concern is concerned, the amendments introduced in ss. 31 and 32 by Act 43 of 1985 do not alter the existing law and no order in the nature of a money decree can be passed against him in these proceedings. It is, however, urged that in so far as the surety is concerned the position is different and in view of the amendments introduced in ss. 31 and 32, an order in the nature of a money decree can be passed against the surety who has given personal guarantee only and has not given security of his property for repayment of the loan. This argument implies that as a result of the amendments introduced in sections 31 and 32 by Act 43 of 1985 while the nature of the proceedings as against the borrower industrial concern remains unchanged and the said proceedings continue to be proceedings akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree, the nature of these proceedings has been changed in so far as the surety is concerned and they have become proceedings in which an order in the nature of a money decree can be passed. In other words, in a case where the borrower industrial concern has obtained a loan from the Financial Corporation without furnishing the security of property on the basis of a personal guarantee given by the surety, the Financial Corporation will have to proceed against the borrower industrial concern by instituting a regular suit for recovery of the dues whereas it can proceed against the surety under sections 31 and 32 of the Act. It means that as compared to the principal

debtor the Financial Corporation vis-a-vis the surety has been placed on a more advantageous Position. It may, however, be mentioned that under the common law, which finds re-enactment in section 128 of the Indian Contract Act, 1872, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. It means that the liability must be proved against the surety in the same way as against the principal debtor. Thus under the general law the surety stands on the same footing as the principal debtor. These submissions raise the question: can the legislature be attributed the intention to alter the existing law so as to bring about a change in the nature of proceedings under sections 31 and 32 of the Act and also to alter the general law relating to the enforcement of the liability of the surety? I find it difficult to answer this question in the affirmative.

In the matter of interpretation of statutes, a principle which is well-recognised in England is: "it is thought to be in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness, and to give any such effect to general words merely because this would be their widest, usual, natural or literal meaning would be to place on them a construction other than that which Parliament must be supposed to have intended." (See: *Mexwell on The Interpretation of Statutes*, 12th Edition, p. 116). In *Minet v. Leman*, [1955] (20) Eav.

269. Sir John Romilly, M.R. stated as a principle of construction, which could not be disputed, that "the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched". In this context, it would be of relevance to take note of the decision of this court in *M.K.Ranganathan & Anr. v. Government of Madras & Ors.*, [1955] 2 SCR 374. In that case this Court was required to construe the words "or any sale held without leave of the Court of any of the properties of the Company" which were added in s. 232 (1) of the Indian Companies Act, 1913 by Act 22 of 1936. the said amendment was introduced with a view to get over the decision of the Allahabad High Court in *Kayastha Training and Banking Corporation Ltd v. Sat Narain Singh*, [1921] ILR 43 All.

433. The question was whether the words which had been added refer only to sales held through the intervention of the court or whether they included the sales effected by the secured creditors outside the winding up and without the intervention of the court. This Court held that the said words referred only to sales held through the intervention of the Court and that the amendments whereby these words were introduced were not intended to bring within the sweep of the general words "sales effected by the secured creditors outside the winding up". In order to arrive at this conclusion, this Court placed reliance on the principle of interpretation referred to above and it was observed:

"If the construction sought to be put upon the words "or any sale held without leave of the Court of any of the properties" by the Appellants were accepted it would effect a fundamental alteration in the law as it stood before the amendment was inserted in section 232 by Act XXII of 1936. Whereas before the amendment the secured creditor stood outside the winding up and could if the mortgage deed so provided, realise his security without the intervention of the Court by effecting a sale either by private

treaty or by public auction, no such sale could be effected by him after the amendment and that was certainly a fundamental alteration in the law which could not be effected unless one found words used which pointed unmistakably to that conclusion or unless such intention was expressed with irresistible clearness. Having regard to the circumstances under which the amendment was inserted in section 232 by Act XXII of 1936 and also having regard to the context we are not prepared to hold that the Legislature in inserting that amendment intended to effect a fundamental alteration in law with irresistible clearness. Such a great and sudden change of policy could not be attributed to the Legislature and it would be legitimate therefore to adopt the narrower interpretation of those words of the amendment rather than an interpretation which would have the contrary effect." (p. 388) In my opinion, regard must be had of this principle of interpretation while construing the expression "for enforcing the liability of any surety" which has been inserted by way of clause (aa) in sub-section (1) of section 31 by Act 43 of 1985. Considering the amendments introduced in sections 31 and 32 of the Act by Act 43 of 1985 and having regard to the principle of interpretation referred to above I do not find any provision in the said amendments which may indicate that Parliament has evinced an intention to effect a fundamental alteration in the law with irresistible clearness. In this context, it would be of relevance to note that while introducing the said amendments Parliament has chosen not to make any alteration in relation to the following matters:

(1) In the marginal note, section 31 is described as 'special provisions for enforcement of claims by Financial Corporation'. No alteration has been made therein by Act 43 of 1985 and section 31 continues to be a special provision for enforcement of claims by Financial Corporation.

(2) Parliament has not expressly indicated that an order for payment of money only may be passed against the surety.

(3) Although in sub-sections (8) and (8A) of section 32, express provision has been made prescribing the procedure for carrying into effect an order of attachment and sale of property and an order transferring the management of an industrial concern to the Financial Corporation passed under sub-section (7) of section 32, no specific provision was made prescribing the procedure for carrying into effect of an order passed under clause (da) of sub-section (7) of section 32 directing the enforcement of the liability of the surety. It cannot be comprehended that while making a provision which would enable passing of an order in the nature of a money decree against a surety on an application under section 31 of the Act, Parliament would have refrained from making a corresponding provision prescribing the procedure for carrying into effect of such an order.

Having regard to the features referred to above, it appears to be more in consonance with the scheme of the Act and the object underlying sections 31 and 32 that by introducing the amendments in sections 31 and 32 of the Act, 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 properties of the principal debtor as

well as the surety. If considered in this perspective, the expression "enforcing the liability of any surety" in clause (aa) of section 31(1) would mean enforcing the liability of a surety in the same manner as the liability of principal debtor is enforced, i.e., by attachment and sale of property keeping in view that the proceedings under sections 31 and 32 of the Act are akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. This construction would obviate the need for a procedure for carrying into effect of the order passed under clause (da) of sub-section (7) of section 32 of the Act because such an order would be an order for attachment and sale of the property of the surety and it can be carried into effect in accordance with sub-section (8) of section 32 which prescribes the procedure for carrying into effect an order for attachment and sale of property. This construction will also preserve the special nature of the proceedings under section 31 and would not result in bringing about a fundamental alteration in the law laid down by this Court with regard to the nature of these proceedings as well as the general law whereunder a surety is to be treated on par with the principal debtor.

For the reasons aforesaid, I am in agreement with the view of the Division Bench of the High Court on this question and I am unable to concur with the decision of my learned brother Ojha, J.

I would, therefore, uphold the decision of the Division Bench of the High Court that the petition whereby the appellant had sought the relief of a money decree for payment of Rs. 15,87,391.20 paise against respondents 2 to 4 was not maintainable and the said relief could not be granted to the appellant in proceedings under section 31 of the Act. As a result, the petition filed by the appellant must be dismissed and for the same reason this appeal also must fail.

R. N. J.

Appeal allowed.