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Date: 21/10/2025

West Bengal Financial Corporation and Another Vs Sarada Kanta Bhowmick

F.A. No. 791 of 1975

Court: Calcutta High Court

Date of Decision: May 2, 1979

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 40 Rule 1#Constitution of India, 1950 â€" Article 14#State Financial Corporations Act, 1951 â€" Section 31, 32, 46B#Transfer of Property Act, 1882 â€" Section 69, 69A

Citation: 83 CWN 795

Hon'ble Judges: S.M. Guha, J; N.C. Mukharji, J

Bench: Division Bench

Advocate: P.N. Chunder, for the Appellant;Manas Ranjan Chakravarti, for the Respondent

Final Decision: Dismissed

Judgement

N.C. Mukharji, J.
This is an appeal against the judgment of Sri B.C. Chowdhury, District Judge, Nadia, dated 6th August, 1974 in other

Suit No. 7 of 1973. By the said order the suit was decreed. The order of attachment of the property described in the application was affirmed. It

was ordered that the petitioner would get Rs. 89,736.89 as the amount due including interest and other legal expenses upto 27.7.74 from the

respondent. It was further ordered that the petitioner would also get interest at the rate described in the deed of mortgage till recovery of the entire

amount, The respondent was directed to pay the decreetal amount including interest at the rate of Rs. 2,000/- per quarter and the first payment

was directed to be made within 30th September, 1974 and the subsequent instalments before the expiry of the last date of each quarter. It was

further ordered that in default of payment of any instalment, the attached property would be put to sale for realisation of the balance. The suit arises

out of an application u/s 31 of the State Financial Corporation Act, 1951 for the sale of the property of the respondent which was mortgaged as

security for a loan advanced by West Bengal Financial Corporation. The case of the Corporation is that in terms of the mortgage deed executed

by the respondent on the 3rd August, 1968 a sum of Rs. 60,000/- was advanced as loan to the respondent. It is alleged that according to the

terms of the agreement the respondent was required to pay the amount in 3 equal instalments starting from 15th July, 1970. There was also a term

for payment of interest in a manner as described in the deed. There is a provision to the effect that the property would be sold in case of default in

payment of interest. It is alleged that the respondent failed to pay the instalments since 15th July 1970. It is further alleged that the respondent also

failed to pay interest. The Corporation, therefore, filed the application for sale of the mortgage property for the amount due from the respondent.

2. The respondent admits execution of the mortgage deed in favour of the Corporation and he admits the claim of the West Bengal Financial

Corporation. It is, however, asserted that the respondent was unable to pay the instalments including interest as there was strike in his factory for

six months. It is further asserted that the respondent had to suffer loss on account of flood at Nabadwip area. The prayer was, therefore, made for

instalments for the amount due. The learned Judge, after considering the facts and circumstances of the case, decreed the suit in the manner as

stated above, Being aggrieved, the West Bengal Financial Corporation has come up in appeal.

3. Mr. P. N. Chunder, learned advocate appearing on behalf of the appellants, raises only one point, namely, that the order of the learned Judge in

granting instalments is illegal as the learned Judge, according to the provisions of the State Financial Corporation Act, 1951, has no power to grant

any instalment. In disposing of an application filed u/s 31 of the Act, he is to proceed according to the provisions contained in Section 32 of the

Act. There is nothing in the Act which empowers the District Judge to grant instalments. Mr. Chunder places before us the relevant provisions of

Section 31 of the Act and contends that according to Section 31 the Corporation can file an application for an order for the sale of the property

pledged, mortgaged, hypothecated or assigned to the Financial Corporation....., or for transferring the management of the industrial concern

to the Financial Corporation or 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. Mr. Chunder

places before us Sub-Section (7) of Section 32 which provides as follows:

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.

Mr. Chunder contends that if the Judge is of opinion that the Order of attachment passed by him should be confirmed and that there should be a

direction for the sale of the attached property, then the Judge has no power to grant instalments to the respondent and to direct that in default of

payment of instalment the property would be put to sale. Mr. Chunder also places before us Section 46B of the Act which reads as follows :

The provisions of this Act and/or of any rules 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 an 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.

Mr. Chunder submits that the proceeding like the present one is started on an application filed by the Corporation for getting speedy remedy. This

is not an ordinary civil suit and that being so, the provisions for granting instalments as in the case of a mortgage decree cannot be resorted to by

the Judge. It is quite competent for the Judge, according to the provisions of Section 32, to release the property from attachment or to vary the

order of attachment or to confirm the order of attachment and direct the sale of the attached property. But the Judge has no power to allow the

prayer of the respondent for making payment by instalment and then to direct that in case of default of payment of instalments, the property would

be put to sale. In support of his contention, Mr. Chunder first refers to a decision reported in West Bengal Financial Corporation and Another Vs.

Gluco Series Private Ltd., . In this case, the question arose whether the petitioner can ask for ad-interim order for appointment of receiver. It was

held ""assuming the Court has power to appoint receiver the Court should not have appointed receiver at the interim stage..... u/s 32 of

the Act, adinterim receiver cannot be appointed but only ad interim attachment and ad interim order of injunction can be passed."" It was also held

that ""West Bengal Financial Corporation Act is a special statute under which special rights have been conferred and the provisions of the special

satute must be strictly complied with. If the special statute gives a special power only that power can be exercised."" Relying on these observations

Mr. Chunder contends that there is no provision in the Act which empowers a Judge to make an order for payment by instalments when the claim

of the Corporation is found to be correct. The only course open to the Judge in such a case is to pass an order for sale. Mr. Chunder also relies on

a decision reported in State Financial Corporation Ltd. Vs. Satpathy Brothers and Nanda Co. (P.) Ltd. and Others, ., This is a Full Bench

decision and it has been held ""sections 32, 31 and 46B provide a complete Code by themselves and confer powers of high judicial authorities like

the District Judge and High Court in appeal."" Their Lordship were considering whether the provisions of Section 31 of the Act are hit by Article 14

of the Constitution and it was held that ""The provisions under the Act are more liberal. The entire, CPC is to be followed except to the extent it is

inconsistent with any provisions of the Act. Parties would get full opportunities to present their case. The Act is, therefore, a step in advance of the

adjudication made in Civil Court. Hence, it cannot be said that Section 31 of the Act is hit by Article 14 of the Constitution"". The only point that

awaits decision in this appeal is whether the granting of instalments is a power inconsistent with he provisions of the Act.

4. Mr. Manas Ranjan Chakraborti, learned Advocate appearing on behalf of the respondent, submits that the learned Judge has acted according

to the provisions of the Act. On an application filed by the Corporation the learned Judge attached the property. In passing the final order, that

order of attachment was affirmed. The learned Judge, however, allowed the prayer of the respondent for making payments by instalments. As has

been stated already, it was ordered that in case of default to pay a single instalment, the property would be immediately put to, sale. Mr.

Chakravarti submits that the learned Judge has passed an order that the property would be put to sale in case the respondent fails to pay the

instalment. That being so, the learned Judge, while passing an order directing that the property would be sold, is certainly within his powers to grant

some time to the respondent for paying up the dues. Mr. Chakravarti places before us several decisions. He first refers a decision reported in

Durlabh Kumar Vs. The District Judge, Indore and Another, . In this case, their Lordships were considering what is meant by the word "claim"

used in sub-sec. (6) of sections 31 and 32. It has been held ""the word "claim" used in sub-sec. (6) cannot be said to mean only the monetary part

of the claim which the Corporation is entitled to recover. The word "claim" has been used in Sections 31 and 32 to mean the sum total of the facts

alleged by the Corporation with demand for a relief under any of the three clauses of sub-section (1) of Section 31. Consequently the question of

default and the justification sought by the defaulter would also fall within the ambit of investigation into the claim"". Relying on this decision, Mr.

Chakravarti contends that the learned Judge considered the circumstances of the case. He also considered the prayer of the respondent and

passed the necessary order and it cannot be said that the Judge was beyond his rights to pass an order for paying the dues in instalments. Ms.

Chakrabarti next relies on a decision reported in Asnew Drums Private Ltd. and Others Vs. Maharashtra State Finance Corporation and Others, .

The question arose before their Lordships whether the District Judge as meant in sub-section (11) of section 32 is a persona designata. Their

Lordships held that ""the provisions of subsection (11) of section 32 clearly show that the District Judge is not a persona designata"". Mr.

Chakravarti seeking reliance on this decision argues that the District Judge is a Civil Court and that being so, he has full powers to allow prayer for

instalments. Mr. Chakravarti next relies on a decision reported in Industrial Finance Corporation of India and Another Vs. Thakur Paper Mills Ltd.

and Another, . This was a case under the Industrial Financial Corporation Act, 1948. The provisions of this Act are similar to the provisions of

State Financial Corporation Act. It has been held that ""By not filing a regular suit for realisation of its dues u/s 69 or by not getting a receiver

appointed u/s 69A of the Transfer of Property Act, Corporation does not lose its right to get a receiver appointed under Order 40, Rule 1 of the

Code. It can choose any one of the different modes or remedies prescribed by law". It was further held that ""the Court should appoint a receiver in

a mortgage suit as in the suit of any other nature when it is just and convenient to do so"". After hearing the learned Advocates at length and on

going through the provisions of Sections 31, 32 and 46B of the State Financial Corporation Act and the decisions referred to above we are of

opinion that in a fit and proper case the Judge is quite within his powers to grant instalments for paying up the dues and in directing that in default,

the properties would be put to sale. The respondent has used an opposition and in paragraph 5 of the said opposition it has been stated that the

respondent has been paying the instalments starting from 25th September, 1974 upto 28th March, 1979 and a total sum of Rs. 38,000/- has

already been paid. But, still then, the arrears together with interest is a heavy one. We feel that the instalments granted by the learned Judge are

easy ones and it will take a long time for the Corporation to realise the same. We are, therefore, inclined to modify the order with regard to the

payment in instalments.

5. In the result, the appeal is dismissed on contest. The order passed by the learned Judge is affirmend. The order for making payment in

instalments is also affirmed. But the mode of payment as directed by the District Judge is modified. The respondent is directed to pay the decreetal

amount including interest at Rs. 5,000/- per quarter instead of Rs. 2,000/- per quarter as directed by the learned District Judge. Other portions of

the order are affirmed. There will be no order for costs in this appeal.

Let the records go down immediately.

Sudhindra Mohan Guha, J.

I agree.