



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Revision Petition No. 18/2007

Balvir Singh

----Petitioner

Versus

R.F.C. Sriganganagar And Ors.

----Respondents

For Petitioner(s) : Mr. S.L. Jain
For Respondent(s) : Mr. Devesh A. Purohit

HON'BLE MS. JUSTICE REKHA BORANA

Order

Reportable

03/07/2024

1. The present revision petition has been preferred against the order dated 11.09.2006 passed by the District Judge, Sriganganagar in Civil Execution Case No.64/2000 whereby the objections under Order 21 Rule 22, CPC as preferred by objector/petitioner-Balvir Singh were rejected.

2. The facts are that an application under Section 31 of the State Financial Corporations Act, 1951 (hereinafter referred to as, 'the Act of 1951') was preferred by the Rajasthan Financial Corporation (hereinafter referred to as, 'RFC') with the averments that one Gurucharan Singh (non petitioner No.2) was granted a loan of Rs.1,99,000/- by the RFC to purchase a truck. Balvir Singh (petitioner) and Shakuntala (non petitioner No.3) stood as guarantors for Gurucharan Singh qua the said loan. The loanee, Gurucharan Singh failed to repay the loan and hence, RFC be held



entitled to recover the due amount from the properties of Balvir Singh and Shakuntala, the guarantors.

3. No reply to the said application was filed by Gurucharan Singh or Balvir Singh. However, Shakuntala did file a reply denying the execution of any such guarantee deed by her and submitted that without proceeding against the principal debtor i.e. Gurucharan Singh first, no recovery can be made from her/her properties.

4. The said application under Section 31 of the Act of 1951 was decided vide order dated 28.05.1999 in favour of RFC and it was held that RFC is entitled to recover the amount from the properties of the guarantors.

5. RFC then preferred an execution petition on 02.12.2004 against the guarantors i.e. present petitioner Balvir Singh and the other guarantor Shakuntala for recovery of the amount of Rs.13,36,208/- which was later amended to Rs.6,82,359/-.

6. Petitioner Balvir Singh, in the said execution proceedings, filed objections under Order 21 Rule 22, CPC with the submission that the execution petition itself was not maintainable in view of Section 31 of the Act of 1951 and the same be dropped. It was also submitted that until and unless, recovery is first sought to be made from the principal debtor, the proceedings cannot be allowed to continue against the guarantors. Further, the amount recovered from the auction of the Truck (seized by RFC) also deserved to be adjusted.

7. Aggrieved of the said objections as preferred by the present petitioner having been dismissed vide the order impugned dated 11.09.2006, the present revision petition has been preferred.



8. Learned counsel for the petitioner submitted that the order impugned dated 11.09.2006 is in total contravention to the basic provision of Sections 31 & 32 of the Act of 1951 insofar as no decree in terms of Section 31 of the Act of 1951 could have been passed by the Court. Counsel submits that Section 31 of the Act of 1951 itself is the enabling provision in terms of which the Court has the jurisdiction to get the liability of the principal debtor as well as the surety enforced but in any manner, the Court is not competent to pass any decree in terms of the said provision.

9. Counsel further submitted that when no decree could have been passed on the application under Section 31 of the Act of 1951 as preferred by the respondent-RFC, any petition for execution of any such order/decreed cannot also be said to be maintainable. He argued that the objection as raised by the surety regarding the maintainability of the execution proceedings was very much tenable and ought to have been sustained.

In support of his submissions, counsel relied upon the judgments passed by the Co-ordinate Bench of this Court in the cases of ***Peetam Oil and Flour Mill vs. The RFC & Ors.; (2015) 2 WLN 105*** and ***N.L.P. Organics Pvt. Ltd. & Ors. vs. Rajasthan Financial Corporation; (2007) AIR (Raj) 10.***

10. Per contra, learned counsel for the respondent-RFC submitted that Section 31 of the Act of 1951 provides for distinct provisions qua a principal debtor and a surety. So far as the principal debtor is concerned, it provides for direct attachment and seizure of his property but so far as the surety is concerned, a show cause notice is to be issued to him and after the said cause been shown by the surety, the Court is required to investigate the





claim of the financial corporation in accordance with the provisions of the Code of Civil Procedure. After the said investigation been done, the Court can, in terms of Section 32(7)(da) of the Act of 1951, direct the enforcement of the liability of the surety or reject the claim.

11. In the present matter, the Court, after taking into consideration the reply as filed by one of the sureties, held the applicant-RFC entitled to enforce the liability of the surety which is totally in consonance with the said provision. Therefore, after the said order having been passed in terms of the said provision, the only remedy available with the applicant-RFC was to get the same executed as if it were a decree as provided under Section 32(8) of the Act of 1951.

In support of his submissions, counsel relied upon the judgment passed by the Hon'ble Apex Court in the case of **Maharashtra State financial Corporation vs. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. & Ors.; (1991) 2 SCC 637.**

12. Heard learned counsel for the parties and perused the material available on record.

13. Sections 31 and 32 of the Act of 1951 read as under:

“31. Special provisions for enforcement of claims by Financial Corporation.—(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any installment 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 (4 of 1882) any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

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

(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. 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.

(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) 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) 1, or issuing a notice under sub-section (1A), 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 (1A) 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 (5 of 1908) insofar 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 (5 of 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 for the possession of immovable property or 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 (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 other powers incidental thereto."*

14. Vide Amendment Act 43 of 1985, Clause (aa) was inserted in sub-Section 1 of Section 31 of the Act of 1951. Vide the said clause, right to a Financial Corporation to get the liability of a surety enforced, was also granted. Meaning thereby, it enabled





the Financial Corporation to make an application under Section 31(1) of the Act of 1951 "for enforcing the liability of a surety". As per the procedure provided under Sections 31 & 32, on such application under Section 31(1) being moved, notices to the surety are to be issued as contemplated by sub-Section 1A of Section 32 of the Act of 1951. If no cause in response to the said notice is shown, sub-Section 4A of Section 32 of the Act of 1951 contemplates passing of an order forthwith for enforcement of the liability of surety. However, if some cause is shown, the claim of the Financial Corporation is to be determined as provided under sub-Section 6 of Section 32 of the Act of 1951 and thereafter, a direction in terms of Clause (da) of sub-Section 7 is to be issued for enforcement of the liability of the surety or reject the claim made in this behalf.

15. In the present matter, admittedly the application under Section 31(1) was preferred by the RFC and the learned Court, after holding the RFC entitled to recover the amount from the guarantors, instead of passing orders/directions to enforce the liability of the surety, proceeded on to end the proceedings vide a decree dated 28.05.1999 in favour of RFC. RFC hence, proceeded on to get the said order/decreed executed and for the purpose, preferred an execution application on 02.12.2004.

16. This Court is of the clear opinion that the execution petition as preferred by RFC could not have been maintained as no decree on an application under Section 31(1) of the Act of 1951 could have been passed. Section 31 of the Act of 1951 does not contemplate of any decree/money decree. Section 31 of the Act of 1951 itself is an enabling provision which provides for the



complete procedure for enforcement of liability of the principal debtor as well as the surety. The proceedings, if any, for enforcement of liability, may be of a surety, could have been undertaken by the RFC in terms of Section 31 of the Act of 1951 only. For the said purpose, no independent/separate execution petition could have been preferred and neither could have the same be entertained by the Court.

17. The Hon'ble Apex Court in the case of **Maharashtra State Financial Corporation** (supra) held as under:

*"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, Subsection (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."*

The Court further held:

"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 as defined in Section 2(2) of the Code for recovery of money."

18. The Co-ordinate Bench of this Court, in the case of **N.L.P. Organics** (supra), while dealing with a similar situation and





interpreting the provision of Section 31 of the Act of 1951, specifically held that the Court, while deciding an application under Section 31 of the Act of 1951, can grant only those four reliefs as enumerated in the section and cannot travel beyond the reliefs contained therein. Further that the application under Section 31 of the Act of 1951 cannot be termed to be a plaint in a suit and the Corporation cannot pray for a decree for its outstanding dues. Therein, the Court held as under:

*"27. The first relief could not be granted u/s 31(1) of the Act of 1951. For, the power to determine the exact amount owed to the Financial Corporation is not given under the said section. According to the Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, "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." Hence, **the learned Judge is not entitled to direct that "the Corporation is entitled to receive Rs.1,36,04,991/- from the Respondents". Such a direction can be passed in a money recovery suit, but not in an application filed u/s 31(1) of the Act of 1951.**"*

19. A similar view was taken by the Co-ordinate Bench of this Court in the case of **Peetam Oil and Flour Mill** (supra) wherein the Court observed that a money decree cannot be passed on an application made under Section 31(1) of the Act of 1951.

20. In view of the above settled position of law, the objections as preferred by the objector-petitioner Balvir Singh deserve to be allowed to the extent that the execution petition as preferred by the RFC was not maintainable. As no decree itself could have been passed by the Court on an application under Section 31(1) of the Act of 1951, the order dated 28.05.1999 could not have been enforced as a decree.



21. The present revision petition is hence, **allowed**. The order impugned dated 11.09.2006 deserves to be and is hereby set aside.

However, respondent-RFC shall be at liberty to get its application under Section 31 of the Act of 1951 (decided vide order dated 28.05.1999) revived or to re-initiate the proceedings under Section 31 of the Act of 1951 subject to all legal and valid objections to be raised by the present petitioner/surety.

(REKHA BORANA),J

T.Singh/-