

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 27th July, 2017**

+ **CM(M) No.612/2017**

DELHI FINANCE CORPORATION

..... Petitioner

Through: Mr. Sanjay Poddar, Sr. Adv. with
Ms. Saahila Lamba & Mr. Govind
Poddar, Advs.

Versus

M/S POLY CRAFTS

..... Respondent

Through: Mr. C.S. Gupta & Ms. Kritika,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order [dated 9th March, 2017 in RCA No.05/2016 (Registration No.61775/2016) of the Court of Additional District Judge (ADJ) (Central)-10, Tis Hazari Courts, Delhi] of restraining the petitioner from initiating recovery proceedings against the respondent or from selling the factory premises of the respondent at F-22, Phase-I, Okhla Industrial Area, New Delhi subject to the respondent (appellant in the appeal) furnishing bank guarantee of Rs.20 lacs in favour of the petitioner (respondent in the appeal).
2. The petition was entertained and notice thereof issued.
3. The counsel for the respondent appears.
4. On the contention of the senior counsel for the petitioner that the learned ADJ has by the impugned order stayed recovery of

public dues of over Rs.6 crores owed by the respondent to the petitioner, the petition has been taken up for hearing on priority.

5. The counsels have been heard.

6. The suit, against the order of rejection of plaint wherein the appeal is pending before the learned ADJ, was instituted by the respondent against the petitioner as far back as in the year 1992 and was pending as Suit No.1302/1992 of this Court.

7. It was the case of the respondent in the plaint i) that the petitioner has on 15th November, 1985 sanctioned a term loan of Rs.13.80 lacs in favour of the respondent; ii) that the respondent mortgaged its industrial plot No. F-22, Phase-I, Okhla Industrial Area, New Delhi with the petitioner for availing the said loan by executing a Mortgage Deed dated 10th March, 1986; iii) that the respondent applied for an additional loan of Rs.4.55 lacs to the petitioner and executed another Mortgage Deed dated 23rd February, 1987 in consideration thereof; iv) that however instead of Rs.4.55 lacs, only Rs.2.14 lacs was availed by the respondent; v) that the request of the respondent to the petitioner to allow the respondent to pay the overdue interest in small installments was acceded to by the petitioner on 4th July, 1988; vi) that though the respondent had paid an amount of Rs.10,15,070/- to the petitioner in repayment of the loan but a notice dated 17th March, 1992 under Section 29 of the State Financial Corporations Act, 1951 was issued by the petitioner claiming the balance due from the respondent as Rs.17,37,824.17 paise.

8. The respondent, in the plaint in the suit, sought the reliefs of a) restraining the petitioner from selling or taking possession of the factory premises of the respondent; and, b) issuance of a direction to the petitioner to give a statement of account relating to the loans advanced to the respondent along with details of interest charged thereon.

9. The aforesaid suit came up before this Court first on 8th April, 1992 when vide *ex parte* order the petitioner was restrained from selling the aforesaid factory premises of the respondent or from dispossessing the respondent therefrom.

10. I am informed that the said interim order continued.

11. The suit aforesaid, on enhancement of the minimum pecuniary original jurisdiction of this Court, was transferred to the District Court and as per its valuation assigned to the Court of Civil Judge.

12. The petitioner filed an application under Order VII Rule 11 of the CPC for rejection of the plaint. The learned Civil Judge-04, Central District, Tis Hazari Courts, Delhi vide order dated 27th November, 2015 rejected the plaint in the suit reasoning i) that the respondent / plaintiff in the plaint had admitted the factum of taking the loan from the petitioner / defendant and of having mortgaged his property to secure the said loan; ii) that the respondent / plaintiff had also admitted receipt of notice of demand of Rs.17,37,824.17 paise from the petitioner / defendant; iii) that though the respondent / plaintiff in the plaint had claimed the said notice to be wrongful and incorrect but had not sought any relief of declaration of the

notice as incorrect or the consequential relief of cancellation of the said notice or of declaration that the same was not binding on the respondent / plaintiff; iv) that the respondent / plaintiff had only sought the relief of injunction simpliciter and owing where to the recovery of dues of the petitioner had been delayed for a long time; v) reliance was placed on ***Orissa State Financial Corporation Vs. Hotel Jogender*** (1996) 5 SCC 357 holding that no indulgence is to be shown to inalcitrant defaulters and that the Court should protect only the honest and sincere litigants and that the State Financial Corporation in such cases are free to take action against the defaulters under Section 29 supra; vi) that the discretionary relief of injunction could not be granted to defaulters of public dues; vii) that per Section 41(i) of the Specific Relief Act, 1963 also injunction cannot be granted when the conduct of the plaintiff or his agent is such as to disentitle the plaintiff to the assistance of the Court; viii) that the respondent / plaintiff had admitted default on its part in repayment of the entire loan; ix) that equally efficacious remedy of declaration and cancellation of the demand notice was available to the respondent / plaintiff; x) that a simpliciter suit for injunction was not maintainable and also barred by Section 41(h) of the Specific Relief Act; xi) reliance was placed on ***Sarjiwan Singh Vs. Delhi Vidyut Board*** 110 (2004) DLT 633 holding that it is necessary to seek declaration before being entitled to consequential relief of injunction in cases where the demand raised by a statutory body against a person is claimed to be incorrect or illegal and that *ad valorem* court fees is payable on such suits on the quantum of

payment; xii) that the respondent / plaintiff has been grossly abusing the process of the Court and owing whereto the respondent / plaintiff continued to enjoy the public monies to the prejudice of the public exchequer.

13. The respondent / plaintiff preferred the appeal as aforesaid against the order of rejection of the plaint. The said appeal was accompanied with an application under Section 151 CPC seeking the interim relief during the pendency of the appeal, of restraining the petitioner from initiating any recovery proceedings and / or from selling the said property and which application as aforesaid has been allowed by the learned ADJ and the appeal posted for hearing, I am told in October/November, 2017.

14. The senior counsel for the petitioner, informs and the counsel for the respondent does not dispute that the petitioner, after rejection of the plaint, has taken possession of the mortgaged property which is now under the lock and key of the petitioner. The senior counsel for the petitioner however contends that owing to the impugned order the sale of the property and realization of the dues of the petitioner from the sale proceeds of the property is held up.

15. I may mention that the learned ADJ before whom the appeal is pending had by an earlier ad-interim order dated 30th November, 2016 also restrained the petitioner from selling the property and / or from proceeding with the auction of the property. The petitioner had then preferred CM(M) No.167/2017 and which came up before this Court on 13th February, 2017 and was disposed of with a

direction to the learned ADJ to dispose of the injunction application within one month.

16. The impugned order though running into as many as 13 pages, for the first nine pages narrates the history of the suit and in the next two pages cites the dicta of the Courts on the principles of grant of interim injunction. The only reasons discernable from the order for granting stay of auction of the property of the respondent and for restraining the petitioner from otherwise recovering its dues of over Rs.6 crores from the respondent are i) that the respondent in repayment of the loan had paid Rs.22,36,820.70 paise to the petitioner and out of which Rs.12,21,750/- was paid during the pendency of the suit; ii) that as per statement of account dated 4th February, 2000 of the petitioner, a sum of Rs.40,38,040.06 paise was due from the respondent; iii) that the outstanding dues against the term loan had been accumulating and rising owing to the charging of compound interest on principal and interest “so much so that the recoverable amounts are stated to be in crores of rupees which are outstanding and payable by the petitioner, as per the case of the defendant”; iv) that the controversy between the parties was whether the respondent was liable to pay simple interest or compound interest on the loan amount; v) that at that stage no conclusive opinion could be given on the merits of the appeal or the suit; vi) that the question pertaining to the liability of the respondent in respect of principal balance as well as recoverable interest can only be examined upon trial; vii) that “however for the purpose of this interim stage, such orders are necessary as may give a fair

chance to the plaintiff so that the very appeal does not become infructuous if the defendant is allowed to sell the factory premises of the plaintiff in public auction. In such a case, the rights of a third party would be created who would unnecessarily be required to be roped in, depending upon the final outcome of the appeal”; viii) that there is a concept of ‘inequality of bargaining power’ in English law; ix) that it shall be a matter of detailed consideration whether equitable considerations are relevant or applicable in the facts of the case; x) that at that *prima facie* stage all that could be observed is that the respondent had paid up / deposited amounts owed over and above the amount which was disbursed by the petitioner to the respondent as loan; xi) that “the interests of justice disclose a *prima facie* case in favour of the plaintiff who shall suffer irreparable loss and injury which cannot be compensated in terms of money if the interim relief is not allowed pending the appeal”; and, xii) that the balance of convenience was also in favour of the respondent and against the petitioner.

17. The aforesaid would show that the impugned order though running into as many as 13 pages is totally devoid of any reasoning. Words of general application without any relation to the facts of the case have been used to show a semblance of consideration and reasoning when there is none. Not a word is mentioned in the impugned order with respect to the order of the Civil Judge appealed against. The learned ADJ forgot that she was exercising appellate jurisdiction and was required to consider the merits of the appeal and was not considering an application for injunction as in a

suit. There was already a finding in existence of the suit Court i.e. the Civil Judge, of the suit as filed being not maintainable resulting in rejection of the plaint. The learned ADJ though exercising appellate jurisdiction, while granting stay of recovery of crores of rupees subject only to the respondent furnishing bank guarantee of Rs.20 lacs, has in the impugned order not considered the order of the Civil Judge of rejection of the plaint and there is not a whisper in the order of any merits in the appeal. The learned ADJ has also failed to notice the observations of the learned Civil Judge of the respondent abusing the process of law by using the same for withholding public dues for over 25 years.

18. I may add that the observations of the learned Civil Judge in this regard are also in consonance with the dicta of the Supreme Court in *U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd.* (1993) 2 SCC 299 holding that State Financial Corporations Act, 1951 was made to promote industrialisation by encouraging small and medium industries by giving financial assistance repayable within a period not exceeding 20 years; the State Financial Corporation is not supposed to give loan once and then go out of business – it has also to recover loans, so that it can give fresh loans to others; the fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it.

19. Seen in this light, it will be noticed that the fact that the petitioner is holding the property of the respondent cannot be a ground for staying the petitioner from recovering its dues inasmuch

as petitioner by holding the property cannot subserve the purpose of its creation, of further industrialization by disbursing loans to others in need.

20. Again, in ***Haryana Financial Corporation Vs. Jagdamba Oil Mills*** (2002) 3 SCC 496, it was held that, the State Financial Corporation being an independent autonomous statutory body, in the discharge of its functions is free to act according to its own light and the views it forms and the decisions it takes are on the basis of the information in its possession, the advice it receives and according to its own perspective and calculations; unless its action is *mala fide*, even a wrong decision by it is not open to challenge. It was further held, the Courts do not sit in appeal over the acts and deeds of the Corporation.

21. I may mention, there is no plea of *mala fides* in the present case.

22. The learned ADJ did not consider that per the spirit of Order XLI Rule 5 read with Order XLI Rule 1 (3) of the CPC also, no stay of money decree even is to be granted without deposit of the entire decretal amount or security therefor. On the said parity, there is no reasoning given in the impugned order why the learned ADJ chose to direct the respondent to furnish bank guarantee in the sum of Rs.20 lacs only and on what basis the figure of Rs.20 lacs, when the dues are noted in the order itself to be running into crores of rupees, was arrived at.

23. Though the impugned order is liable to be set aside on the aforesaid grounds alone i.e. of the learned ADJ having granted

interim relief restraining recoveries of monies by due process of law, without applying proper parameters required in law to be applied therefor but the other arguments of the counsels may also to be noticed.

24. The counsel for the respondent today also has argued that the dispute is only about computation of interest and the petitioner should be directed to compute the interest in terms of the loan agreement and to furnish the same to the respondent.

25. The senior counsel for the petitioner has handed over in the Court copies of the orders dated 11th November, 2014 and 3rd December, 2014 in WP(C) No.6858/2011 filed by the respondent in this Court. The said order records that notice in the writ petition was issued on 20th September, 2011 only on the limited question of directing the petitioner to calculate the amount which according to the petitioner was due from the respondent on the basis of the amount as disclosed in notice dated 15th July, 1991 with interest at 17% per annum with an additional interest at 1% per annum after adjusting the amount paid by the respondent and observing that the respondent will have opportunity to pay the said amount in full and final settlement of dues within three months of the amount being so communicated. Vide order dated 3rd December, 2014 it was clarified that the reference to interest payable would be read as compound interest with quarterly rests and as per the mortgage deed.

26. It is thus quite clear that the grievance of the respondent as urged today and as perhaps urged before the learned ADJ also

already stands adjudicated in the writ petition aforesaid and the respondent, after the orders in the writ petition have attained finality, cannot re-agitate the same.

27. Rather, I am unable to understand the purport of the suit and I am *prima facie* of the opinion that the learned Civil Judge was correct in rejecting the plaint. The respondent does not dispute the loan or creation of mortgage as consideration therefor. There is nothing to indicate that the demand of the petitioner is not in consonance with the loan agreement and the mortgage deed. Merely by alleging that basis of computation of interest have not been furnished, the payment of State Financial Corporation cannot be stayed.

28. Rather there is not an iota of reasoning in the impugned order of the action of the petitioner being illegal. It is not understandable as to how, without giving findings on the same, the learned ADJ has chosen to interdict in the exercise of statutory powers by the petitioner. Rather Section 46B of the State Financial Corporation Act provides that the provisions of the State Financial Corporations Act and any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

29. The petition thus succeeds and is allowed. The impugned order dated 9th March, 2017 is set aside. Axiomatically, the stay granted by the learned ADJ restraining the petitioner from initiating recovery proceedings or from selling the factory premises of the respondent is vacated and the application of the respondent for

interim relief during the pendency of the appeal dismissed.

30. The petition is disposed of.

31. A copy of the order dated 9th March, 2017 of the learned ADJ as well as a copy of this order be forwarded to Hon'ble the Chief Justice as well as to the ACR Committee of the learned ADJ.

JULY 27, 2017

‘gsr’..

RAJIV SAHAI ENDLAW, J.

