

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...
FIRST APPEAL NO. 1255 OF 2005

MAHESH BAIJNATH ROY

VERSUS

MAH STATE FINANCIAL CORPN & ORS

...

Advocate for Appellant : Mr. V S Bedre

Advocate for Respondent No. 1: Mr. G.D. Tanpure h/for
Mr. N. C. Garud

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 9th September, 2015

PER COURT :

1. The present respondent No.1 had filed an application under section 31 of the State Financial Corporations Act for recovery. The same is partly allowed. The borrower has filed the present appeal.

2. Mr. Bedre, the learned counsel for the appellant/original respondent No.3 submits that the proceedings were not maintainable. The original agreement was not filed. The property of the present appellant was sold at very low price under section 29 of the SFC Act. All these aspects have not been considered. The Court has not granted the agreed rate of interest. In absence of the document before the Court, the Court could not have come to the conclusion about the jural relationship between the parties. It ought to have considered that as the property has been sold at lower price, no liability can be accrued.

3. I have considered the submissions.

4. As far as question of tenability of the application is concerned, the same is no longer *res integra* in view of the judgment of the Apex Court in the case of **Maharashtra State Financial Corporation Vs. Jaycee Drugs and pharm.**, reported in (1991) 2 SCC 637.

5. The proceedings were filed for recovery of the shortfall i.e. loan amount due, less the amount recovered from the sale of the property. It is not disputed that the property of the present appellant has been sold by the respondent No.1. in exercise of powers under section 29 of the S.F.C. Act. It is the case of the present appellant that the said property has been sold for lower price. Jural relationship is not disputed. The Court has not awarded the amount of interest as claimed. The Court has awarded only 9% future interest. Even the appellant is not ready to deposit the amount as per the order.

6. Considering the above, no case for interference is made out. The first appeal is dismissed. No costs.

(S. V. GANGAPURWALA, J.)

JPC