

Regular Second Appeal No.606 of 2012 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.606 of 2012 (O&M)
Date of Decision: August 30, 2016

Col.Yadukul Bhushan Behl

...Appellant

Versus

Delhi Financial Corporation, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sanjay Kaushal, Senior Advocate with
Mr.Kanwal Goyal, Advocate,
for the appellant.

Mr.Sanjay Judge, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

CM No.10471-C of 2016

Annexure R-X (colly) is taken on record subject to all just
exceptions.

Exemption is also granted to file certified copies.

CM stands disposed of.

RSA No.606 of 2012

Appellant-plaintiff is aggrieved of the dismissal of the suit
seeking declaration and consequential relief of injunction by challenging the
notice dated 18.11.2002 (Ex.P1) issued under Section 29 of the State
Financial Corporations Act, 1951 (for short "1951 Act") by defendant No.2,
being illegal, null & void and without jurisdiction, whereby the appellant,
the alleged guarantor, has been called upon to deposit a sum of ₹16, 87,995-

58P before the office of Collector.

Mr.Sanjay Kaushal, learned Senior Counsel assisted by Mr.Kanwal Goyal, Advocate for the appellant-plaintiff submits that the notice, aforementioned, shows that the respondents initiated proceedings by invoking the provisions of Section 32-G of 1951 Act. He submits that the appellant stood as a guarantor in respect of advancement of loan of ₹3.07 lacs to the principal borrower for purchasing of a Tata make truck bearing registration No.CHW-7550, which was registered with the Registering Authority, U.T.Chandigarh. The said vehicle was hypothecated with the Delhi Financial Corporation (for short "DFC"). Vide notice Ex.D5 dated 9.3.1991, the Bank initiated proceedings under Section 29 of 1951 Act by recalling of the loan. The said notice was addressed to the principal borrower and the copy thereof was endorsed to the appellant-guarantor. As a result thereof, notice Ex.D6 dated 27.5.1992 was issued. In support of his contention, he submits that Section 29 of 1951 Act deals with the procedure of taking remedial measure by the Financial Corporation against the industrial concern, in essence the principal borrower, whereas on the contrary, Section 31 entitles the Financial Corporation to enforce the liability of a surety, particularly Section 31 (1) (aa), which was inserted by Act 43 of 1985, i.e., w.e.f. 21.8.1985. The loan in the aforementioned case was taken in 1988 and, therefore, the provisions of the said Section would apply. He further submits that the procedure under Sections 29 and 31 of 1951 Act is totally different vis-a-vis the provisions of Section 31. As per the provisions, proceedings before the competent court, i.e., the concerned District Judge, are required to be initiated. However, no procedure in this regard under the aforementioned provisions of law had been followed. In

support of his contention, he relies upon the judgment rendered by the Hon'ble Supreme in **Karnataka State Financial Corporation Versus N.Narasimahaiah and others, (2008) 5 Supreme Court Cases 176 (Para 37).**

He further submits that the vehicle in question had been taken into possession by the Financial Corporation way back in 1992. The said truck was not sold owing to the fact that the same was taken on superdari. Perhaps certain criminal proceedings were initiated. The Courts below have non-suited the plaintiff on the premise that the proceedings under Section 32-G of 1951 Act have not been challenged by the appellant-plaintiff. He submits that the action initiated by the Financial Corporation is per se without jurisdiction and, thus, there is fallaciousness and perversity, this aspect has totally been ignored by the Courts below and, therefore, urges this Court for formulation of the following substantial questions of law for determination of this Court:-

- 1) Whether the notice dated 18.11.2002 (Ex.P1) issued by Collector (R), Delhi Financial Corporation is illegal and without jurisdiction, much less legally sustainable?
- 2) Whether the judgments and decrees of the Courts below suffer from falsity and perversity?
- 3) Whether there has been misapplication of mind, misappreciation of facts and misconstrual of the statutory provisions of law?

Per contra, Mr.Sanjay Judge, learned counsel for respondent Nos.1 and 2 submits that the role of the surety is to honour the commitment as per the surety bond/deed executed. Once the liability of the principal and the guarantor is co-extensive, i.e., joint and several, the surety cannot run

from his liability in the manner and mode as indicated in the suit and rightly so, the Courts below have declined to interfere in respect of the relief sought and, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

For the purpose of appreciating the contentions and rival contentions of the learned counsel for the parties, it would be apt to reproduce the provisions of Sections 29 and 31 of 1951 Act and Para 37 of the judgment cited supra. The same read thus:-

“29. Rights of Financial Corporation in case of default.

(1) Where any industrial concern, which is under a liability to the Financial Corporation under an 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, the Financial Corporation shall have the [right to take over the management or possession or both of the industrial concerns], as well as the [right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred [as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) [Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, [charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it [as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]

(5) [Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of [the concern].

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 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 (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.

Para 37 of the judgment

“The legislative intent, in our opinion, is manifest. The intention of the Parliament in enacting [Sections 29](#) and [31](#) of the Act was not similar. Whereas [Section 29](#) of the Act consists of the property of the industrial concern, [Section 31](#) takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. The Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of [Section 31](#) of the Act and not under [Section 29](#) thereof.”

The conceded position on record is that the notice dated 18.11.2002 (Ex.P1) was issued by the Collector-defendant No.2 of Delhi Financial Corporation purportedly as consequence of the proceedings initiated under Section 32-G of 1951 Act. Ex.D5 and Ex.D6 are the proceedings under the provisions of Section 29 of 1951 Act against the principal borrower, though copies of the same were endorsed to appellant, in essence the Corporation had taken the possession of the vehicle as a consequence of the aforementioned proceedings but against the surety, so far has not taken any action under Section 31 of 1951 Act. Section 31 (1) (aa) of 1951 Act, inserted in 1985, was in vogue at the time when the loan was advanced. Nothing prevented the Corporation to initiate proceedings in

the manner and mode as indicated above, i.e., the provisions of Section 31.

Separate procedures are provided as noticed by the Hon'ble Supreme Court.

In my view, the appellant-plaintiff could not have been non-suited or it could not be said to be fatal having not challenged the alleged notice (Ex.D8) purportedly under Section 32-G of 1951 Act. As per the procedure prescribed under Section 31, the District Judge was required to initiate the enquiry, much less issue a show cause notice to the surety concerned. In my view, there has been a deviation from statutory provisions of law and, thus, the notice under challenge could not have been issued, in essence was without jurisdiction. All these aspects have escaped notice of the Courts below, thus, in my view there is illegality and perversity.

For the foregoing reasons, the judgments and decrees under challenge are not sustainable and hereby set-aside. The suit of the appellant-plaintiff is decreed, in essence it is declared that the notice dated 18.11.2002 is without jurisdiction and hereby set-aside. However, this shall not prevent the Corporation to take action in accordance with law, if permissible as Mr.Kaushal at this stage submits that any action intend to be taken shall be, *ex-facie*, barred by law of limitation. I do not intend to delve on this point at this stage. Liberty is granted to the parties to raise the plea as and when such proceedings are initiated.

Appeal stands allowed.

August 30, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No