IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.78 OF 2012

EDC Limited, a company
duly registered under the
Indian Companies Act, 1956,
having its registered office
at EDC House, 1st floor,
Dr. Atmaram Borkar Road,
Panaji-Goa. … Appellant

Versus

1. M/s. Shri Kastub Shipping
Pvt. Ltd., having its registered
office at 6 Laxmi Apartments,
Yeshwantnagar, Tisk,
Ponda-Goa. Major in age.

2. Shri Anand Desai,
businessman,
resident of S2/S3,
Radha Anand Bhavan,
near Saraswati Mandir,
Ponda-Goa. Major in age.

3. Shri Balkrishna Kamat,
businessman, resident of Kunkale,
Magilwada, Mardol – Goa.
Major in age. …. Respondents

Mr. D. Pangam with Mr. P. Sawant, Advocates for the Appellant.

Mr. Nigel Da Costa Frias with Mr. B. Pacheco and Ms. A. Barbara, Advocates for the Respondents no.1 & 3.

CORAM : MANISH PITALE &
M. S. JAWALKAR, JJ

Reserved on : 17th September, 2021
Pronounced on : 24th September, 2021

JUDGMENT : (Per M.S. Jawalkar, J.)

Present appeal is filed under Section 32 (9) of the State Financial Corporation Act, 1951, (in short, 'the SFC Act')against the judgment and order dated 17.05.2012 passed by the Principal District and Sessions Judge, North Goa, Panaji in Civil Misc. Application No.32/2004.

2. The appellant is the original applicant and the respondents are the original respondents before the Principal District & Sessions Court, North Goa, Panaji. Appellant is a Government Company incorporated under Section 617 of the Companies Act and formed for the purpose of providing financial assistance to the industrial concerns and to encourage the industrial development in the State of Goa. The company is engaged in lending and advancing finances to the industrial concerns and other commercial activities.

3. The respondent is a private limited company having its registered office at 6, Laxmi Apartments, Yeshwantnagar, Tisk, Ponda, Goa. Respondent no.1 was granted term loan of ₹1,85,00,000/- vide letter dated 09.01.1998 for the purpose of purchasing a barge to be operated in the Goan waters. The respondents no.2 & 3 stood as guarantors for the respondent

no.1. The respondents executed agreement dated 14.03.1998 power of attorney dated 24.02.1998, Deed of hypothecation dated 14.03.1998, tripartite agreement dated 14.03.1998, Deed of Guarantee dated 14.03.1998, certificate of registration for the purpose of obtaining the said loan. The respondents no.2 & 3 were Directors of the respondent no.1 Company.

4. The appellant states that one of the conditions in the loan agreement was that the respondents shall not transfer registration of barge from the Port of Registry of Goa to any other Port without the consent of the appellant. Accordingly, the loan was disbursed to the respondents in terms of the said agreement and other documents. The respondents were defaulters and negligent in repayment of the said loan or liability. On respondents' request the appellant gave consent to transfer the port registration in respect of the said barge from Goa Port to Maharashtra Port as allegedly there was no viable business in the State of Goa.

5. The NOC was issued on 05.01.2021 subject to the terms and conditions mentioned therein. One of the conditions was that the respondents should regularise the accounts. However, as there was default, show cause notice dated 07.02.2001 came

to be issued and the appellant withdrew the NOC dated 05.01.2001 vide communication dated 07.03.2001. On restructure of loan and on down payment of some amount NOC was issued on 30.01.2002 for transfer. As there was again default, the appellant was constrained to recall the loan. The appellant took action under Section 29 of the State Financial Corporation Act. Thereafter, the appellant filed application under Section 31 of the State of Financial Corporation Act before the District Court of Panaji for the sale of the said barge which was hypothecated for an order directing the respondents to pay an amount of ₹2,85,73,399/- as of 31.12.2003 along with interest and other reliefs.

6. Respondents no.1 & 3 filed common reply. Respondent no.2 filed separate reply. Respondents no.1 & 3 even filed undertaking dated 07.06.2004 to pay an amount of ₹2,50,00,000/- by 5/07/2004 and the balance amount should be recovered from the respondent no.2. There is another similar undertaking given on 05.07.2004. Only amount of ₹37,00,000/- was paid vide various cheques. Subsequently, on various dates some amount was paid and, thereafter, cheques were issued for an amount of ₹20,00,000/-, each, which got dishonoured. After recording of evidence the learned District Court at Panaji vide

judgment and order dated 17.05.2012 dismissed the application under Section 31 of the State Financial Corporation Act.

7. Being aggrieved, the present appeal is preferred mainly on the ground that the judgment and order is contrary to the evidence or material on record and which discloses total non application of mind. The finding arrived at by the learned District Court that it has no territorial jurisdiction is contrary to law and suffers from perversity. It failed to consider that loan was disbursed in the office of the appellant in North Goa and agreements were signed and executed in North Goa. As such, District Court, Panaji, certainly had the jurisdiction to entertain the claim. The finding of the learned District Court that since the barge was taken outside the territory of Goa without consent of respondent no.2, the respondent no.2 is not liable for any repayment, is totally erroneous and perverse. It is also contended that findings on all issues are not recorded which is against the provision of law.

8. As against this, learned counsel for the respondents no.1 & 3 Shri Nigel Da Costa Frias, submitted that the order is perfectly legal and justified. The barge is not within the territory of Goa and, therefore, this Court has no jurisdiction in

view of the prayers made in the application.

9. We have heard both the parties at length, perused record and judgment passed by the learned trial Court. Both the parties have consensus that there is no need to call for records as everything is included in the paperbook. We have perused the application and the prayers made therein.

10. The applicants have prayed to stay the judgment and order in terms of Section 31(1)(a) of the SFC Act, the sale of the said hypothecated barge M.V. Indira presently stationed at Dharmatal Jetty, Maharashtra State and/or to repay to the applicant the amount of ₹2,85,73,399/- as on 31.12.2003 along with interest till realisation, injunction from plying the barge and for decree to enforce the guarantee and for direction to pay the outstanding amount.

11. Record shows that even after filing of this application in the month of March 2004, in the month of June respondents no.1 & 3 filed undertaking to pay an amount of ₹2,50,00,000/- by 05.07.2004. Another application was moved by respondents no.1 & 3 on 05/07/2004 for extension of time and again on 09.08.2004 filed another undertaking. This application *prima*

facie shows admission on the part of respondents no.1 & 3 about the liability. There are certain payments also made by respondents no.1 & 3.

12. The issues framed by the learned District Judge are as under :

	Issues	**Findings**
1	Whether the applicant proves that respondent no.1 was sanctioned loan of ₹1,85,00,000/-?	Does not survive
2	Whether the applicant proves that respondent no.2 and respondent no.3 had offered themselves as guarantors for repayment of the loan of ₹1,85,00,000/- with interest, cost, charges and other incidental expenses?	Does not survives
3	Whether the applicant proves that the respondent no.1 has defaulted in making the payment and that the respondents are liable to pay ₹28,85,73,399/- with further interest as on 04.02.2004?	Negative
4	Whether the respondents no.1 & 3 prove that this Court has no territorial jurisdiction to entertain the application?	Affirmative
5	Whether the respondents no.1 & 3 prove that the applicant has charged interest at the rate of 18.5% though the	Negative

	amount was repayable at the interest of 16.5% floating rate?	
6	Whether the respondent no.2 proves that, R3 who was his superior had made him to sign the agreement without giving any opportunity to read the documents?	Affirmative
7	Whether the respondent no.2 proves that the terms of the contract had been varied without his consent and as such he is not liable/responsible for the same?	Affirmative
	Additional Issue	
8	Whether the G.M. had been authorized to file the application under Section 31 of SFC Act?	Negative

13. It appears that learned District Judge decided issue no.4 in favour of respondents no.1 & 3, that is, about the territorial jurisdiction to entertain the application and, in view thereof, without deciding the issue nos.1 & 2, answered as “does not survive” and to the issue of default in payment in the negative. There is no finding against the issue nos.1 & 2 in view of affirmative finding against the issue no.4. The learned District Judge, in paragraph 48 of the judgment has recorded finding as under :

> "In sum and substance the applicants had failed to establish that this Court had the territorial jurisdiction to entertain the application for the stated reliefs. i therefore answer the issue no.4 in the affirmative. The issue no.1 does not actually arise and fall for determination since there was no dispute that the Term Loan of ₹1,85,00,000/- was sanctioned in favour of the respondents no.1, that the respondents no.2 & 3 were the Guarantors for the repayment of the said loan and accordingly issues no.1 and 2 are answered as do not survive."

It also appears from the order that the only reason for not having territorial jurisdiction recorded by the learned Judge is barge is moved beyond the territorial waters of Goa.

14. It is settled principle of law that Court has to pronounce judgment on all issues. Order XIV Rule 2 is to that effect only which provides that although suit can be disposed of on a preliminary issue the Court shall ordinarily pronounce judgment on all issues, but where any issue relates to the jurisdiction of the Court or a bar to the suit created for any law for the time being in force, the court may postpone the settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such a bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue. Order XIV Rule 2 makes it clear that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to

the provisions of sub-rule (2), pronounce judgment on all issues. Order XIV Rule 2 speaks about where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law.

15. Thus, proper course for the learned District Judge was either to decide the issue of territorial jurisdiction first and take appropriate steps thereafter or pronounce judgment on all the issues. Here there are no findings in respect of issue nos.1 & 2 and the finding recorded against issue no.3 as negative is totally erroneous.

16. It appears that learned District Judge has failed to appreciate that in the application itself Section 31 of the SFC Act is reproduced. Moreover, it is in very clear terms mentioned that barge is plying outside the Goa waters and at the relevant time same is stationed at Dharmatal Jetty, Maharashtra State. It is also made clear that applicant is entitled to proceed against the respondent no.1 though the barge is not within the Goan waters but as the respondent no.1 is registered in Goa and carries substantial part of his business

from his registered office situated at Ponda, Goa, and, therefore, the Court has got jurisdiction to entertain and dispose of the application.

17. Moreover, Deed of hypothecation was on record wherein address of the respondent no.1 is shown as 6, Laxmi Apartments Yeshwantnagar, Tisk, Ponda, Goa. It is admitted fact that the said company is not having any other office at any other place at the time of filing of application. Inspite of this position, the learned District Judge held that the Court has no territorial jurisdiction to entertain the application and Issue nos.1 & 2 about sanction of loan and liability of respondents no.2 & 3 as a guarantor were answered as 'does not survive'. So far as issue in respect of default in payment is also answered in negative, specifically when there was undertaking on record on behalf of respondents no.1 & 3. The learned District Judge has totally erred in recording such finding.

18. Section 31 of SFC Act is very clear. It reads 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 instalment thereof 71 [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, 72 [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 73 [Financial Corporation] as security for the loan or advance; or
> [(aa) for enforcing the liability of any surety; or]

19. This provision clearly indicates that 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**.

20. Admittedly, all agreements with respondents no.1 to 3 are executed in North Goa. It is not the claim of respondent no.1 that there is any other office from where they are carrying out their business. Even Deed of hypothecation reveals the address of respondent no.1 as Ponda. Thus, whether hypothecated

barge is in the water of Goa or Maharashtra hardly makes any difference. If the subsequent provisions of SFC Act are perused, the Court is having not only territorial jurisdiction but also having power to attach the property and adopt procedure of execution as per CPC, as if the financial Corporation were the decree holder. As such, the Court can invoke to execute decree, procedure established under Order XXI. It has ample powers to attach, sell, auction the property even if situated beyond the territorial jurisdiction of the Court as per procedure laid down under Order XXI.

21. In our considered opinion, the order passed by the learned District Judge is totally erroneous against the provisions of law. It failed to appreciate that the respondent no.1 has its registered office in Ponda and, as such, the Court had jurisdiction to entertain the proceedings under Section 31 of SFC Act. Just because barge is moved out of territory cannot be the reason to hold that there is no territorial jurisdiction.

22. As such, we hold that respondents no.1 & 3 failed to prove that the learned District Judge has no territorial jurisdiction to entertain the application and we record our finding that the learned District Judge is having territorial jurisdiction to

entertain and try the application.

23. Many of the findings also, in respect of exonerating respondent no.2 from any liability, are perverse. The learned District Court accepted the evidence of respondent no.2 that since the barge was taken outside the territory of Goa without the knowledge of respondent no.2 and his consent. Therefore, respondent no.2 is not liable. In fact, consent is required of the appellant and not of the respondent no.2.

24. Moreover, restructuring of loan offer was conditional and as the terms and conditions were not fulfilled by the respondent no.1 the loan was not restructured and the offer was withdrawn. As such, it is in no way affected to respondent no.2. The learned District Judge also appears to have given unnecessary importance to the version of respondent no.2 that as there was no consent of respondent no.2 it was not within the knowledge of respondent no.2 that barge was taken out of State of Goa. However, the learned District Judge failed to appreciate that the loan application was dated 03.07.1997 and the sanction was on 09.12.1997 and the Deed of Guarantee signed by him was in January 1998. These are admitted facts. Moving barge out of State of Goa will not affect Guarantors'

liability. So far as his resignation is concerned it is subsequent as it was in the month of June 2000. Nothing turns on his resignation in the month of June 2000. As such, on this count also, the order passed by the learned District Judge cannot sustain in the eyes of law and is liable to be quashed and set aside.

25. Above discussion leads us to hold that impugned order needs to be set aside as it is patently erroneous. The learned Judge failed to appreciate evidence in its proper perspective or to apply provisions of law. We would have decided other issues also finally, however, that may have defeated the right of the parties to appeal. Hence, it would be proper to remit the matter back for fresh hearing.

26. Accordingly, we proceed to pass the following order:

O R D E R

(i) First appeal is partly allowed.

(ii) The order passed in Civil Misc. Application No.32 of 2004 dated 17.05.2012 by the learned Principal District Judge, Panaji, is hereby quashed and set aside.

(iii) The application is directed to be restored to its original number for hearing afresh.

(iv) Parties to appear before the learned Principal District Judge, Panaji, on 01.10.2021 at 10.00 a.m.

(v) Records and Proceedings received from the District Judge, to be returned back forthwith.

(vi) There shall be no order as to costs.

M.S. JAWALKAR, J. **MANISH PITALE, J.**

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NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2021.10.05 14:57:42 +05'30'