IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34290 of 2023
and
W.M.P. No. 34178 of 2023

Vani … Petitioner

-vs-

1. The General Manager (Administration),
   Pondicherry Industrial Promotion Development and
   Investment Corporation (PIPDIC) Limited,
   No. 60, Roman Rolland Street,
   Puducherry – 605 001.

2. N.Karthikeyan

3. VKS Bio Briquettes,
   R.S. No. 135/3A, Abishegapakkam Main Road,
   Keezhagraharam,
   Puducherry – 605 110. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent in Proceedings No. PIPDIC/FP/SSI/41/212/T-III/24/3360 dated 02.11.2023 and to quash the same as incompetent, illegal and without jurisdiction.

For Petitioner : Ms. K.Abhirame

For Respondents : Mr. D.Ravichander (for R1)

No appearance (for R2 & R3)

O R D E R

Heard Ms. K.Abhirame, Learned Counsel for the Petitioner and Mr. D.Ravichander, Learned Counsel for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Second and Third Respondents when the matter is called at 11.05 a.m. today.

3. The Third Respondent, viz., M/s. V.K.S. Bio Briquettes – (03D83), is a partnership firm in which the Second Respondent is one of its partners. The Petitioner is the sister of the Second Respondent. The mother of the Petitioner and the Second Respondent, viz., Baby Ammal, had created equitable mortgage on 21.03.2011 of her property situated at R.S. No. 135/3A, Abishegapakkam Main Road, Keezhagraharam, Puducherry - 605110 and had deposited the title-deeds of that property as security for the borrowings made by the Third

Respondent from the First Respondent. The said Baby Ammal died on 22.03.2019 and as there was default in the repayment of the loans due by the Third Respondent, the First Respondent by notice dated 21.07.2022 to the Third Respondent and its partners including the Second Respondent and the said Baby Ammal informed that the mortgaged property would be taken possession on 13.09.2022 for recovery of the dues under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'the Act' for short). The Petitioner had on 08.09.2022 filed the Writ Petition in W.P. No. 24560 of 2022 assailing that action taken by the First Respondent contending that the aforesaid notice sent to the said Baby Ammal, who is a dead person, is not valid in law and that the Petitioner, who has succeeded to her estate and entitled to half share in that mortgaged property has not been given in notice of the impugned proceedings. This Court, at the time of admission of that Writ Petition on 12.09.2022, had granted interim order of stay of the impugned proceedings on condition that a sum of Rs. 8,00,000/- would have to be paid in two installments. Inasmuch as the only lacuna raised by the Petitioner in that Writ Petition was that she had not been served with notice in the impugned proceedings, Learned Counsel appearing for the First Respondent had produced a copy of another notice in No. PIPDIC/FP/SSI/41/212/T-III/24/3360 dated 02.11.2023 in supersession of the earlier notice No. PIPDIC/ FP/ SSI/ 41/ 212/

T-III/ 24/ 6872 dated 21.07.2022 informing the concerned parties including the Petitioner, the Second and Third Respondents that the possession of the mortgaged property would be taken on 30.11.2023 under Section 29 of the State Financial Corporation Act, 1951. In view of the subsequent events, that Writ Petition was disposed with the observations that in respect of the sum of Rs. 8,00,000/- remitted by the Petitioner as condition for grant of interim order, it is left open to the parties to work out their rights in accordance with law in that regard.

4. In this Writ Petition, the Petitioner has challenged the said notice dated 02.11.2023 issued by the First Respondent informing that the First Respondent would be taking over the assets of the Third Respondent at R.S. No. 135/3-A, Abishegapakkam Main Road, Keezhagraharam, Thirukanchi Revenue Village, Villianur, Puducherry under Section 29 of the Act on 30.11.2023.

5. The pivotal attack on the impugned action taken by the First Respondent under Section 29 of the State Financial Corporation Act, 1952 (hereinafter referred to as 'the SFC Act' for short), is that it cannot be invoked in the absence of any prior determination of liability by a Court or other adjudicating authority. At the outset, it must be pointed out as held by the Hon'ble Supreme

Court of India in the decision in ***Punjab National Bank -vs- Surendra Prasad Sinha*** [(1993) 1 SCC 499] that it is not obligatory to file a suit to recover the debt and the creditor, when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody. In that backdrop, reference must be made to Section 29 of the SFC Act, which reads as follows:-

> *"**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."

It is beyond any pale of doubt from the plain language of Section 29 of the SFC Act, that it, by itself, entitles a State Financial Corporation, like the First Respondent in this case, to recover the debt due from an industrial concern to which it has advanced loan without filing any suit by taking over its management or possession or both as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to it. While holding that the right vested in the State Financial Corporation under Section 29 of the SFC Act is besides the right already possessed at common law to institute a suit, the scope of power exercised under that statutory provisions has been explicated by the Hon'ble Supreme Court of India in ***A.P. State Financial Corporation -vs- M/s. Gar Re-Rolling Mills*** [(1994) 2 SCC 647] in the following words:-

"9. An analysis of Section 29 of the Act reveals that where any industrial concern which is under an obligation and a liability to the Corporation under an agreement makes a default in repayment of the loan or advance or any instalment thereof or otherwise commits breach of any of the terms of the agreement,

the Corporation has the right to take over the management or possession or both of the defaulting industrial concern. It also has the right to transfer by way of lease or sale and realise the property pledged, mortgaged or hypothecated or assigned to the Corporation as security for the loan. Any transfer of property of the defaulter thereafter made by the Corporation shall vest in the transferee all rights in or to the property transferred by virtue of Section 29(2) of the Act. Vide Section 29(3) of the Act, the Corporation has the same rights with respect to the goods manufactured, or produced wholly or partly as it had in respect of the original goods forming part of the security. Section 29 of the Act, therefore, deals with not only the rights of the Corporation in cases of default by the industrial concern, but also provides for a remedy to take over the management of the defaulting industrial concern with or without possession as well as the right to transfer by way of lease or sale of the hypothecated property to realise its dues. Since Section 29 of the Act provides both the rights and the remedies as also the procedure for enforcement of the rights and is a complete code in itself, it is open to the Corporation to act under Section 29 of the

Act to realise the dues from the defaulting concern by following the procedure prescribed under Section 29 of the Act. ***The Corporation does not require the assistance of the court to enforce its rights while invoking the provisions of Section 29 of the Act to recover its dues from the defaulting concern.***

(emphasis supplied)*"*

In view of this incontrovertible legal position, the said contention raised by Learned Counsel for the Petitioner cannot be countenanced.

6. The next plea raised by Learned Counsel for the Petitioner is that the First Respondent cannot take possession of the property of the guarantor of a State Financial Corporation in terms of Section 29 of the SFC Act, placing strong reliance on the decision of the Division Bench of this Court in ***A.Mohamed Ali (Died) -vs- Tamil Nadu Industrial Investment Corporation Limited, Tiruchirapalli*** [(2009) 1 LW 352]. In this context, it requires to be noticed that the property of Baby Ammal, which the First Respondent seeks to take possession under Section 29 of the SFC Act in this case, has been mortgaged to it and the Third Respondent had taken it on lease from her for establishing the industrial concern for which the loan had been advanced and is sought to be recovered by the impugned proceedings. In short, that mortgaged

property was the primary security for the loan and would squarely fall within the rights of the First Respondent to take over its management and possession as the industrial concern of the Third Respondent in terms of Section 29 of the SFC Act. The circumstance that the said Baby Ammal was a guarantor for the loan cannot be seen as a fetter on the rights of the First Respondent to exercise such powers. It must be straightaway pointed out that what has been sought to be interdicted in the decision of the Division Bench of this Court in ***A.Mohamed Ali (Died) -vs- Tamil Nadu Industrial Investment Corporation Limited, Tiruchirapalli*** [(2009) 1 LW 352] is that the personal property of a guarantor, which has not been mortgaged as security for the loan advanced to State Financial Corporation, cannot be taken possession under the guise of exercising powers under Section 29 of the SFC Act. The said principle cannot have any application to the present case when it is not only the mortgaged property, but also the industrial unit of the Third Respondent for which the loan sought to be recovered has been advanced. In this backdrop, it must be recapitulated that the Hon'ble Supreme Court of India in ***Regional Manager -vs- Pawan Kumar Dubey*** [(1976) 3 SCC 334] has highlighted that it is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its *ratio decidendi* and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. The Constitution Bench of the Hon'ble Supreme Court of India in ***Padma Sundara Rao (Dead) -vs- State of Tamil Nadu*** [(2002) 3 SCC 533] has aptly ruled in this regard as follows:-

> *"Courts should not place reliance on decisions without discussing as to how the factual situations fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

7. In furtherance to the order passed by this Court, the First Respondent has placed on record the statement of accounts showing the calculation of the amounts borrowed with interest due after appropriation of all re-payments. It is informed that as against the total liability of Rs. 29,71,800/- as on 18.12.2023,

the Third Respondent has been extended an offer of One Time Settlement to pay a sum of Rs. 15,72,685/- (after adjusting a sum of Rs. 8,00,000/- received from the Petitioner and another sum of Rs. 1,00,000/- paid on 29.11.2023) on or before 31.03.2024, failing which the entire amount of liability with accruing interest as per the contract would be recoverable till realization in full.

8. It is settled position of law that the High Court in the exercise of its powers of judicial review under Article 226 of the Constitution in respect of an action taken under Section 29 of the SFC Act is confined to two circumstances, i.e. (a) where there is statutory violation in the part of State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. The Petitioner has not been able to make out any case of procedural irregularity, much less illegality, in the decision-making process of the First Respondent in the exercise of powers under Section 29 of the SFC Act warranting interference by this Court under Article 226 of the Constitution. As such, the First Respondent in pursuance of the impugned action taken under Section 29 of the SFC Act is entitled to proceed further in the matter in accordance with law.

9. In the upshot, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.02.2024

Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 22.05.2024.

vjt

To

The General Manager (Administration),
Pondicherry Industrial Promotion Development and Investment Corporation (PIPDIC) Limited,
No. 60, Roman Rolland Street,
Puducherry – 605 001.

P.D. AUDIKESAVALU, J.

vjt

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