

Before : G. R. Majithia, J.

M/S. AMAR COLD STORAGE & ICE FACTORY, LUDHIANA
AND OTHERS,—Appellants.

versus

PUNJAB FINANCIAL CORPORATION,—Respondent.

First Appeal from Order No. 23 of 1985.

10th July, 1990

*State Financial Corporation Act, 1951—Ss. 30, 31 & 32(6)—
Recovery of loan—Claim for—Investigation into such claim under
S. 32(6)—Extent of—Restricted to matters specified in S. 31(1).*

Held, that where an industrial concern shows a cause, and the District Judge is required to investigate the claim of the Corporation under S. 32(6) of the State Financial Corporation Act, 1951, the District Judge is not required to go into all the objections of the Industrial concern as is done by a civil court while deciding a suit of a mortgagee for recovery of mortgage amount. Clause 6 does not suggest such an enquiry as has to be done in a suit for recovery of the mortgage amount. The scope of investigation is restricted to the claim of the Corporation which has to be established in order to entitle it to any of the reliefs mentioned in S. 31(1).

(Paras 13 & 14)

Held, further that if breach of the contract has been committed by the Corporation, the loanee may file a suit for recovery of damages which he has suffered but his liability to repay the loan with interest is not wiped out merely on the ground that the Corporation has committed breach of contract.

(Para 14)

First Appeal from the order of the Court of Shri Iqbal Singh, Addl. District Judge, Ludhiana dated 13th December, 1984 ordering that the respondents are liable to pay to the petitioner Rs. 6,95,559.20 with future interest at the rate of 15 per cent per annum from 1st August, 1980 onwards till realization alongwith incidental charges and miscellaneous expenses which may hereinafter will be debited to the loan account of the respondents in accordance with the terms and conditions incorporated in the mortgage deed, Ex. P 6 eventually I confirm the order of attachment and direct the sale of the attached property for the realization of the aforesaid amount with costs.

Claim :—Application under Section 31 of the State Financial Corporation Act, 1951.

Claim in appeal :—For reversal of the order of lower court.

H. L. Sibal, Sr. Advocate with Vijay Jhanji and Ravinder Jain,
Advocates, for the Petitioner.

Arun Nehra, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) This judgment disposes of F.A.O. Nos. 23, 1229, 1230 and 1231 of 1985 as common questions of law arise for determination in these appeals.

(2) F.A.O. Nos. 23 of 1985 is directed against the order of the Additional District Judge, Ludhiana allowing Misc. Application No. 7/18-A/6 of 1981/1984 filed by the respondent for the recovery of Rs. 6,95,559.20 with interest.

(3) F.A.O. No. 1229 and 1230 of 1985 are directed against the order of the Additional District Judge, Rupnagar, whereby the applications registered as Civil Misc Nos. 2/26th September, 1978 and 1/12th September, 1978 filed by the respondent for the recovery of Rs. 96,531.41 and Rs. 9,00,670.31, respectively, were allowed.

(4) F.A.O. No. 1231 of 1985 is directed against the order of the Additional District Judge, Rupnagar dated October, 14, 1977 allowing application under Section 31 of the State Financial Corporation Act, 1951 (for short, the Act) and order for recovery of Rs. 2,02,626.61 with interest was passed in favour of the respondent.

(5) In order to appreciate the question of law arising for adjudication in these appeals, reference to a few relevant facts is necessary and these have been alluded to from F.A.O. No. 23 of 1985.

(6) The respondent sanctioned a loan of Rs. 7,00,000 to the appellants on the terms and conditions mentioned in the mortgage deed, dated August 5, 1975, Ex. P. 6. Agreement dated December 3, 1975, Ex. PW 2/A, was also executed by the appellants whereby disbursement of loan by the Corporation was linked with the raising of additional capital to the tune of Rs. 5,83,000 and it was also agreed upon that the appellants would not allow the capital to fall below Rs. 8,68,000 during the currency of loan of the Corporation. The agreement was acted upon and the loan was released in

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accordance with the same. Out of the sanctioned loan of Rs. 7 lacs, a sum of Rs. 3,42,000 was paid. The loan was repayable as per terms of mortgage deed in 13 half-yearly instalments. The first two instalments were to be of Rs. 53,000 each and the remaining 11 instalments were to be of Rs. 54,000 each being payable on 1st of February and 1st of August each year commencing from 1st of August, 1977 together with interest at the rate of 6½ per cent above the bank rate subject to the minimum of 15½ per cent. The interest on the said amount was payable half-yearly by 1st of February and 1st of August each year and the first of such payment was to be made on 1st August, 1976. However, a rebate of 3 per cent on the aforesaid interest was to be allowed if the instalments of principal and interest were paid on the due dates and in default the Corporation was entitled to charge interest at the rate exceeding the stipulated rate by 1/2 per cent per annum on any half-yearly instalments in respect of which the default in paying the interest or the instalment of the said principal might continue. Compound interest was also chargeable for the entire period during which the default continued. It was also agreed by the appellants that the corporation would be entitled to charge compound interest at the aforesaid higher rate for the entire period during which the default continued. The appellants committed default in the payment of the instalments of the principal from 1st August, 1977 to February, 1980 and instalments of interest due from 1st February, 1976 to 1st February, 1980 and, therefore, the Corporation resolved to send a registered notice under section 30 of the Act which was sent on 21st April, 1980 requiring the appellants to pay the amount totalling to Rs. 6,42,909.36 with further interest from 1st February, 1980.

(7) The appellants admitted the execution of the mortgage deed, dated August 5, 1975 but denied the execution of the agreement, dated December 3, 1975 and raising of any additional capital. It was pleaded that they had invested a sum of Rs. 2,85,000 and a further sum of Rs. 1,83,000 and they were entitled to the payment of Rs. 6,19,000 by the respondent. The Corporation did not advance the balance loan of Rs. 3,57,500 and thus committed breach of the terms of the mortgage deed. The agreement was not admissible in evidence for want of registration and the terms of the registered mortgage deed could not be changed except by a document duly written and registered. It was denied that the appellants committed any breach. The mortgage deed contained reciprocal terms. The Corporation was entitled to recover Rs. 7,00,000 only if they

had advanced a sum of Rs. 6,19,000 in accordance with the terms of the mortgage deed. As a result of the failure of the Corporation to perform the terms of the mortgage deed, they suffered losses. They pleaded set off and counter claim under Order 8 rule 6-A of the Code of Civil Procedure for damages suffered by them on account of non-performance of the conditions of the agreement by the Corporation. It was pleaded that the Corporation was liable to pay Rs. 4,68,000 to the appellants and, therefore, the Corporation is not entitled to claim interest or enforce the terms of the agreement after committing the breach of the mortgage deed. They claim that they have suffered a loss of Rs. 2,62,500 by way of loss of profit which they would have made if the cold storage had started functioning and prayed for a decree of Rs. 3,88,000 against the Corporation.

(8) From the pleading of the parties, the following issues were framed on February 26, 1982 and additional issues were framed on March 30, 1988 :—

1. Whether Shri Sherinderjit Singh is the Secretary of the Punjab Financial Corporation, Chandigarh and is competent to sign, verify and file the proceedings on behalf of the petitioner corporation ? OPP
2. Whether the respondent committed a breach of the agreement dated 5th August, 1975, and the petitioner is entitled to recover the amount from the respondent ? OPP
3. Whether the petitioner failed to perform its part of the agreement embodied in the mortgage deed dated 5th August, 1975 and the respondent suffered a loss of Rs. 3,88,000 and is entitled to recover the same from the petitioner ? OPR
4. Whether the petitioner assured the respondent that the petitioner will advance a loan of Rs. 7 lacs to the respondent to set up a cold storage and ice factory and had asked the respondent to invest Rs. 2,85,000 and Rs. 1,83,000 to enable the petitioner to advance the loan of Rs. 7,00,000 for setting up a cold storage and ice factory ? If so, to what effect ? OPR
5. Whether the respondent is entitled to recover the balance amount of Rs. 3,57,500 from the petitioner, as alleged ? OPR

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6. Whether the Court has no jurisdiction to adjudicate upon decree the counter claim of the respondent, as alleged ?
OPP
- 6A. Whether the respondents executed the agreement dated 3rd December, 1975, as alleged ? If so, to what effect ? OPP
- 6B. Whether the agreement dated 3rd December, 1975 was fully acted upon and the respondents are estopped by their act and conduct to raise any plea contrary to the terms and conditions incorporated in the said agreement ? OPA
- 6C. Whether the agreement dated 3rd December, 1975 is inadmissible in evidence for want of registration ? OPR
7. Relief.

Issues No. 1 and 2 were answered in favour of the Corporation and issues No. 3, 4 and 5 were held to be redundant since the pleas raised by the appellants were beyond the scope of the enquiry under section 32 of the Act. Under issues No. 6A, 6B and 6C, it was held that the agreement dated December 13, 1975 Ex. PW2/A was duly executed by the appellants and it was acted upon by them and they were estopped by their act and conduct to raise any plea contrary to the terms and conditions incorporated therein. It was further held that it was not inadmissible in evidence for want of registration.

(9) The principal question arising for determination is with regard to the interpretation of Clause 6 of Section 32 of the Act.

(10) Section 30 empowers the Corporation to call for repayment of loan or advance before the agreed period.

(11) Section 31 enables the Corporation to enforce its claim by moving the District Judge by means of a petition and the latter has to act in the manner laid down in section 32 of the Act. It could ask for any of the following reliefs :—

- (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

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- (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.

(12) Section 32 of the Act says that when an application is made seeking reliefs mentioned in clauses (a) and (c) of sub-section (1) of Section 31, it is obligatory on the District Judge to pass *ad interim* order attaching the security, or so much of the property of the industrial concern as would, on being sold, realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Corporation, together with the costs of the proceedings with or without an *ad interim* injunction, restraining the industrial concern from transferring or removing its machinery, plant or equipment. If the applicant seeks relief as mentioned in clause (b) of sub-section (1) of section 31, the District Judge shall pass an order of *ad interim* injunction restraining industrial concern from transferring or removing its plant or equipment. A notice accompanied by notice of *ad interim* order and the application is required to be served upon the industrial concern calling upon it to show cause why the *ad interim* order of injunction should not be made absolute or the injunction confirmed. If no cause is shown on or before the specified date, the order is to be made absolute. Sub section 6 of section 32 provides that if the industrial concern shows a cause, the District Judge is required to investigate the claim of the Corporation in accordance with the provisions of the Code of Civil Procedure.

(13) The question which arises for determination is whether the District Judge under Clause 6 of Section 32 of the Act has only to go into the correctness of the claim including that of the future interest made by the Corporation or he is required to go into all the objections of the industrial concern as is done by a civil court while deciding a suit of a mortgagee for recovery of mortgage amount.

(14) Clause 6 does not suggest such an enquiry as has to be done in a suit for recovery of the mortgage amount. The scope of

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investigation is restricted to the claim of the Corporation which has to be established in order to entitle it to any of the reliefs mentioned in Section 31(1). However, if breach of the contract has been committed by the Corporation, the loanee may file a suit for recovery of damages which he has suffered but his liability to repay the loan with interest is not wiped out merely on the ground that the Corporation has committed breach of contract. If the loanee succeeds in a suit for damages and secures a decree against the Corporation, he may ask for adjustment of the principal amount of loan together with interest thereon out of the decretal amount. He can not raise such defence entitling him to claim damages and ask for adjudication of the same in a petition by the Corporation for a relief under section 31(1) of the Act.

(15) Similar matter came up for consideration before this Court in *Man Singh v. Punjab Financial Corporation, Chandigarh and others* (1). The learned Single Judge of this Court after referring to the observations of the Apex Court in *Gujarat State Financial Corporation v. Natson Manufacturing Co. Pvt. Ltd.* (2), came to the following conclusions :—

“From the observations in the above two cases it emerges that the proceedings under Sections 31 and 32 are in the nature of execution proceedings and not proceedings in a suit and the application under Section 31(1) is not to obtain a substantive relief of recovery of the amount by sale of the property. The investigation under Section 32(6) is to find out the terms and conditions on which loan was given by the Corporation to the industrial concern and whether the Corporation is entitled to the reliefs under Section 31(1) of the Act on account of breach of the terms of the agreement. It is not the duty of the District Judge to investigate all objections raised by the industrial concern. Therefore, in my view, the District Judge affirms the right to charge future interest as given in the agreement and does not grant future interest as is done in suits.”

(1) A.I.R. 1985 P&H 149.

(2) A.I.R. 1978 S.C. 1765.

(16) Somewhat identical question was again raised in this Court in *Industrial Finance Corporation of India and another v. M/s Sehgal Papers Ltd., and others* (3). In that case Industrial Financial Corporation of India advanced medium and long term loan to M/s Sehgal Papers Ltd. Loan agreements were duly signed. As a security for due payment of the loans, the industrial concern executed deeds of hypothecation hypothecating by way of first charge all its plant, machinery and equipment and other moveable property and estates. Interest was not paid despite demands. The Industrial Corporation of India served a notice under section 30 of the Industrial Financial Corporation Act for sale of the properties of the loanee concerned which was subject matter of the deed of hypothecation. The claim was challenged on the ground that the agreement consisted of reciprocal promises. The Corporation did not disburse the amount of loan according to the terms of the agreement and it is not entitled to recover the amount which had been advanced by it. The contention was repelled with the following observations :—

“Faced with this situation Mr. Jain has urged that on account of not paying the instalments of term loan in time, the respondent-company suffered huge loss and the petitioner-institution is, therefore, not entitled to recover the loan, unless it compensates the respondent-company to the extent of the loss suffered by it. I am not impressed with this submission as well. If the respondent-company is entitled to some damages, may institute a suit for recovery thereof against the petitioner-institution. It cannot be allowed to say that the petitioner-institution is not entitled to recover the loan, unless it is compensated by the petitioner-institution to the extent of loss suffered by it. In the above view I am fortified by the observations of a Division Bench of Allahabad High Court in *Mirza Javed Murtaza v. U.P. Financial Corporation* (4). In that case the U.P. Financial Corporation recalled the instalments of loan paid by it to the petitioner as he failed to carry out certain conditions of the agreement and issued a recovery certificate for recovering the amount due from him. The petitioner challenged the recovery certificate through the writ petition *inter alia*

(3) A.I.R. 1986 P&H 21.

(4) A.I.R. 1963 All. 234.

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on the ground that he suffered loss as the Corporation failed to release the huge amount of Rs. 1 lac and odd and, therefore, the loan stood wiped out. It was observed by the learned Bench :

“If the breach of the contract has been committed by the Corporation the petitioner may file a suit for recovery of damages which he has suffered but his liability to repay the loan with interest is not wiped out merely on the ground that the Corporation has committed breach of contract. The amount of loan is to be repaid but if the petitioner has suffered damages and the Court in an appropriate suit, if filed by him, finds that particular amount of damages has been suffered and passes a decree for the same the petitioner may ask for adjustment of the principal amount of loan together with interest thereon. Similarly, if the contract has been breached by the petitioner by not paying the overdue interest at the stipulated time and by not complying with other conditions of the contract then too the petitioner would be liable to repay the loan with interest. In either event the amount of loan with interest as discussed above is repayable and so long as that is not paid up the petitioner cannot ask for the release of his title deeds because those title deeds were given to the Corporation while creating equitable mortgage.”

I am in respectful agreement with the above observation.

(17) The Apex Court in *M/s Everest Industrial Corporation and others v. Gujarat State Financial Corporation* (5), while considering the question whether the provisions of Section 34 of the Code of Civil Procedure or that of Order 34 Rule 6 of the Code, would apply to proceedings under Section 31 of the Act, observed thus :-

“If as held by this Court the proceeding instituted under Section 31(1) of the Act is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree no

question of passing any order under Section 34 of the Code would arise since Section 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. It may also be mentioned here that even under the Code the question of interest payable in mortgage suits filed in civil courts is governed by Order 34 rule 11 of the Code and not by Section 34 of the Code which may be applicable only to cases of personal decrees passed under Order 34 rule 11 of the Code. The High Court was right in holding that interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed under Section 32 of the Act. We hold that the decision of the Karnataka High Court, referred to above, which has applied section 34 of the Code to a proceeding instituted under Section 31 (1) of the Act is not correctly decided."

(18) The submission of the learned counsel for the appellant that the District Judge in a petition filed by the Corporation for a relief under Section 31 (1) of the Act, is bound to examine the plea of the loanee that the former committed breach of the contract and as a result thereof it suffered damages has to be repelled.

(19) On merits, the Corporation has proved the Mortgage Deed dated August 5, 1975, Exhibit P-6. Exhibit P.3 is a copy of the statement of accounts upto November 18, 1980; Exhibit P.4 is copy of the statement of accounts upto June 5, 1982 and Exhibit P. 5 is a copy of the statement of accounts from February 4, 1981 to February 24, 1982. The agreement dated December 3, 1975 Exhibit P.W. 2/A, is proved by Brij Lal (P.W. 2). He stated that Tarlochan Singh and Parsin Kaur affixed their signatures on Ex. PW 2/A in his presence. He also proved the extract of the minutes, Ex. PW 2/B and letters Ex. PW 2/C and PW 2/D received by Tarlochan Singh. P.W. 3 S. Chakarvarti also proved the minutes, Ex. PW 2/B. P.W. 4 Shri K. S. Puri, a reputed handwriting expert, proved his report Ex. PW 4/C stating that he had compared the disputed signatures of Tarlochan Singh on the agreement dated December 3, 1975, Ex. PW 2/A, with his specimen signatures and the admitted signatures on Mortgage Deed, Ex. P. 6, and, in his opinion, the disputed, the specimen and the admitted signatures were in the handwriting of one and the same person.

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He also compared the disputed signatures of Smt. Parsin Kaur on the agreement dated December 3, 1975 with her specimen signatures, Ex. PW 4/B, and her admitted signatures on Mortgage Deed, Ex. P. 6, and opined that those were in the handwriting of one and the same person. The learned counsel for the appellants could not dispute that the amount claimed is not due to the respondent-corporation. It was not suggested that the agreement dated December 3, 1975, Ex. PW 2/A, does not bear the signatures of Tarlochan Singh and Smt. Parsin Kaur. The signatures on agreement, Ex. PW 2/A, were not assailed by the appellants' counsel before the trial Judge.

(20) The only argument advanced is that the agreement dated December 3, 1975, Ex. PW 2/A, requires registration since it falls within the ambit of Section 17(1)(b) and (c) of the Registration Act, 1908. Under Section 17(1)(b) any non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees or upwards, to or in immovable property and under Section 17(1)(c), any non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of creation, declaration, assignment, limitation or extinction of any such right, title or interest, shall require registration if the value of property to which it relates is Rs. 100 or upwards. The agreement, Ex. PW/2, does not fall within the ambit of these provisions. In the agreement, Ex. PW 2/A, the appellants agreed to raise additional capital to the tune of Rs. 5,83,000. It incorporated an undertaking for the advancement of further loans. The agreement does not require registration. Even otherwise, the disputed amount is recoverable under Mortgage Deed, Ex. P. 6. The amount claimed is fully supported by the documentary evidence produced on record and referred to above.

(21) No other point was urged on merits in other appeals.

(22) Consequently, the appeals are dismissed with no order as to costs.

R.N.R.