

Kewal Krishan  
v.  
Government of  
India and  
another  
Falshaw, C.J.

It was argued that since the plural is used in the Explanation the rule would not apply in the case of contest between a single claimant and a single non-claimant. This argument appears to have found favour with Shamsher Bahadur J. in *Dr. Khushi Ram v. Union of India and others* (1), but I do not consider that this view is correct. The learned counsel for the appellant has not been able to suggest any rule other than rules 30 and 31 which could apply, and rule 31 deals only with cases where allotable property is in the occupation of more than one displaced person none of whom hold a verified claim. I have already set out the provisions of rule 30 and it would appear that if the argument of the learned counsel for the appellant is correct, there is no rule to govern a contest between a claimant and a non-claimant occupying different parts of the same property. There can be no doubt in my opinion that in such a case the property must be allotted to the claimant under rule 30 and the Explanation must be held applicable to such a case. I would accordingly dismiss the appeal, but leave the parties to bear their own costs.

Harbans Singh J. HARBANS SINGH, J.—I agree.  
K.S.K.

REVISIONAL CIVIL

Before Shamsher Bahadur, J.

M/s SWAYA MAL-SANT RAM AND ANOTHER,—

*Petitioners.*

*versus*

THE PUNJAB FINANCIAL CORPORATION AND OTHERS,—

*Respondents.*

Civil Revision No. 711 of 1962.

State Financial Corporation Act (LXIII of 1951)—Ss. 31,  
32 and 46-B—Procedure to be followed in applications under

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Dec., 28th

(1) 1962 P.L.R. 755.

*S. 1—Whether that of Code of Civil Procedure—Mortgagee—Whether necessary to be impleaded—Code of Civil Procedure (V of 1908)—0 43, R 4—Whether applicable—S. 46-B—Effect of—Whether overrides other laws.*

*Held*, that section 32 of the State Financial Corporation Act, 1951, lays down the procedure which a District Judge has to adopt in respect of applications under section 31. The Code of Civil Procedure is generally not to apply to an application which is made by a party against whom an application is made by the Financial Corporation under section 31. When cause is shown by a person against whom an application is made, the provisions of the Code of Civil Procedure will apply to the determination of that cause.

*Held*, that where the dispute is between the industrial concern and the Financial Corporation simpliciter, there is no reason for other creditors of the concern to be impleaded so that their respective claims may also be adjudicated. The provisions of Order 34, Rule 4 C.P.C. do not apply and the impleadment of a mortgagee is not necessary. Section 46-B of the State Financial Corporation Act gives overriding effect to the provisions of this Act and its provisions cannot be made subservient to other laws including the Code of Civil Procedure.

*Petition under Section 115 of Civil Procedure Code for revision of the order of Shri Sant Ram Garg, District Judge, Ambala, dated the 13th November, 1962, holding that the receivers and Punjab National Bank are not necessary parties and fixed the case for 6th December, 1962, for evidence of the parties.*

D. N. AGGARWAL, ADVOCATE, for the Petitioner.

K. L. KAPUR, ADVOCATE, for the Respondent.

#### JUDGMENT

SHAMSHER BAHADUR, J.—This is a revision directed against the order of the District Judge, Ambala, passed under the State Financial Corporation Act, 1951.

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The first respondent, the Punjab Financial Corporation, had been advancing sums of money

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from time to time to the petitioner, Sawaya Mal Sant Ram, Roller Flour Mills, Chandigarh. The debtor having made defaults, the Corporation made an application to the District Judge under section 31 of the Act which is to this effect :—

“Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, any officer of the Financial Corporation generally or specially authorized 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
- (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.”

Concededly, the assets of the debtor concern were mortgaged with the Corporation. It is not disputed that defaults had been made. The Corporation asked for reliefs (a) and (c) provided under section 31. The debtor concern while resisting the petition made an application that the Punjab National Bank and some others should be impleaded as parties. It is stated at the Bar that the firm of Sawaya Mal-Sant Ram suspended business about one year ago. It appears that the New Bank of India, United Commercial Bank of India and Kharar Cooperative Society had filed applications for adjudication of Messrs. Sawaya Mal-Sant Ram as insolvent in the Court of the Insolvency Judge, Ambala and some receivers had been appointed of the mills which is the property of the debtor-firm. The learned District Judge on the objection raised by the debtor concern framed the following issue :—

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“Whether the Punjab National Bank, Chandigarh and the four receivers, namely Shri Dilbagh Rai, Shri Mohan Lal Jhanji, Shri Ved Parkash and Shri Tirath Ram, Manager of the New Bank of India, are necessary parties?”

The learned District Judge came to the conclusion that the Punjab National Bank and the receivers were not necessary parties and directed further proceedings to continue in the petition under section 31.

It is contended by Mr. D. N. Aggarwal, the learned counsel for the petitioner, that the learned District Judge did not take into account rule 4 of Order 34 of the Code of Civil Procedure under which :—

“Where, in a suit for sale or a suit for foreclosure in which sale is ordered subsequent mortgagees or persons deriving title from, or subrogated to the rights

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of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9."

There seems to be no force in this contention. Section 32 of the Act lays down the procedure which a District Judge has to adopt in respect of applications under section 31. If a cause is shown by a person against whom an application is made, sub-section (6) provides that "the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, in so far as such provisions may be applied thereto." It cannot be inferred therefrom that the Code of Civil Procedure is generally to apply to any application which is made by a party against whom an application is made under section 31. It is specifically stated in sub-section (6) that when cause is shown the claim is to proceed in accordance with the Code of Civil Procedure. In other words, the provisions of the Code will apply to the claim made by the industrial concern. The present application to have other parties impleaded cannot be said to form a claim of the industrial concern and therefore, the provisions of Order 34, rule 4 cannot be invoked to support the contention of Mr. Aggarwal. If the provisions of the Code of Civil Procedure were to apply generally to all proceedings under section 31, it would not have been necessary to make frequent reference to the provisions of the Code of Civil Procedure as has been done in sub-section (8) and sub-section (8-A) of section 32. The present is a dispute between the industrial concern and the Financial Corporation simpliciter and

there is no reason for other creditors of the concern to be impleaded so that their respective claims may also be adjudicated. The Corporation is concerned primarily with its own claim and it is empowered to bring an application for summary remedy under section 31 of the Act. It has to be borne in mind that a State Financial Corporation is designed to promote the finance of an industrial concern which has been defined in clause (c) of section 2 of the Act as one "engaged or to be engaged in the manufacture, preservation or processing of goods or in mining or in the generation or distribution of electricity or any other form of power". A defunct concern which has suspended its business cannot be regarded as an industrial concern and the Corporation would naturally be anxious to recover the loans as speedily as possible. There is no merit in the contention of Mr. D. N. Aggarwal that if the other creditors are also impleaded the sale of the mortgaged property would fetch a better price in auction.

It is also worthy of note that section 46-B of the Act makes it clear that the provisions of the State Financial Corporation Act "shall have effect notwithstanding anything inconsistent therewith contained in any other law . . .". Assuming that it would be desirable to implead the Punjab National Bank and other creditors as parties under Order 34, rule 4 of the Code of Civil Procedure, the provisions of the State Financial Corporations Act are not to be made subservient to other laws including the Code of Civil Procedure. It has not been shown that the State Financial Corporation Act requires or makes it necessary that the Punjab National Bank should be impleaded a party.

There is no force in this petition which fails and is dismissed with costs.

R.S.

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