

Before M.L. Singhal, J

HARYANA FINANCIAL CORPORATION LTD. &
OTHERS,—*Petitioners*

versus

M/S KABIS SHINES PVT. LTD.—*Respondents*

C.R. No. 3213 of 1999

4th October, 2001

State Financial Corporation Act, 1951—S.29—Code of Civil Procedure, 1908—O.39 Rls. 1&2 —Failure to make payment of loan amount—Corporation ordering to take possession of the Industrial Unit—Trial Court granting injunction against the Corporation—1st Appellate Court dismissing the appeal on a mere technicality—whether the Branch Manager authorised by the Managing Director competent to file the appeal—Held, yes, interest of Corporation could not be allowed to suffer because of procedural irregularity, if any—Having failed to repay the loan amount despite rescheduling of the defaulted amount, decision of the corporation to take possession of the unit of the plaintiff neither arbitrary nor unjust—Petition allowed while vacating temporary injunction granted in favour of the plaintiff.

Held, that as per the Haryana Financial Corporation loan of Rs. 90 lacs was given on 20.3.93. It was to be repaid in 29 quarterly instalments. On the request of the plaintiff, defaulted amount was allowed to be paid as per the rescheduling of the amount then outstanding. Plaintiff, committed defaults in the payment of the rescheduled amount. Out of the total amount of Rs. 174.88 lacs, payable as per the repayment schedul of loan agreement, the plaintiff had paid only Rs. 55.80 lacs and the remaining amount was due with further interest from 19.9.97. Decision of the Haryana Financial Corporation to take over the unit of the plaintiff was, thus, not inequitable or unjust.

(Para 17)

Surya Kant Advocate with Kamal Sahgal Advocate, *for the Petitioners*

H.L. Sibal, Sr. Advocate with Rita Kohali, Advocate *for the Respondent*

JUDGMENT

M.L. SINGHAL. J.

(1) Vide order dated 23rd December, 1997 Additional Civil Judge, Senior Division, Hissar allowed the application of M/s Kabis Shines, Pvt. Ltd., a company registered under the Indian Companies Act restraining the Haryana Financial Corporation from taking possession of its factory unit. Not satisfied with this order dated 23rd December, 1997 of Additional Civil Judge (Senior Division), Hissar Haryana Financial Corporation went in appeal. Vide order dated 27th February, 1999 learned District Judge Hissar dismissed the appeal. Still not satisfied, Haryana Financial Corporation has come up in revision to this court.

(2) By means of this order, Civil Revisions No. 3202, 3213, 3214, 3215 and 3216 of 1999 would be disposed of as the same question of law and fact is involved in all these revisions.

Facts :

(3) M/s Kabis Shines Pvt. Ltd., a company registered under the Indian Companies Act, 1956, availed loan of Rs. 85.37 lacs on 14.12.93 which was to be repaid in 29 instalments. Payment of Rs. 39.40 lacs was paid to Haryana Financial Corporation upto 16.12.97. Payment of Rs. 6 lacs was made on 12.12.97. On the request of the plaintiff, defaulted amount was allowed to be paid as per rescheduling vide letter dated 26.7.96. Still, the plaintiff failed to pay the defaulted amount. Out of the total amount of Rs. 132.93 lacs, only payment of Rs. 39.40 lacs was made upto 16.12.97. Payment of Rs. 6 lacs was made on 12.12.97. Remaining amount was due with further interest from 1.12.97. When the plaintiff failed to make the payment, order was passed by the Haryana Financial Corporation under section 29 of the State Financial Corporation Act, 1951 (in short the Act) that possession of its industrial unit be taken and it be put to sale.

Plaintiff filed suit for permanent injunction restraining the Haryana Financial Corporation from taking possession of its industrial unit on the basis of its decision taken on 28th November, 1997. It was alleged in the plaint that the said decision is illegal, without jurisdiction, mala fide, based on political considerations, contrary to law, void ab-initio and nonest. It was further alleged that the plaintiff is ready and willing to make payment of the remaining amount in easy instalment. Balance of convenience is thus in its favour. There is also a prima facie case in its favour. Alongwith the plaint, the plaintiff made an application for the grant of temporary injunction restraining the defendant Haryana Financial Corporation from taking possession of its industrial unit alleging that it is ready and willing to make payment of the remaining amount in easy instalment. It would suffer irreparable injury if temporary injunction is not granted to it because it has already employed more than 100 workers. They will lose their job. There is recession in the industrial sector.

(4) Defendant Haryana Financial Corporation opposed the grant of temporary injunction urging that the plaintiff had availed loan of Rs. 85.37 lacs on 14th December, 1993 which was to be repaid in 29 instalments. Plaintiff paid only Rs. 39.40 lacs to it up to 16th December 1997. Amount of Rs. 6 lacs was paid on 12th December 1997. On the plaintiff's failure to pay the instalments' the remaining amount was allowed to be paid as per rescheduling. Plaintiff defaulted in the payment of the amount as rescheduled. Remaining amount is due against the plaintiff with further interest from 1st December 1997. Haryana Financial Corporation decided to take possession of its industrial unit under section 29 of the Act and put it to sale. Its decision to take possession of its industrial unit is perfectly valid, justified and legal. Plaintiff has no prima facie case nor balance of convenience is in its favour.

(5) Vide order dated 23rd December 1997 Civil Judge (Senior Division), Hissar allowed temporary injunction to the plaintiff restraining the defendant Haryana Financial Corporation from taking possession of its industrial unit. Learned District Judge dismissed the defendant's appeal vide order dated 27th February 1999.

(6) Still not satisfied, defendant Haryana Financial Corporation has come up in revision to this court. It was submitted by the learned counsel for the petitioner that the learned District Judge dismissed the appeal on a short ground namely that the decision to file appeal was not taken by a competent officer and the Branch Manager of Haryana Financial Corporation, Hissar was not authorised/competent to file the appeal. It was submitted that the decision to file the appeal was taken by the Managing Director of the Haryana Financial Corporation and this decision was also conveyed to the Branch Manager through Annexure P-1 and there is the order passed by the Managing Director on the notings authorising the Branch Manager to file appeal. It was submitted that it was not his own decision of the Branch Manager to file the appeal but it was the decision of the Managing Director that appeal be filed. It was submitted that in this case, Managing Director of Haryana Financial Corporation himself had decided to file the appeal and conveyed his decision to the Branch Manager authorising him to file the appeal. It was submitted that even otherwise on a mere technicality that the appeal had been filed by a competent person, it should not have been dismissed. Assuming that the appellate court felt that the appeal had not been filed by a competent person, even that it, should have decided the appeal on merit. In support of this submission, he drew my attention to *United Bank of India versus Naresh Kumar and others (1)*, where the Hon'ble Supreme Court observed as follows :—

“In cases where suits are instituted or defended on behalf of a public corporation like bank; public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

(1) AIR 1997 SC 3

(7) It was submitted that the substantive right should not have been allowed to be sacrificed at the altar of procedure by the learned District Judge when the learned District Judge has himself observed that "the huge amount of loan is outstanding against the plaintiff and the plaintiff has not paid even a single pie after the filing of the suit. Cheques given by the plaintiff have already been taken back by the plaintiff and the defendant Haryana Financial Corporation may take appropriate legal proceedings in the lower court to get the stay vacated". It was submitted that when the learned District Judge had himself felt that huge amount of loan was outstanding against the plaintiff which the plaintiff had failed to repay despite rescheduling of the outstanding amount due, learned District Judge should have decided the appeal on merit and held whether the plaintiff had a prima facie case and further whether the balance of convenience was in favour of the plaintiff and whether the plaintiff would suffer irreparable injury if injunction was not granted or whether the defendant would suffer irreparable injury if injunction was granted. It was submitted that learned District Judge should not have thrown the defendant overboard on a mere technicality.

(8) It was next submitted by the learned counsel for the petitioner that the appeal was filed by the Branch Manager who had been duly authorised by the Managing Director of Haryana Financial Corporation. Section 9 of the Act reads as follows :—

"9. Management of Financial Corporations.—The general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in the Board of Directors which with the assistance of an Executive Committee and a managing Director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation."

(9) It was submitted that Haryana Financial Corporation thus acts through its Board of Directors. It is thus clear that the Haryana Financial Corporation can work through its Board of Directors with the assistance of the Executing Committee and the Managing Director. It was submitted that the Board of Directors of Haryana Financial Corporation should have passed a resolution authorising someone to

file appeal. In this case, it was submitted that there is no such resolution. It was submitted that on 21st August, 1999, a resolution was passed by the Board of Directors of Haryana Financial Corporation in its meeting which reads as follows :—

AGENDA ITEM NO. 178.24 :

Delegation of Powers to Managers to engage local lawyers and to sign vakalatnama.

The Board approved the delegation of powers to sign Vakalatnama and all other documents in connection with legal proceedings and to sign sale deeds, redemption deeds and agreement to sell and any other legal document for and on behalf of the Corporation to the Managers and above at Head Office as well as in Branches.

2. Further, the Board also accorded its ex-post-facto approval in the cases where advocates had already been engaged and complaints, written statements and vakalatnama had been signed by the officers of the above level.

(10) It was submitted that there was thus delegation of powers to the Managers to engage local lawyers and to sign vakalat-namas. It also accorded its ex-post facto approval in cases where Advocates had already been engaged and complaints and written statement and Vakalatnamas had been signed by the officers of the above level. It was submitted that the suit had been filed against the Haryana Financial Corporation through its Branch Manager and when the Haryana Financial Corporation was defending the suit through its Branch Manager, the Branch Manager could file the appeal also because the appeal is continuation of the suit. On merits, it was submitted that huge amount of loan was outstanding against the plaintiff which the plaintiff had failed to repay despite the grant of facility of rescheduling of the earlier repayment schedule. It was submitted that there was no other alternative with the Haryana Financial Corporation but to take a decision under section 29 of the Act that its industrial unit be taken possession of and be put to sale. It was submitted that the Haryana Financial Corporation had to take this step per force when there was no hope of getting repayments despite it having been rescheduled.

(11) Learned counsel for the respondent on the other hand submitted that appeal was not maintainable before the learned District Judge as it had been filed by the Branch Manager who had not been authorised through any resolution by the Board of Directors. It was submitted that the Haryana Financial Corporation acts through resolutions. Haryana Financial Corporation is managed by Board of Directors or by the Managing Director with the help of his executive. It was submitted that no decision was taken by the Board of Directors or by the Managing Director with the help of his executive that appeal be filed. It was submitted that agenda item No. 178.24 adopted on 21st August, 1989 by the Board of Directors in its meeting does not speak of any delegation of powers so far as the filing of appeals is concerned. It was submitted that agenda item No. 178.24 nowhere says that the Branch Manager shall have the power to decide in what cases appeals are or are not be filed. It was submitted that section 2(a) of the Act defines "Board" as meaning the Board of Directors of the Financial Corporation. "Financial Corporation" is defined in clause (b) of section 2 as a Financial Corporation established under section 3 and includes a Joint Financial Corporation established under section 3 A. "Prescribed" is defined as prescribed by rules or regulations made this Act. Section 3 of the Act says that the Financial Corporation is a body corporate. Section 9 of the Act says that the general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in the Board of Directors which, with the assistance of an Executive Committee and a Managing Director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation. It was submitted that the management of the Financial Corporation vests in the Board of Directors which acts with the assistance of the executive committee and the managing director. The Board of Directors with the assistance of the executive committee and the managing director discharges all the powers and functions of the Financial Corporation. Section 10 gives the complexion of the Board of Directors and section 15 refers to the Chairman of the Board who is to be one of the directors. It is also provided that the same person may be appointed to function both as Chairman and Managing Director. Section 18 refers to the executive committee of the Corporation. It is to consist of managing director who will chair the committee meeting and other directors given in Section 18. Section 19 specifies that the

Board and the executive committee shall meet at such times and places and shall observe such rules of procedures etc. It was submitted that this shows that the Board and the executive committee are different entities. Section 20 of the Act defines the powers of the executive committee. It can exercise such powers and deal with such matters which should have been entrusted with the general or special directions of the Board. Section 43A of the Act provides for delegation of powers by the Board by general or special order to the managing director or to any other officer of the Financial Corporation so appointed under section 21 of the Act. Section 47 gives the powers to the State Government to frame rules. Section 48 gives the powers to the Board to make regulations. It was submitted that there are no such regulations or rules which empower the Branch Manager of the Corporation to file an appeal. No such power has been conferred upon the Branch Manager. It was submitted that there is no resolution by the Board of Directors authorising the filing of an appeal by the Branch Manager.

(12) In *Vice Chancellor Utkal University and others versus S. K. Ghosh and others* (2) the Hon'ble Supreme Court observed as follow :—

“Though an incorporated body like University is a legal entity, it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate resolutions which purport to have been passed at it.

(13) It was submitted that State Financial Corporation Act is incorporated under the state Financial Corporations Act, 1951 and is thus legal activity. It has neither living mind nor voice. It can only express its will by a formal resolution and so can only act in the manner laid down by its constitution.

(14) Section 17 of the Act lays down that managing director shall :—

- (a) XXXXX XXXXXX XXXXXXXX
- (b) perform such duties as the Board may, by regulations, entrust or delegate to him.
- (c) & (d) XXXXXXXX XXXXX XXXXX

(15) Appeal before the District Judge was instituted on 28th January, 1998. There was delegation of the powers to the Managers to engage local lawyers and to sign vakalatnamas. On 21st January, 1989, Board of Directores of the Haryana Financial Corporation, Chandigarh passed a resolution giving powers to the branch managers to sign vakalatnamas and all other documents in connection with legal proceedings and to sign sale deeds, redemption deeds and agreements to sell and any other legal document for and on behalf of the Corporation. Power to engage a lawyer includes power to decide also. In this case , the decision to file the appeal was taken by the managing director of the Haryana Financial Corporation and before the managing director took this decision, there had been noting on which the managing director decided to file an appeal. It was submitted by the learned counsel for the respondent that the managing director can perform only such duties as the Board of Directors, by regulations, entrusts or delegates to him. It was submitted that there are no regulations framed by the Haryana Financial Corporation permitting delegation to the managing directors. The suit was authorised to be defended by the branch manager. In the authority to defend the suit, the authority to file the appeal, If any order goes against the Haryana Financial Corporation, is implicit. Why there is insistence upon resolution being passed by a corporation incorporated under a statute is that appeal be or be not filed so that frivolous appeals are not filed and the Corporation is not burdened with unnecessary expenditure. In this case, appeal was filed by the branch manager to get rid of the order

passed by the learned Additional Civil Judge (Senior Division). Hissar against the Haryana Financial Corporation. Branch Manager has not acted on its own. He has been authorised to file the appeal by the managing director of the Haryana Financial Corporation. Assuming that the branch manager had filed this appeal without any authority before the District Judge, Hissar, this appeal could be withdrawn and fresh appeal instituted by a duly authorised person. If any delay had occurred the corporation could apply for condonation of delay under section 5 of the Limitation Act read with section 151 CPC or the corporation could file fresh authority and if fresh authority had been filed, this appeal could have been instituted on the day when fresh authority was filed. If there had been any delay in the filing of the fresh authority, corporation could file an application for condonation of delay under section 5 of the Limitation Act read with section 151 CPC. In any case, the interest of the corporation could not be allowed to suffer because of this procedural irregularity. On merits what weighed with the trial court while granting temporary injunction was that there was recession in the industrial sector and as such it could not be said that intention of the plaintiff was not to repay the amount of loan. It was this factor keeping in view which the trial court felt that the decision of the corporation to take possession of the unit and to put it to sale was arbitrary.

(16) Suffice it to say, the decision of the Haryana Financial Corporation to take possession of the unit and to put it to sale under section 29 of the Act cannot be said to be arbitrary as this decision was taken when the plaintiff had failed to pay the loan amount although rescheduling was done. There was no equity in favour of the plaintiff. It was held in *U.P. Financial Corporation versus M/s. Gem Cap (India) Pvt. Ltd and others* (3) that.

“The corporation is not like an ordinary money lender or a Bank which lends money. It is a lender with a purpose—the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation

no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one.”

(17) As per the Haryana Financial Corporation, loan of Rs. 90 lacs was given on 20th March, 1993. It was to be repaid in 29 quarterly instalments. On the request of the plaintiff, defaulted amount was allowed to be paid as per the rescheduling of the amount then outstanding. Plaintiff committed defaults in the payment of the rescheduled amount. Out of the total amount of Rs. 174.88 lacs, payable as per the repayment schedule of loan agreement, the plaintiff had paid only Rs. 55.80 lacs and the remaining amount was due with further interest from 19th September, 1997. Decision of the Haryana Financial Corporation to take over the unit of the plaintiff was thus not inequitable or unjust. It is the public money which is being channelised through the Corporation for industrialisation. If loan is not repaid in time, there will be no recycling of public money and if there is no recycling of public money, there will be no development towards industrialisation. Learned District Judge has observed that the plaintiff has not paid even a single pie after the filing of the suit and the cheques given have been taken back. Plaintiff instituted this suit in December, 1997. After the institution of the suit also, there is further addition of interest.

(18) For the reasons given above, these revisions are allowed and the impugned orders passed by the courts below are set aside. Temporary injunction granted in favour of the plaintiff is vacated.