

*Before Sanjay Kishan Kaul, CJ & Augustine George Masih, J.*

**M/S GURDIAL SINGH & SONS & OTHERS—Petitioners**

*versus*

**DELHI FINANCIAL CORPORATION  
& ANOTHER—Respondents**

**CWP No.14836 of 1999**

July 11, 2013

*Constitution of India, 1950 - Art. 226 - State Financial Corporation Act, 1951 - SS. 29, 31 & 32G - Petitioner No.1, a partnership concern applied for priority allocation of chassis for transportation of petroleum products - Petitioners 2 to 4 partners of Petitioner No.1, approached Delhi Financial Corporation (DFC) for financing purchase of chassis, legal agreement entered into - Delivery of chassis took 6 months - Petitioner requested DFC not to present post dated cheques - Show cause notice issued for cancellation of lease agreement - DFC terminated lease agreement - Possession of trolleys taken over by DFC - Notice issued for taking over possession of collateral security and mortgaged property of guarantors - Said notice impugned by way of CWP - Notice quashed - Held, S.29 cannot be resorted to as a coercive process against the properties of guarantors but is confined only to the industrial concern - Corporation can take recourse to S.31 and 31G of the Act.*

*Held, that the dispute aggravated with endeavour to take over possession of some of the trolleys. There is some dispute as to when the possession of the trolleys was taken over as, according to the petitioners, it was in September 1997 while the respondents stated it was in March 1998. Not only that, a threat was held out by the respondents vide notice dated 24.9.1999 (Annexure P-22) of taking possession of the property given as collateral security on non-payment of alleged dues of Rs.71,62,193.91 and the mortgaged property of the guarantors was sought to be taken possession of by taking recourse to the provisions of Section 29 of the State Financial Corporation Act, 1951, (hereinafter referred to as 'the said Act').*

(Para 1)

*Further held*, that the Hon'ble Supreme Court opined that in view of the fact that special provisions are made in derogation to the general rights of citizens, statute should receive strict construction. The liability of an industrial concern can be recovered by taking recourse to both the provisions of Section 29 and 31 of the said Act or even under Section 32G of the said Act. However, the same would not be the position with respect to the surety or guarantee given in favour of a Financial Corporation for the benefit of the industrial concern. It has to be a property of the industrial concern.

(Para 5)

*Further held*, that Section 31 of the said Act contains special provisions for enforcement of the claim by a Financial Corporation. They, however, on breach of an agreement, entitle a Financial Corporation to apply to the District Judge, with the limits of whose jurisdiction the industrial concern carries on business, for an order for sale of pledged, mortgaged, hypothecated or assigned property including for enforcing the liability of any surety. Section 32G entitles recovery of amounts due to the Financial Corporation as an arrear of land revenue.

(Para 6)

*Further held*, that in our view, the aforesaid judgment leaves no manner of doubt that Section 29 cannot be resorted to as a coercive process against the properties of the guarantors but is confined only to the industrial concern. The fact that the borrowing entity is a registered partnership firm and the mortgaged property is jointly owned by its partners-petitioners No.2 to 4 would make no difference in this behalf as enunciated in the aforesaid judgment. This, of course, does not preclude the respondent-Corporation from taking recourse to the provisions of Section 31 and 32G of the said Act in accordance with law.

(Para 11)

Pankaj Gupta, Advocate, *for the petitioners.*

Sanjiv Ghai, Advocate, *for the respondents.*

### SANJAY KISHAN KAUL, CHIEF JUSTICE

(1) The petitioner No.1 is a partnership concern of which petitioners No.2 and 4 are partners. The petitioner No.1 applied under a scheme of the Indian Oil Corporation (IOC) for obtaining priority allocation of chassis of oil tankers/vehicles for transportation of petroleum products and pursuant thereto the IOC issued a letter for allotment of 20 chassis by TELCO on priority basis. In order to finance the purchase of these chassis, the petitioners approached Delhi Financial Corporation (DFC), respondents herein. This resulted in lease agreement *inter se* parties. A similar arrangement was made for another 12 chassis. It is the case of the petitioners that it took six months to deliver the first supply of chassis which necessitated a communication on 20.12.1996 to the respondents, requesting for non-presentation of the post-dated cheques, as it was not known when the trolleys would start operation. The vehicles are stated to have become roadworthy only on 1.1.1997, but soon thereafter the respondents are stated to have issued a show cause notice regarding cancellation of the lease agreement due to nonpayment of the leased rentals, on 21.2.1997. Further representations of the petitioners did not evoke a satisfactory settlement and the respondents terminated the lease agreement on 20.8.1997 with a request to the IOC not to allow transportation of the petroleum products in view of the termination of the lease agreement. This was followed up by the Corporation by publishing a notice inviting sealed tenders for sale of the trolleys. The dispute aggravated with endeavour to take over possession of some of the trolleys. There is some dispute as to when the possession of the trolleys was taken over as, according to petitioners, it was in September 1997 while the respondents stated it was in March 1998. Not only that, a threat was held out by the respondents vide notice dated 24.9.1999 (Annexure P-22) of taking possession of the property given as collateral security on non-payment of alleged dues of Rs.71,62,193.91 and the mortgaged property of the guarantors was sought to be taken possession of by taking recourse to the provisions of Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'the said Act').

(2) On the aforesaid given facts, the petitioners filed the present writ petition under Article 226 of the Constitution of India seeking quashing of the notice dated 24.9.1999 with a further direction to the respondents not to charge/claim lease rentals with effect from August/September, 1997 when the lease agreement was terminated.

(3) The writ petition has been opposed by the respondents. It has been pleaded that the accounts of the petitioners became irregular and, thus, the respondents had no option but to resort to seizure of vehicles leased out. It is alleged that the petitioners managed to remove some of the vital components of the vehicles for which even police report was filed. The vehicles were sold ultimately and the amounts credited to the accounts of the petitioners. The amounts are stated to have been charged as per the terms of the agreement.

(4) In terms of order dated 1.11.1999, interim orders were granted in favour of the petitioners, restraining the respondents from taking any further coercive action for recovery of dues against the petitioners provided the petitioners deposited a sum of Rs. 10 lacs. The order sheets further show that one of the main issues raised was the plea of the petitioners that the respondents were not entitled to claim interest from November-1997 till the trolleys were auctioned. This, of course, had a corresponding effect on the interest component.

(5) The principle argument advanced before us by the learned senior counsel for the petitioners is predicated on the plea that in view of Section 29 of the said Act, the respondents could not have taken over the possession of the property of the sureties in view of law enunciated in *Karnataka State Financial Corporation versus N.Narasimahaiah and others (1)*. In order to appreciate the said plea, Section 29 is reproduced hereinunder:

**“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.**

(Sanjay Kishan Kaul, C.J.)

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under subsection (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." (*Emphasis supplied*)

The basic argument was over the right of the Financial Corporation to take over possession of "industrial concern" as well as right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. The Hon'ble Supreme Court opined that in view of the fact that special provisions are made in derogation to the general rights of citizens, statute should receive strict construction. The liability of an industrial concern can be recovered by taking recourse to both the provisions of Sections 29 and 31 of the said Act or even under Section 32G of the said Act. However, the same would not be the position with respect to the surety or guarantee given in favour of a Financial Corporation for the benefit of the industrial concern. It has to be a property of the industrial concern.

(6) Section 31 of the said Act contains special provisions for enforcement of the claim by a Financial Corporation. They, however, on breach of an agreement, entitle a Financial Corporation to apply to the District Judge, within the limits of whose jurisdiction the industrial concern carries on business, for an order for sale of pledged, mortgaged, hypothecated or assigned property including for enforcing the liability of any surety. Section 32G entitles recovery of amounts due to the Financial Corporation as an arrear of land revenue.

(7) Learned counsel for the petitioners also referred to the judgment of the Full Bench of the Punjab and Haryana High Court in *Shiv Charan Singh versus Haryana State Industrial and Infrastructure Development Corporation Limited and another (2)*, which followed the aforesaid judgment of the Supreme Court in coming to the conclusion that Section 29 of the said Act does not confer jurisdiction on the Financial Corporation to proceed against the defaulter to sell his property and those of a guarantor.

(8) Learned counsel for the petitioners, thus, referred to the impugned notice of the respondent-Corporation dated 24.9.1999, assailed in the present petition, which had been issued under Section 29 of the said Act whereby a threat was held out to petitioners No.2 to 4 for taking over possession of the mortgaged property of the petrol pump, to contend that this notice was *ex facie* contrary to the aforesaid legal position.

(9) Learned counsel for the respondents sought to distinguish the aforesaid judgments by claiming that in the peculiar facts and circumstances of the present case, the action under Section 29 of the said Act was maintainable. In this behalf, the learned counsel produced the bond of guarantee, which, undisputedly, was signed by petitioners No.2 to 4. There was separately a declaration and undertaking executed in respect of the mortgage created by deposit of title documents qua the mortgaged property. The plea sought to be advanced is that the petitioner No.1 and petitioners No.2 to 4 are one and the same thing, as petitioners No.2 to 4 are partners of petitioner No.1 and the partnership is not a separate legal entity.

(10) On the latter aspect, the plea of the learned counsel for petitioners is that it would make no difference as is apparent from the Division Bench judgment of the Kerala High Court in **W.A. No.478 of 2008** titled: **C.Thomas vs. Kerala Financial Corporation and others, decided on 12.12.2008**. The facts of the case were that immovable properties belonging to partnership firm as well as co-applicants were mortgaged in favour of the State Financial Corporation with a loan advanced to the partnership firm. Despite this, it was held that Section 29 of the said Act could not be resorted to, though the same would not be the position qua proceedings under Section 31 or Section 32G of the said Act. Similarly, even the Karnataka High Court in **Writ Appeal No.620 of 2009** titled: **M.Narayana and another vs. The Karnataka State Financial Corporation and others, decided on 8.4.2013**, took the same view where the property was of the partner of the borrowing firm.

(11) In our view, the aforesaid judgment leaves no manner of doubt that Section 29 cannot be resorted to as a coercive process against the properties of the guarantors but is confined only to the industrial concern. The fact that the borrowing entity is a registered partnership firm and the mortgaged property is jointly owned by its partners petitioners No.2 to 4 would make no difference in this behalf as enunciated in the aforesaid judgment. This, of course, does not preclude the respondent-Corporation from taking recourse to the provisions of Sections 31 and 32G of the said Act in accordance with law.

(12) The result of the aforesaid is that the impugned notice dated 24.9.1999 is quashed and the rule is made absolute with liberty to the respondent-Corporation to take action in accordance with the other permissible provisions of the said Act in accordance with law including Sections 31 and 32G of the said Act. Parties are left to bear their own costs.