

**Beegee Corporation Private Ltd. v. M/s. Punjab Financial Corporation, Chandigarh (H. N. Seth, C.J.)**

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of a valid resolution by a corporate body supporting the revision petition. If this objection is allowed to prevail, it would amount to perpetuation of the illegal exercise of jurisdiction by the trial Court and allowing respondent No. 1 to enjoy the fruits of the judgment and the decree passed by the trial Court without jurisdiction. When illegality in the exercise of jurisdiction has once come to the notice of this Court, it has ample power under section 115, C.P.C., on its own motion to undo the same.

(10) In view of the above discussion, I allow this revision petition with costs and set aside the judgment and the decree dated 20th September, 1985 passed by the learned Additional Senior Sub-Judge, Ludhiana.

(11) The parties through their learned counsel are directed to appear before the learned trial Court on 14th September, 1987. The Corporation shall file its objections against the award before the trial Court on that date and further proceedings shall be taken in accordance with law.

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R.N.R.

*Before : H. N. Seth, CJ and M. S. Liberhan, J.*

**BEEGEE CORPORATION PRIVATE LTD.—Appellant.**

*versus*

**M/S PUNJAB FINANCIAL CORPORATION, CHANDIGARH,—  
Respondent**

*Letters Patent Appeal No. 711 of 1987*

August 10, 1987.

*State Financial Corporation Act (LXIII of 1951)—Sections 31 and 32—Proceedings for sale of property to recover amounts due—Determination of loanee's liability towards financial institution—Whether limited to period anterior to date of application under Sections 31 and 32—Liability—Whether extends till realisation.*

Held, that for the purposes of proceedings under Sections 31 and 32 of the State Financial Corporation Act, the loanee's upto-date liability has to be taken into account and not his liability as

on the date of application under Section 31 of the Act. Hence it has to be held that the amount for which the property had to be sold had to be computed by taking into consideration loanee's up-to-date liability in accordance with the terms of agreement entered into by him.

(Para 8)

*Letters Patent Appeal under clause 10 of the Letters Patent praying that the Letters Patent Appeal be accepted and the orders of the courts below be set aside and quashed and the execution application Annexure 'C' be dismissed.*

B. K. Jhingan, Advocate, for the Appellant.

Harmohan Singh Sethi, Advocate, for the Respondent.

#### JUDGMENT

H. N. Seth, C.J.

(1) This appeal under clause X of the Letters Patent applicable to this Court, is directed against the judgment of a learned Single Judge of the Court dated May 13, 1983.

(2) Briefly stated, the facts giving rise to this appeal are that on December 16, 1966, M/s Beegee Corporation (P) Ltd. (appellant) obtained a loan of Rs. ten lacs from Punjab Financial Corporation after mortgaging its assets. On February 6, 1971, the Corporation moved an application under sections 31 and 32 of the State Financial Corporation Act, 1951, for determination of the loan and for the sale of the mortgaged property. On August 21, 1972, it was agreed between the parties that Rs. 11,00,875 was payable by the Company to the Corporation. The parties further agreed to the mode of payment of the same by instalments as also the payment of 9 per cent interest and in default for payment an additional interest of  $\frac{1}{2}$  per cent. However, the appellant having committed default in the payment of instalments, the Corporation moved the District Court on February 5, 1974, for taking further steps for recovery of Rs. 5,50,470 which was due to it from the Company. The Company filed objections which did not find favour with the District Judge. Ultimately when the mortgaged property was going to be put to auction, one of the shareholders of the Company sought permission to negotiate a

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private sale,—*vide* his statement, dated July 24, 1980 and four months time was allowed to complete the sale. M/s Pushap Industrial Corporation, Patiala, came forward to purchase the property of the Company for ten lac rupees. However, the sale did not materialise because objections were filed by the shareholders of the Company that the value of the assets of the Company was much higher. At that time, it was stressed on behalf of the Company that Rs. 10,24,000 was due from it to the Corporation on February 1, 1980. Ultimately, by order dated December 1, 1980, learned Additional District Judge determined that Rs. 16,25,000.95 was due to the Corporation from the Company. After this determination, the Additional District Judge proceeded to put the assets of the Company to auction, but before it could be done, the Company came to this Court in F.A.O. No. 261 of 1981 and obtained an order staying auction on the condition that it deposited Rs. 1,83,000 with the Corporation on or before June 2, 1981.

(3) As the appeal came up for hearing, learned counsel for the Company questioned the validity of the order passed by the Additional District Judge determining the amount for which the auction was to take place as Rs. 10,25,020.95 on following three grounds :—

- (1) That under sections 31 and 32 of the State Financial Corporation Act, the Court had to determine the liability of the loanee only upto the date of the application under section 31 of the Act and to thereafter proceed to sell so much of the property of the loanee as would be sufficient to satisfy such liability.
- (2) The subsequent application filed by the Corporation on February 5, 1974, was in continuation of the original application, dated February 6, 1971, and, as such, the properties of the loanees could not be sold for recovery of any sum in excess of Rs. 5,30,417.00 ; and
- (3) According to compromise entered into by the parties on August 21, 1972, the loanee could not be made liable to pay compound interest.

(4) The learned Single Judge repelled all the three submissions made on behalf of the appellant-Company. So far as the first two submissions were concerned, the learned Judge held that in proceedings under sections 31 and 32 of the Act, the liability which the

loanee had incurred upto date, and not merely the liability, which it had incurred upto the date of the application, had to be taken into account. In this regard, the loanee had accepted that a sum of Rs. 10,24,000 was due from it on February 1, 1980, and that it had incurred some further liability thereafter with the result that the total amount recoverable from it became Rs. 10,25,020.95. He also considered the terms of the compromise dated August 21, 1972, in which reference had been made of the original mortgage deed as well, and held that the Corporation was justified in charging compound interest. In the result, he dismissed the appeal.

(5) Being dissatisfied, the appellant has preferred the present appeal under clause X of the Letters Patent and this is how the matter has come up before us.

(6) The only submission made by learned counsel for the appellant before us is that the learned Single Judge has erred in holding that for purposes of proceedings under sections 31 and 32 of the State Financial Corporation Act, the Additional District Judge could not take into account the upto date liability of the loanee. According to him, for this purpose, the Additional District Judge was concerned with the liability of the loanee as on the date of the application under section 31 of the Act.

(7) In the case of *M/s Everest Industrial Corporation and others v. Gujarat State Financial Corporation*, Civil Appeal No. 1446 of 1987, decided on July 21, 1987, the Supreme Court 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

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decrees passed under Order 34, rule 6 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.*"

(8) In view of this clear pronouncement made by the Supreme Court, it is not possible to accept the appellant's submission that the learned Single Judge had erred in holding that for purposes of proceedings under sections 31 and 32 of the State Financial Corporation Act, the District Judge was concerned with loanee's upto-date liability and not his liability as on the date of application under section 31 of the Act. The learned Judge, in our opinion correctly held that the amount for which property had to be sold had to be computed by taking into consideration loanee's upto-date liability in accordance with the terms of agreement entered into by him.

(9) Learned counsel for the appellant did not make any submission questioning the finding of the learned Single Judge that the agreement entered into between the parties on August 21, 1972, in which reference had also been made of the original agreement, clearly stipulated that loanee was liable to pay compound interest.

(10) As we do not find any merit in the only argument advanced on behalf of the appellant, the present appeal fails and is dismissed with costs.

R.N.R.

Before: H. N. Seth, C.J. and M. S. Liberhan, J.

RAM BHAGAT SINGH,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 1313 of 1986

June 5, 1987.

*Haryana Civil Services (Judicial Branch) Haryana 1st Amendment Rules, 1974—Rules 2, 7 and 8—Selection on the basis of*