

A BIHAR STATE FINANCIAL CORPORATION

v.

M/S. CHHOTANAGPUR MINERALS AND ORS.

(Civil Appeal No. 7253 of 2008)

DECEMBER 12, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

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State Financial Corporations Act, 1951 -- ss.29 and 30 – Power under – Scope of – Held: The power to be exercised only in respect of the properties which were mortgaged – Selling of the property, not forming part of mortgage, is illegal and without jurisdiction – Financial Corporation liable to pay damages for the loss caused by such action.

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Respondent No.1 took loan from appellant-Corporation for setting up a factory. Respondent No.1 mortgaged lease hold right over a piece of land of the factory with the Corporation. Factory was set up. Corporation initiated proceedings in terms of ss. 29 and 30 of State Financial Corporations Act, 1951. Corporation sold the factory premises to respondent No.2.

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Respondent No.1 filed a suit for damages against the Corporation stating that the Corporation sold also other properties which were not subject matter of mortgage, and various properties were hypothecated with respondent No.3-Bank against a loan taken from it.

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Respondent No.1 had claimed damages for Schedule-A property. By way of amendment of the suit, also claimed damages in respect of Schedule B, C and D properties. Trial Court decreed the suit. Order of trial court was confirmed by Single Judge of High Court as well as Division Bench of High Court. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. The statutory power vested in the Corporation u/ss.29 and 30 of Financial Corporations Act, 1961 must be exercised only in respect of the properties

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which were mortgaged. The appellant did not have any right to sell any property which was not the subject matter of the deed of mortgage. Any action taken in that behalf must be held to be wholly illegal and without jurisdiction. Appellant, therefore, was liable for payment of damages as had been opined by the courts below. [Paras 17 and 18] [558-G; 559-C-D]

Ormi Textiles and Anr. v. State of Uttar Pradesh and Ors.
2008 (5) SCC 194, relied on.

2. The appellant has not placed before this Court the amended plaint. The Court has not been informed as to what the B, C and D Schedules to the plaint were about. It is accepted at the Bar that the movable properties mentioned in Schedule A to the plaint stood mortgaged in favour of respondent No. 3. It has furthermore not been denied or disputed that respondent No. 3 – Bank had not initiated any action for realisation of its dues. The movable properties hypothecated to the Bank having not been realized and as it was permissible for it to remove the same, the decretal amount in regard to prayer for payment of sum of Rs. 1,87,635.24 by way of damages, should be held to be payable to respondent No. 3. The decretal amount may be paid by the appellant to respondent No. 3, together with interest as directed by the courts below. [Paras 19, 20 and 21] [559-E; 560-C-E]

Case Law Reference:

(2008) 5 SCC 194 relied on Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7253 of 2008.

From the Judgment and final Order dated 7.3.2006 of the High Court of Jharkhand at Ranchi in L.P.A. No. 113 of 2005.

M.P. Jha, Ram Ekbal Roy and Harshvardhan Jha for the Appellant.

Ashwarya Singh, Aabhas Parimal, Amboj Kumar Sinha, Ramesh N. Keswani, Ramlal Roy, Sumeera Raheja (for M/s. Keswani & Co.) and Ejaz Maqbool for the Respondents.

A The Judgment of the Court was delivered by
S.B. SINHA, J. 1. Leave granted.

2. Appellant is a Corporation constituted under the State Financial Corporations Act, 1951 (for short "the Act"). Respondent No. 1 intended to set up a factory in the Industrial Area, Kokar in the town of Ranchi. It, on or about 5.11.1976, for the aforementioned purpose, sought for and was granted loan by the appellant for a sum of Rs. 3.36 lakhs.

3. An agreement was entered into by and between the parties, in terms whereof, the respondent no. 1 mortgaged the properties described in Schedules 'A', 'B' and 'C' thereof in favour of the appellant – Corporation, viz., the lease hold right over a piece of land admeasuring 0.56 acres at Village Kokar.

4. In terms of the said deed of mortgage, the plaintiff was required to liquidate the aforementioned amount of loan in fourteen instalments. The interest payable thereupon was 14.25 per cent per annum payable every six months. Indisputably, the plaintiff refunded a sum of Rs. 1,32,000/- out of the total sum received from the appellant, viz., Rs. 3,34,300/-. The plaintiff installed machineries upon construction of buildings over the plot. The factory started operation from the month of November, 1978. However, admittedly the factory was closed in March, 1982 for one reason or the other.

5. *Inter alia* on the premise that the plaintiff failed and/ or neglected to pay amount of loan in the manner specified, a proceeding in terms of Sections 29 and 30 of the Act was initiated by the appellant on or about 7.12.1981. Advertisements were issued for selling the factory on 16.12.1982 and 12.01.1983. However, no bid was received pursuant thereto and in furtherance thereof.

6. A decision was taken to sell the said properties in favour of one Shri Atma Lal Agrawal, respondent No. 2 herein. Plaintiff was not informed thereabout. According to the plaintiff, the said sale was conducted in a hush-hush manner. In disposing of the said property, the appellant did not keep in mind the interest of the plaintiff at all. The factory premises was handed over to the respondent No. 2 for which an inventory was prepared on

16.02.1983 which is to the following effect:

"(A) PLANTS MACHINERY

(1) 312 (3-Roller) Raymond Mill Plant for Veeorope drive but without Motor and started complete with and Air-classifier.

(2) Jaw crusher – without Motor

(3) Blower 1 No.

(4) Disintegrator without Motor 1 No.

(5) Electrical installation with starter & switch..."

7. Indisputably, in the said factory, the plaintiff had other properties which were not the subject matter of mortgage. It is furthermore not in dispute that the plaintiff had taken a working capital loan for a sum of Rs. 1,60,000/- from the State Bank of India, Respondent No. 3 herein. Various immovable properties including liquid assets and stock were hypothecated in its favour. The purchaser allegedly utilised the said materials. Plaintiff thereafter filed a suit being Money Suit No. 9 of 1984 in the Court of Subordinate Judge – IV Ranchi wherein originally the following reliefs were prayed for:

"A. That a decree for the payment of a sum of Rs. 1,87,635.24 (One lac eight, seven thousand six hundred thirty five and twenty four paise) by way of damages as detailed in Schedule "A" of the plaint be passed against the defendant no. 1 & 2."

8. However, the plaint was later on amended and the following relief was added:

"A decree for a sum of Rs. 1,86,934.46 paise be passed against the defendant No. 1 being the wrongful and deliberate loss caused to the plaintiff as specified in Schedule "B", "C" and "D" of the plaint."

9. Appellant in its written statement inter alia contended that it had exercised its power *bona fide* in terms of Sections 29 and 30 of the Act. It furthermore contended that despite service of notice upon the Bank the movable properties having not been removed from the factory premises, the appellant was

A not liable to pay any damages.

10. The learned Trial Judge, having regard to the pleadings of the parties, inter alia framed the following issues:

"1. Has the plaintiff any valid cause of action for the suit?

B 2. Is the suit as framed maintainable under the law?

3. Is the suit bad U/s 46(b) of the State Financial Corporation Act?

C 4. Have the defendants taken and removed the movable properties which were not mortgaged to the corporation illegally and unauthorisedly?

5. Is the sale conducted by the Corporation defendant no. 1 in favour of defendant no. 2 *bonafide* and legal one?

6. Whether the plaintiff is entitled to damages for valuing the mortgaged properties by the defendants?

D 7. Whether plaintiff is entitled for decree as prayed for?

8. To what relief or reliefs, if any, the plaintiff is entitled?"

The learned Trial Judge held:

E "...The Branch Manager B.B. Singh has admitted in his evidence that nobody was present on behalf of plaintiff at the time of preparation of inventory vide para 13 and 15 and it falsified the written statement of defendant no. 2 about presence of Pradeep Modi at the time of preparation of inventory. The documentary and oral evidences of plaintiff and defendants fully support that inventory Ext. B is not a reliable document at all and has not been correctly and impartially prepared and it is incomplete.

G The defendant no. 2 had purchased the mortgaged assets of plaintiff only vide Ext. 7/4 and hence defendant no. 1 and defendant no. 2 committed a wrong in taking possession of raw materials, finished goods, spares etc. on 16.2.83 which were not subject matter of sale to defendant no. 2 and on those account defendant no. 1 and 2 are liable to pay damages to the plaintiff as claimed by plaintiff. Thus, issue no. 4 is decided in favour of plaintiff

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against defendant no. 1 and defendant no. 2."

It was furthermore held:

"...The plaintiff is not entitled to decree against bank defendant No. 3. The plaintiff is also entitled for interest at a rate of 13% per annum *pendente lite* and future till realization. Thus, it is ordered that the suit be and the same is decreed for a sum of Rs. 1,87,635.24 p (One lac eight, seven thousand six hundred thirty five and twenty four paise) for claim of relief no. A on contest against defendant no. 1 and against defendant no. 2 with cost also with interest at a rate of 12% per annum *pendente lite* and future till realization. The plaintiff may recover the aforesaid amount jointly or severally from defendant no. 1 and defendant no. 2.

The suit is decreed for a sum of Rs. 1,85,934.46 (One Lack Eighty Six Thousand Nine Hundred Thirty Four and paise forty six only) for claim in relief no. A-1, on contest against defendant no. 1 with cost along with interest at a rate of 12% per annum *pendente lite* and future till realization. The suit for claim of relief no. A-1 is dismissed against defendant no. 2. The suit is dismissed *exparte* against defendant no. 3."

11. Aggrieved by and dissatisfied with the said judgment and decree, the appellant preferred an appeal before the High Court. By reason of the impugned judgment, the said appeal has been dismissed.

12. The High Court in its judgment framed the following three points for consideration:

"Whether the appellant removed the movable properties not mortgaged to the Corporation illegally or unauthorisedly? Whether the sale conducted by the Corporation, defendant – appellant, in favour of the defendant no. 2 *bonafide* and legal one, and whether plaintiff – respondent is entitled to damages for undervaluing the mortgaged properties by the defendants?

The High Court held that the appellant broke open the door

A of the factory in absence of any representative of the plaintiff.
Inventory of the articles was also prepared without any
representative of the plaintiff. The inventory list of machineries
which were in the factory premises was handed over to the
defendant No. 2. The plea of the appellant that there was no
movable property in the factory premises was disbelieved.
B Indisputably, the properties which were hypothecated to the
State Bank of India, respondent No. 3 were also lifted without
any information to the State Bank of India.

The first point was, thus, determined in favour of the plaintiff
– respondent No. 1. As regards points No. 2 and 3, the High
C Court opined:

"31. A plea has been taken on behalf of the appellant Atma
Ram who has filed F.A. No. 22 of 1994 against the
judgment and decree of the learned court below that he is
not at fault, rather he is at loss on account of the fact that
D prior to the sale of the factory, some machines had been
removed from the factory just before the take over of the
factory. But question is that before purchase of the factory
by him, he entered into negotiation with the Branch
Manager of Bihar State Financial Corporation Ranchi and
E had agreed to purchase the factory at the price agreed
upon in between him and the Branch Manager and before
purchase, it cannot be believed that he purchased the
factory without going through the premises of the factory.
Further, he did not appear or take part in the tender that
F was opened at the head office of Bihar State Financial
Corporation and Bihar State Financial Corporation also
when no tender was filed, should have re-issued the tender
and from the evidence of the Branch Manager, defendant
No. 1 obtained permission from the head office at Patna
for approval of sale and in course of time, sale was
G approved. While deciding issue no. 2, it was found that
Bihar State Financial Corporation did not conduct sale in
proper manner and did not fetch proper price for the factory
worth which the factory was in possession of defendant no.
1 and, therefore, the question of removal of articles from
H the factory premises by the plaintiff – respondent does not

arise, although an F.I.R. to that effect has been lodged against the plaintiff – respondent and a case in this connection is said to be pending. But the sale which was conducted by the defendant No. 1 appellant was not conduct in a proper way and there was collusion in between the defendant no. 1 and defendant no. 2, so ignoring all the norms, the sale was conducted and as such, both defendant no. 1 and defendant no. 2 are liable, and, therefore, the learned court below gave a finding against the defendant no. 2 holding the defendant no. 1 – appellant of F.A. No. 531 of 1993 responsible for the loss of the property as described in Schedule – A of the plaint. So far as relief A-1 was concerned, defendant no. 1 – appellant has been held responsible."

13. A Letters Patent Appeal preferred thereagainst before a Division Bench of the High Court has been dismissed as being not maintainable.

14. Mr. M.P. Jha, learned counsel appearing on behalf of the appellant, would contend that the courts below committed a serious illegality in passing the impugned judgments insofar as they failed to take into consideration the letters issued by the appellant to the defendant No. 3 – Bank for taking away the movable properties and in that view of the matter the appellant cannot be said to be guilty of any negligence.

The learned counsel pointed out that damages awarded by the learned Trial Court on two counts, as would appear from prayers A and A-1 of the plaint are not maintainable. He, however, fairly conceded that the decree passed in respect of prayer A-1 stands satisfied.

15. The learned counsel on behalf of the respondents, on the other hand, would support the impugned judgment.

16. Sections 29 and 30 of the Act read as under:

"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

A 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 concern, as well as the right to
B transfer by way of lease or sale and realise the property
pledged, mortgaged, hypothecated or assigned to the
Financial Corporation.

(2) Any transfer of property made by the Financial
Corporation, in exercise of its powers under Sub-section
C (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
D 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
E 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
F 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-
G 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 sued in the name
of the concern.

30. Power to call for repayment before agreed period.
H Notwithstanding anything in any agreement to the contrary,

the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,-- A

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; B
or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or C

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or D
E

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or F

(f) if for any reason it is necessary to protect the interests of the Financial Corporation."

17. A bare perusal of the aforementioned provisions would clearly go to show that the statutory power vested in the Corporation must be exercised only in respect of the properties which were mortgaged. This aspect of the matter has been considered by this Court in *Ormi Textiles and Another v. State of Uttar Pradesh and Others* [(2008) 5 SCC 194], holding: G

"15. For the purpose of invoking Section 29 of the Act, the borrower must have a liability to the Corporation under an H

A agreement. It must make a default in repayment of any loan
or advance, etc. The Corporation in such a situation shall
inter alia have the right to take over the management or
possession or both of the industrial concerns. This power
is in addition to the power of the right to transfer by way of
B lease or sale and realize the property pledged, mortgaged,
hypothecated or assigned to the Corporation. The right to
transfer by way of lease or sale, however, is not an
independent right. Only in case of default, such a right can
be exercised. We must keep in mind that the powers
C contained in two parts of Section 29 of the Act are
separate and distinct. The power to take over the
management is ordinarily exercised when the concern is
an ongoing one. But, when a power is conferred to sell the
property unilaterally, the same must have a nexus with the
D mortgaged property. The power to sale cannot be read in
isolation. It can also realize the mortgaged property which
would mean that when a property had been sold, only the
mortgaged property can be realized and not any other
property which was not the subject matter of mortgage.
What can be transferred by the mortgagee even in terms
E of the provisions of the Transfer of Property Act is the
property which was the subject matter of mortgage and not
any other. A power to take over the management or
possession is a statutory power. As and when the debt is
realized, the Corporation would be bound to handover the
F management or possession of the property, as the case
may be, back to the industrial establishment.

16. A mortgagee can have a right to sell a property even
under the contract. The same must necessarily mean that
the property to be sold is the one over which he has the
right, title and interest. A sale without any right would be a
G nullity.

17. For proper construction of the provisions of the Act,
we may notice the provisions of Section 31 thereof. It
provides for an additional remedy. Whereas Section 29
confers a power to sale the property unilaterally, Section
H 31 provides inter alia for the same power only through the

intervention of the court.

18. Clause (a) of Sub-section (1) of Section 31 of the Act categorically states that the jurisdiction of the District Judge can be invoked for order of sale of the mortgaged or assigned property in favour of the Corporation. Clause (b) thereof provides for transferring the management of the industrial concern. Clauses (aa) and (c) of Sub-section (1) of Section 31 of the Act provide for additional remedies. When an application is filed in terms of Section 31 of the Act, the procedures laid down in Sub-section (1A) of Section 32 of the Act are required to be followed. A further additional remedy has been provided to a Financial Corporation in terms of Section 32G of the Act."

18. In that view of the matter, there cannot be any doubt whatsoever that the appellant did not have any right to sell any property which was not the subject matter of the deed of mortgage. Any action taken in that behalf must be held to be wholly illegal and without jurisdiction. Appellant, therefore, was liable for payment of damages as had been opined by the courts below.

19. We may, furthermore notice that the appellant has not placed before us the amended plaint. Whereas prayer A relates to Schedule A, prayer A-1 relates to Schedules B, C and D appended to the plaint. We have not been informed as to what these Schedules were about. Schedule 'A' appended to the plaint, however, reads as under:

"SCHEDULE A

1. As per stocks statement submitted Rs. 1,30, 161.64
to State Bank of India, Main
Branch Court Compound,
Ranchi on 31.3.1982
2. Cost of 10,808 MT of coal Tar Rs. 45, 393.60
Pitch @ Rs. 4200/- PMT
3. Cost of 190 bags of Pilla Miiti Rs. 3,800.00
@ Rs. 20/- per bag

A	4. Cost of 1.5 MT of Graphite powder @ Rs. 1,000/- PMT	Rs. 1,500.00
	5. Cost of 4000 Nos. 1st Class bricks @ Rs. 320/- 1000 Nos.	Rs. 1,280.00
B	6. Cost of channels Angles etc. 500 Kg. @ Rs. 5,000/- PMT	Rs. 2,500.00
	7. Cost of 1.5 MT Iron Nails @ 2,000/- PMT	Rs. 3,000.00
	Total:	Rs. 1,87,635.24 p"

C 20. It is accepted at the bar that the aforementioned movable properties stood mortgaged in favour of the respondent No. 3. It has furthermore not been denied or disputed that the respondent No. 3 – Bank had not initiated any action for realisation of its dues. Probably, it could not do so because of the pendency of the instant case and one of the claims made by the plaintiff was also directed against the Bank.

D 21. We, therefore, with a view to do complete justice between the parties, are of the opinion that the movable properties hypothecated to the bank having not been realized and as it was permissible for it to remove the same, the decretal amount in regard to prayer A should be held to be payable to the State Bank of India – the respondent No. 3. We direct accordingly. The decretal amount may be paid by the appellant to the respondent No. 3 together with interest as directed by the courts below within six months from date failing which it will be open to the bank to execute the decree.

E 22. The appeal is dismissed with aforementioned directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

F K.K.T.

Appeal dismissed.