IN THE COURT OF NARENDER PAL, ADDL. DISTRICT JUDGE; KARNAL (UID No.HR0165).

Petition No.: 77 of 2014
Date of Institution: 28.08.2014
Date of Decision: 30.03.2018
CNR No.:HRKR01-004604-2014

Haryana Financial Corporation a body corporate established under State Financial Corporation's Act having its Head Office at Bays No.17, 18 and 19, Sector-17A, Chandigarh and branch office at Panipat through its Manager, Panipat.

.....Petitioner.

VERSUS

1. M/s Vishav Manav Printers through its Sole-Prop. Shri Jai Singh Kashyap son of late Shri Mam Chand, resident of VPO Jhanjari, PO Uchani, Tehsil and District Karnal.
2. Shri Jai Singh Kashyap son of late Shri Mam Chand, resident of VPO Jhanjari, PO Uchani, Tehsil and District Karnal (Sole-Prop. and Guarantor).
3. Shri Chander Shekhar son of late Shri Mangat Ram (since expired), resident of 182/14, Urban Estate Karnal (guarantor) through his legal heirs:
   a) Smt. Asha Garg wife of late Shri Chander Shekhar,
   b) Shri Juggal Garg,
   c) Shri Deepak Garg, both sons of late Shri Chander Shekhar,
   d) Smt. Himani,
   e) Miss Kanika Garg, both daughters of late Shri Chander Shekhar,

All residents of 292/32, Nursi Village, Karnal.

4. Smt. Sunhari Devi wife of Shri Daya Ram, resident of 18-1028/874(874/691) (91-92), New Char Chaman, Karnal (owner and mortgagor of residential house as collateral security) since expired through her legal heir – Shri Ram Bhaj son of late Shri Daya Ram, resident of Ghosian Mohalla C-273, (Near Harizan Choupal), Karnal.

….Respondents.

Petition u/s 31 of the SFC's Act, 1951.

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Present : Shri M.S. Mann, counsel for the petitioner.
Respondents already exparte.

JUDGMENT

The instant petition has been preferred by the petitioner under Section 31 of The State Financial Corporation Act, 1951.

2. Brief facts, necessary for the disposal of the instant petition are that, the present petition under Section 31 of the State Financial Corporatin Act, 1951 (here-in-after be referred to as SFC's Act) was filed by the petitioner Haryana Financial Corporation (here-in-after be referred to as HFC) against the respondents inter-alia on the grounds that the petitioner HFC is a body corporate established under the SFC's Act 1951

having its head office at Chandigarh and branch office at Panipat and the Manager, HFC Panipat is duly authorized and competent person to file the present petition. It was alleged that the application of the respondents for advancing a term loan of ₹7,50,000/- as well as loan for working capital of ₹1,70,000/- was allowed and the same was disbursed to the respondent No.1 i.e. Jai Singh son of Mam Chand being sole proprietor concerned for running an offset printing press as per terms and conditions of hypothecation deed dated 29.07.1994 and deed of additional security dated 13.12.1995. The respondents mortgaged land measuring 150 Sq. Yards with building constructed thereon bearing No.18/874/691, situated in New Char Chaman, Karnal owned and possessed by Sunehri Devi wife of Daya Ram as collateral security vide deed of additional security dated 13.12.1994 to secure the aforesaid term loan and working capital loan respectively. It was further submitted that the respondent No.1 had to repay the aforesaid loan amount in 15 half early installments of ₹50,000/- each payable on 1st March and 1st September of each year starting from 01.09.1995 and the last installment was to be paid on 01.07.2002 alongwith agreed rate of interest, but the respondents did not adhere to the terms and conditions of the repayment of loan and made continuous default from the very beginning. Ultimately, the entire loan amount was recalled by the competent authority vide registered notice dated 07.09.1995 and despite several notices and personal efforts for receiving the repayment, the respondents concerned did not make the payment inspite of issuing registered notice dated 19.09.1995. Ultimately, the corporation took over the possession of the unit/primary security on 10.10.1995 and sold the same in open auction for a sum of ₹2,20,000/- and after crediting that amount into the loan account, an amount of ₹1,42,60,181/- remained outstanding as on 01.09.1997 alongwith further interest @ 20% and a sum of ₹2,87,444/- alongwith interest remained pending towards work capital. It was further submitted that on 01.03.2014 the total outstanding in term loan account became due as ₹3,58,22,979/- and a sum of ₹1,09,40,193/- in working capital loan with further interest of 22.5%. Hence, it was prayed that the property of respondent No.4 i.e. house No.18-1028874(874/601) (91-92) be ordered to be sold as per requirement of section 31 of HFS's Act.

3. In addition to that, it was also pleaded that one Brij Lal and

Smt. Neelam Rani, both residents of House No.874/601 had filed a suit on 04.05.2007 against the possession and sale of the house in question alleging that they had purchased 56.77 Sq. Yards land from Raj Rani and her two sons namely Mohan Dass and Pardeep Kumar on 21.04.2005, and said Raj Rani etc had purchased the same house from Mohan Lal son of Amar Nath, and said Mohan Lal had purchased th same on 09.08.1995 from Smt. Sunehri Devi, the original mortgagor of the house measuring 150 Sq. Yards. It was further submitted that although, the learned lower court had granted the stay, but ultimately on appeal of the Corporation that stay was vacated and even the Hon'ble High Court also dismissed the revision petition of said Brij Pal and Neelam Rani on 15.07.2013. Ultimately, it was prayed that this court may please order for selling the house No.18-1028874(874/601) (91-92).

4. Upon notice of the petition, the respondents No.1 to 3 not appeared and they were proceeded against exparte vide order dated 04.09.2017. However, the respondent No.4 appeared, but she did not file her written statement and on 01.02.2018 none appeared on behalf of respondent No.4, therefore, she too was proceeded against exparte.

5. On the basis of pleadings of the petitioner the following issues was framed vide order dated 13.12.2017:

1. Whether the petitioner is entitled for the reliefs claimed in prayer clause? OPP
2. Relief.

6. Thereafter, the petitioner was directed to lead its exparte evidence and then petitioner examined Surender Kumar, Registry Clerk as PW1 and Shanti Chawla, Manager, HFC as PW2 before local commissioner in compliance of order of this court dated 13.12.2017 and she tendered her affidavit Ex.PW2/A. Thereafter, the evidence of petitioner was closed by court order vide order dated 01.02.2018 as the petitioner remained failed to conclude its evidence despite availing several effective opportunities including last opportunity.

7. The petitioner has also tendered the following documents i.e. copy of deed of additional security as Ex.PA, photocopy of deed of hypothecation as P1, copy of agreement of hypothecation of book debt as Ex.P2, copy of letter dated 06.04.1995 as Ex.P3, copy of letter dated 07.09.1995 as Ex.P4, copy of letter dated 19.09.1995 as Ex.P5, copy of

account statement as Ex.P6, copy of judgment dated 23.12.2010 passed by the court of Ms. Raj Rahul Garg, the then learned District Judge, Karnal in an appeal titled as Corporation of Haryana versus Brij Lal and others as Ex.P7, copy of decree-sheet as Ex.P8 and photocopy of order dated 15.07.2013 passed by the Hon'ble High Court in RSA No.2858 of 2011 titled as Brij Lal versus State Financial Corporation as Mark-A.

8. I have heard the learned counsel for the petitioner and have perused the case file very carefully.

Issue No.1

9. The onus to discharge the burden from this issue was upon petitioner and it was required to be proved that the petitioner was entitled for selling the house of mortgagor against the loan amount.

10. Learned counsel for the petitioner has argued that by virtue of section 31 of the State Financial Corporation Act the petitioner was entitled to file this petition thereby seeking order for the sale of property pledged/mortgaged/hypothecated or assigning to the Corporation for the security of the loan/advanced as well as other reliefs mentioned in clause (a to c) of sub section 1 of section 31 and sub-section 2 of the Act. It was

further argued that the respondent No.1 had taken a loan of ₹7,50,000/- from the petitioner for establishing offset printing press and he executed several documents mentioned above alongwith a mortgage deed of house in question for additional security, but the respondents No.1 and 2 did not adhere to the financial discipline, therefore, establishment of respondent No.1 was taken over by the petitioner and the same was sold in open auction for ₹2,20,000/-, but despite adjusting that amount in the loan account a sum of ₹3,58,22,979/- was outstanding as on 01.03.2014 qua the term loan and a sum of ₹1,09,40,193/- qua working capital loan alongwith further interest @ 22.5%. He further argued that as on 01.09.2017, the total outstandings are ₹7,44,79,593/- + ₹2,35,58,019 + further 22% interest till realization of the amount. He further argued that because the house in question has been mortgaged by the respondent No.4, therefore, that house is liable to be sold in open auction for recovering the aforesaid amount from respondents No.1 & 2. Hence, it was prayed that this petition be allowed as per prayer clause.

11. After having given a thoughtful consideration over the submissions made by learned counsel for petitioner, this court is of the

considered view that the present petition of the petitioner is liable to be dismissed for the reasons mentioned below:

Firstly, no doubt as per provision contained in section 31 of the State Financial Corporation Act 1951 a special provision has been made for enforcement of claims by the financial corporation , but it is the wording of this section itself that this provision shall be invoked only by an officer of the financial corporation who is either generally or specially authorized by the board in this behalf and only that authorized person could have applied to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business. A perusal of the case file would reveal that initially this petition was filed by Haryana Financial Corporation through its branch manager at Panipat, however, the name of that branch manager was not mentioned in the title page, but if the verification part of this petition is seen, then it would reveal that, that petition was signed by some Saroj Sehgal, however, no specific authority letter had ever been produced alongwith this petition to show that said Saroj Sehgal had been authorized by the corporation for filing this petition in view of the requirement of sub-section 1 of section 31 of the aforesaid Act. Apart from this, when this case was fixed for leading evidence on behalf of petitioner, then one Shanti Chawla, Manager SFC, Panipat appeared as PW2 and tendered her affidavit Ex.PW2/A and in para no.2 of her affidavit although she claims that she was duly authorized and competent person to file, sign and verify the documents related to the present petition on behalf of the corporation, but she also did not file any such authority letter which could indicate that she had been authorized by the corporation either generally or specially to appear before this court as witness or to pursue the matter in place of said Saroj Sehgal who had instituted this petition. Although, the petitioner has sought the benefit provided under the provisions of section 31 of the Act for getting the order for selling the mortgage house, but the petitioner itself has not complied with the mandatory provision as contained in the section itself.

12. **Secondly**, it is the allegation of the petitioner that Sunehri Devi-the respondent No.4 had mortgaged her house with the corporation/petitioner as collateral security against the loan amount received by respondents No.1 and 2, and because the respondents No.1

and 2 have been failed to repay the payment, then that house of respondent No.4 is liable to be sold in open auction in view of the deed of additional security Ex.PA dated 13.12.1994. First of all it is considered view of this court that the petitioner has not placed on record the original mortgaged deed for the perusal of this court, and if the certified copy of the same has been placed and proved by PW1, then no application was moved to prove this document by way of secondary evidence as per requirement of section 65 and 66 of The Indian Evidence Act. Even the loss of document was not pleaded and proved. Further, no attesting witness of this alleged document was examined before the court in compliance of section 68 of The Indian Evidence Act. Apart from this, if for the sake of arguments this document is presumed as legal, then also it is considered view of this court that in clause 7 of this mortgage deed it was provided that if the borrower makes any default in repayment of the mortgage debt or any installment thereof, then the corporation shall have the right u/s 29 of the SFC's Act to take over the possession of whole of the said property as well as right to transfer by way of lease or sale and realize all the property, mortgaged, assigned or charge to the corporation.

But no such proceedings were initiated, and further in clause 9 of the same document it was provided that corporation shall be entitled to recover its loan as arrears of land revenue as provided in the Haryana Public Money (recovery of dues) Act 1979 by forwarding the requisite certificate under the signature of its managing director to the Collector of the district, who shall be entitled to recvoer the same by sale of the mortgage property mentioned in the schedule hereunder or by any other method. Meaning thereby that it was the duty of the corporation to apply before the District Collector for recovering the dues as arrears of land revenue after forwarding a requisite certificate qua outstanding amount duly signed by managing director, but no such alternate agreed mode was adopted. Even otherwise, it is not understandable that when as per pleadings of the petitioner the loan account of respondent No.1 had already been declared NPA (Non-performing Assets) on 07.09.1995 as the entire amount was recalled, then why the proper proceedings available to petitioner were not initiated, rather the corporation remained continued to debit the interest on the loan amount and PW1 in her affidavit Ex.PW1/A has claimed that till 01.09.2017 a sum of ₹7,40,79,593/- alongwith further interest @ 22% was outstanding in term loan against the principal amount of ₹7,50,000/- and a sum of ₹2,35,58,019/- for the working capital loan against the principal amount of ₹1,80,000/-. The account statement furnished by petitioner Ex.P6 has not been proved in accordance with law. Even no certificate has been issued that this statement is correct and admissible as per Bankers Book Evidence.

13. **Thirdly**, this petition is hopelessly time barred because as per averments contained in the petition, the respondents No.1 & 2 had obtained the loan in the year 1994 and the loan was to be paid in 15 half early installments commencing from 01.09.1995 to 01.07.2002, and it is the case of petitioner himself that the respondents stopped making repayment from the very beginning and ultimately, the entire loan amount was recalled by the competent authority vide registered notice dated 07.09.1995, meaning thereby that this special provision for enforcement of claims u/s 31 of the Act could have been invoked by the petitioner within three years from the date of final refusal of making the payment, or within three years from the date of last installment i.e. 01.07.2002, but this petition was filed by the petitioner only on 27.08.2014 after a delay

of more than 12 years and this inordinate delay has not been explained.

14. Lastly, it is the case of petitioner that Sunehri Devi, who was the actual mortgagor of the house in question, has been died that is why Ram Bhaj being legal heir of said Sunehri Devi was impleaded as respondent No.4, but this assertion is vague and uncertain because neither the date of death was mentioned nor death certificate was placed on record and even it was not explained that except Ram Bhaj no other legal heir of Sunehri Devi was available. Further more, the property in question had allegedly been mortgaged in the year 1994, but at the time of filing this petition in the year 2014 the latest status of that property was not disclosed. Even no site plan was placed on record, and even the measurement/dimensions as well as description of construction were also not disclosed either in the petition or in the alleged deed of additional security.

Relief

15. Keeping in view of my above discussion, this court has reached on conclusion that the petition of the petitioner is devoid of any merits, hence, the same is hereby dismissed with costs. Memo of costs be

prepared accordingly. File be consigned to the record room after due compliance.

Pronounced in open court.
30.03.2018.

(Narender Pal)
Addl. District Judge,
Karnal (UID No.HR0165).

All fifteen pages are checked and signed by me.

(Narender Pal)
Addl. District Judge
Karnal.(UID No.HR0165).

typed by:
ajay,
steno Gr.II

Narender Pal
ADJ, Karnal. 30.03.2018

Present : Shri M.S. Mann, counsel for the petitioner.
Respondents already exparte.

Arguments heard. Vide my separate judgment of even date, the present petition has been dismissed with costs. File be consigned to the record room after due compliance.

Pronounced in open court.
30.03.2018.

(Narender Pal)
Addl. District Judge,
Karnal.(UID No.HR0165).

typed by:
ajay,
steno Gr.II