

**RAJASTHAN FINANCIAL CORPORATION**  
**Udyog Bhawan, Tilak Marg, C-Scheme**  
**JAIPUR-302 005**

Ref.No.RFC/F.Law-3/LPM(22)/3729. Dated: 16<sup>th</sup> August, 2005

**CIRCULAR**  
**(Lit.Circular No.12/)**

**Sub: Important decision of Hon'ble Supreme Court in the matter of Section 32-G and in the case of Delhi Financial Corporation & Another Vs. Rajiv Anand & Ors (2004) 11 SCC 625).**

The Hon'ble Supreme Court while considering appeal of Delhi Financial Corporation & Another with regard to Section 32-G of the SFCs Act has decided following issues:-

- (a) Whether the Requisition Certificate (RC) being issued by the officers of the Corporation U/S 32-G is violative of the doctrine of "no man can be a judge in his own cause"?

Held:

That the control of SFC rest in their Board of Directors. There was no question of presuming that there is any conflict of duty or the MD would not act fairly. Hence the MD of Corporation can be appointed as an authority U/S 32-G.

- (b) Whether it is permissible under the practice and procedure that respondents supporting impugned order under challenge in the Supreme Court in an appeal filed by the financial corporations through it was decided against it in courts below?-

Held

Permissible on all available points.

(c) Whether the provisions of Section 32-G are also applicable to the sureties?

Held:

That if the intention of the legislature were to limit the procedure under section 32-G only to the principal debtor then the legislature would necessarily have had to use the words "amount due from the principal debtor" or "amount due from the industrial concern" and it was held that Section 32-G is to **apply where any amount found due to the financial corporation**. It was further made clear that Section 32-G was incorporated by the same amendment Act which incorporated the provision for enforcement against the surety. Accordingly the provisions of Section 32-G can also be enforced against the Surety, Guarantor, Mortgagor-Guarantor.

(d) Whether the Court can determine legislative intent?

Held:

The Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result.

(d) Whether the proceeding U/S-32-G in the nature of Execution Proceeding?

Held:

The provision is in the nature of an Execution Proceeding but it is not a recovery proceeding pursuant to a decree of Court.

(e) Whether the provisions of Section 32-G, 31 and 32 are arbitrary?

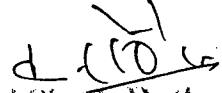
Held:

No.

539

This judgement is a landmark judgement with regard to provisions of Section 32-G of SFCs Act and all the aspects including that the action U/S 32-G can be taken against their sureties and guarantors had been decided by the Hon'ble Court. Copy of judgement in the case of DFC Vs. Rajiv Anand alongwith two other related judgements passed in the cases of Hanuman Prasad Vs. RFC and Vinay Singhal Vs. RFC are enclosed and marked as Annexure 'A', 'B' & 'C' respectively.

All concerned are advised to keep the judgement in mind while dealing with the court cases and also apprise our panel advocates about the judgement so that the same may be taken use as and when required.

  
(Karni Singh Rathore)

Chairman & Managing Director

Encl: as above

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DELHI FINANCIAL CORPN. v. RAJIV ANAND

(2004) 11 Supreme Court Cases 625

(BEFORE S.N. VARIAVA AND H.K. SEMA, JJ.)

a DELHI FINANCIAL CORPN. AND ANOTHER ... Appellants;

*Versus*

RAJIV ANAND AND OTHERS ... Respondents.

Civil Appeals Nos. 4014-17 of 1998 with Nos. 4018-21 of 1998 and 7818  
of 2002, decided on March 24, 2004

b A. Debt Laws — State Financial Corporations Act, 1951 — Ss. 32-G and  
9 — Appointment of Managing Directors as the authority under S. 32-G —  
If violated the doctrine of “no man can be a judge in his own cause” —  
Held, merely because an officer of a corporation is named to be the  
authority, does not by itself bring the said doctrine into operation —  
Circumstances in which doctrine would come into play stated — Given that  
c control of State Financial Corporations rested in their Boards of Directors  
by virtue of S. 9, despite the fact that the said Boards would take the advice  
of the Executive Committee and MD, there was no question of presuming  
that there is any conflict of duty or that the MD would not act fairly —  
Further reasons for, given — Hence, the MD of a financial corporation can  
be appointed as an authority under S. 32-G — Natural Justice — *Bias/Nemo  
debet esse judex in propria sua causa* — Applicability of doctrine of  
d Held :

The doctrine that “no man can be a judge in his own cause” can be applied  
only to cases where the person concerned has a personal interest or has himself  
already done some act or taken a decision in the matter concerned. Merely  
because an officer of a corporation is named to be the authority, does not by itself  
bring into operation the doctrine “no man can be a judge in his own cause”. For  
e that doctrine to come into play it must be shown that the officer concerned has a  
personal bias or connection or a personal interest or has personally acted in the  
matter concerned and/or has already taken a decision one way or the other which  
he may be interested in supporting. (Paras 9 and 14)

The control of the State financial corporations, by virtue of Section 9, vests  
in a Board of Directors. Of course, the Board of Directors would take the  
f assistance of the Executive Committee and the Managing Director. But the  
control remains that of the Board of Directors and, therefore, there is no question  
of presuming that there was any conflict of duty or that the Managing Director  
would not act fairly. A Managing Director is a high-ranking officer. He is not  
personally interested in the transaction. There is no question of any bias or  
conflict between his interest and his duty. Therefore the Managing Director of a  
financial corporation can be appointed as an authority under Section 32-G of the  
g Act. (Paras 10, 9 and 14)

*Lachhman Das v. State of Punjab*, (1963) 2 SCR 353; *Accountant and Secretarial Services  
(P) Ltd. v. Union of India*, (1988) 4 SCC 324, relied on

*A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 : AIR 1970 SC 150; *Gullapalli  
Nageswara Rao v. A.P. SRTC*, 1959 Supp (1) SCR 319 : AIR 1959 SC 308; *Krishna Bus  
Service (P) Ltd. v. State of Haryana*, (1985) 3 SCC 711 : AIR 1985 SC 161.  
h distinguished

**B. Constitution of India — Art. 136 — Practice and Procedure —** Respondent supporting impugned order in the Supreme Court in an appeal filed only by financial corporations though it was decided against it in courts below — Held, permissible on all available points (Para 3) a

Even though the findings on the other points were against the respondents and the appeal had only been filed by the financial corporations, the respondents could still support that judgment on all available points. (Para 3)

*Northern Rly. Coop. Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur*, (1967) 2 SCR 476 : AIR 1967 SC 1182; *Employers, India Cable Co. v. Workmen*, (1974) 3 SCC 11 : (1973) 1 SCR 105, followed b

[Ed.: See also (2004) 3 SCC 214, short notes G, H, I and J]

**C. Debt and Financial Laws — State Financial Corporations Act, 1951 — S. 32-G — Held, applicable also to surety — Use of words “when any amount is due” — Import of — Held, if the intention of the legislature were to limit the procedure under S. 32-G only to the principal debtor then the legislature would necessarily have had to use the words “amount due from the principal debtor” or “amount due from the industrial concern” — The legislature has purposely omitted to use these words — The words omitted to be used cannot be added by the court — It is presumed that the legislature made no mistake when it omitted to use these words and that it intended what it said, namely, that S. 32-G is to apply wherever any amount is found due to the financial corporation — Moreover, S. 32-G was incorporated by the same amending Act which incorporated provisions for enforcement against a surety (Paras 16 and 17) c**

**D. Interpretation of Statutes — Basic rules — Determination of legislative intent — Supplying of casus omissus and correcting of errors by court — Permissibility — Legislature is presumed to have made no mistake and that it intended to say what it said — Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result — The court is not authorised to alter words or provide a casus omissus (Para 17) d**

Suggested Case Finder Search Text (*inter alia*) :

“interpretation of statutes” and [legislature near mistake]

*Munnalal Gupta v. U.P. Financial Corpn.*, AIR 1975 All 416 : (1975) 1 All LR 504 (FB), cited f

*P.K. Unni v. Nirmala Industries*, (1990) 2 SCC 378; *Union of India v. Elphinstone Spg. and Wvg. Co. Ltd.*, (2001) 4 SCC 139, relied on

**E. Debt and Financial Laws — State Financial Corporations Act, 1951 — S. 32-G — Nature of proceedings under — If in the nature of execution proceedings — Adjudication by civil court if a prerequisite to invoking provisions of — Held, undoubtedly the provision is in the nature of an execution proceeding but it is not a recovery proceeding pursuant to a decree of court — In cases of amounts due to financial corporations, all that is required is a simple arithmetical calculation or a simple verification — Therefore there is no lis or adjudication contemplated under S. 32-G — Fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them — Therefore such an interpretation cannot be placed thereon — Analogy with S. 33-C(1) g**

of Industrial Disputes Act, 1947 — Industrial Disputes Act, 1947 — Ss. 33-  
C(1) & (2) (Paras 21 and 22)

- a *Fabril Gasosa v. Labour Commn.*, (1997) 3 SCC 150 : 1997 SCC (L&S) 667; *Haryana Financial Corpn. v. Jagdamba Oil Mills*, (2002) 3 SCC 496, relied on  
[Ed.: See also *Mardia Chemicals case*, (2004) 4 SCC 311]

F. Debt Laws — State Financial Corporations Act, 1951 — Ss. 32-G and 31 and 32 — Procedure under S. 32-G (or lack thereof) if arbitrary — Words “after following the procedure” — Import — Held, said words necessarily indicate that principles of natural justice have to be complied with — However, the order thereunder need not always be a speaking or reasoned order, given that the provisions only contemplate arithmetical calculations or simple verification — All that is to be stated is the amount due — Moreover, recourse to civil courts or the High Court under Arts. 226 and 227 is not barred — Hence the provision is not arbitrary — Constitution of India — Art. 14 — Particular statutes — Civil Procedure Code, 1908 — S. 9 (Paras 25 and 26)

- b *Lachhman Das v. State of Punjab*, (1963) 2 SCR 353; *Malik Ram v. State of Rajasthan*, AIR 1961 SC 1575 : (1962) 1 SCR 978; *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay*, (1974) 2 SCC 402; *Director of Industries, U.P. v. Deep Chand Agarwal*, (1980) 2 SCC 332, relied on  
c *Excel Wear v. Union of India*, (1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009, distinguished

- d [Ed.: See also *Mardia Chemicals case*, (2004) 4 SCC 311]  
CAs Nos. 4014-17 and 4018-21 of 1998 partly allowed  
CA No. 7818 of 2002 dismissed

D-M/30204/S

*Chronological list of cases cited*

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|---|----------------------------------------------------------------------------------------------------------------------------|--------------------------|
|   | 1. (2002) 3 SCC 496, <i>Haryana Financial Corpn. v. Jagdamba Oil Mills</i>                                                 | 638b                     |
|   | 2. (2001) 4 SCC 139, <i>Union of India v. Elphinstone Spg. and Wvg. Co. Ltd.</i>                                           | 635e-f                   |
| e | 3. (1997) 3 SCC 150 : 1997 SCC (L&S) 667, <i>Fabril Gasosa v. Labour Commr.</i>                                            | 636c-f                   |
|   | 4. (1990) 2 SCC 378, <i>P.K. Unni v. Nirmala Industries</i>                                                                | 635d                     |
|   | 5. (1988) 4 SCC 324, <i>Accountant and Secretarial Services (P) Ltd. v. Union of India</i>                                 | 634a                     |
|   | 6. (1985) 3 SCC 711 : AIR 1985 SC 1651, <i>Krishna Bus Service (P) Ltd. v. State of Haryana</i>                            | 629b, 633c-d             |
| f | 7. (1980) 2 SCC 332, <i>Director of Industries, U.P. v. Deep Chand Agarwal</i>                                             | 639d                     |
|   | 8. (1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009, <i>Excel Wear v. Union of India</i>                          | 639a                     |
|   | 9. AIR 1975 All 416 : (1975) 1 All LR 504 (FB), <i>Munnalal Gupta v. U.P. Financial Corpn.</i>                             | 634e-f                   |
|   | 10. (1974) 3 SCC 11 : (1973) 1 SCR 105, <i>Employers, India Cable Co. v. Workmen</i>                                       | 628e-f                   |
| g | 11. (1974) 2 SCC 402, <i>Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay</i>                            | 639b, 639d               |
|   | 12. (1969) 2 SCC 262 : AIR 1970 SC 150, <i>A.K. Kraipak v. Union of India</i>                                              | 629b, 633a               |
|   | 13. (1967) 2 SCR 476 : AIR 1967 SC 1182, <i>Northern Rly. Coop. Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur</i> | 628e-f                   |
|   | 14. (1963) 2 SCR 353, <i>Lachhman Das v. State of Punjab</i>                                                               | 630f-g, 630g             |
| h | 15. AIR 1961 SC 1575 : (1962) 1 SCR 978, <i>Malik Ram v. State of Rajasthan</i>                                            | 632a                     |
|   | 16. 1959 Supp (1) SCR 319 : AIR 1959 SC 308, <i>Gullapalli Nageswara Rao v. A.P. SRTC</i>                                  | 629b, 630b, 632c-d, 632f |

## ORDER

1. All these appeals can be disposed of by this common judgment. In all these cases monies had been borrowed from financial corporations. Action was initiated under Section 32-G of the State Financial Corporations Act, 1951. The State Government having appointed the respective Managing Directors as the authority under Section 32-G, certificates of recovery were issued by the Managing Directors. Writ petitions were filed in the Delhi High Court and the Punjab and Haryana High Court challenging the appointment of the Managing Directors as the authority and the certificates of recovery.

2. The Delhi High Court has, in the judgment impugned in Civil Appeals Nos. 4014-17 and 4018-21 of 1998, held that the appointment of the Managing Director was against the principle that "no man can be a judge in his own cause" and struck down the appointment of the Managing Director and accordingly struck down the certificate of recovery. On the other hand, the Punjab and Haryana High Court has in the judgment, impugned in Civil Appeal No. 7818 of 2002, disagreed with the view of the Delhi High Court and has upheld the appointment of the Managing Director. However, on facts of that case, it was held that the opportunity of being heard had not been granted and the matter was referred back for giving a hearing to the party and passing a fresh order. The financial corporations being aggrieved by the judgment of the Delhi High Court have come in appeal against that judgment. The party being aggrieved by the judgment of the Punjab and Haryana High Court has come in appeal against that judgment.

3. At this stage it must be mentioned that even though the Delhi High Court allowed the writ petitions on the abovementioned ground, all other points raised in the writ petitions were answered against the party. Mr Mehta relied upon the authorities of this Court in the cases of *Northern Rly. Coop. Society Ltd. v. Industrial Tribunal, Rajasthan, Jaipur*<sup>1</sup> and *Employers, India Cable Co. v. Workmen*<sup>2</sup> and submitted that even though the findings on the other points were against his clients and the appeal had only been filed by the financial corporations, the respondents could still support that judgment on all available points. We have accepted that proposition. We, therefore, heard these appeals on all points canvassed before us.

4. The first question which arises is whether the Managing Director of a corporation can be appointed by the State Government as the authority contemplated under Section 32-G of the State Financial Corporations Act. Section 32-G reads as follows:

"32-G. *Recovery of amounts due to the Financial Corporation as an arrear of land revenue.*—Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make

1 (1967) 2 SCR 476 : AIR 1967 SC 1182

2 (1974) 3 SCC 11 : (1973) 1 SCR 105

a an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue."

b 5. The Delhi High Court relied upon, amongst others, the judgments of this Court in the cases of *A.K. Kraipak v. Union of India*<sup>3</sup>, *Gullapalli Nageswara Rao v. A.P. SRTC*<sup>4</sup> and *Krishna Bus Service (P) Ltd. v. State of Haryana*<sup>5</sup>. On the basis of these judgments, the Delhi High Court held that Section 32-G was not unconstitutional. The Delhi High Court, however, held that Section 32-G postulates appointment of an independent person. The Delhi High Court held that the Managing Director or any other official of the financial corporation could not be appointed by the State Government as an authority under Section 32-G of the Act. The Delhi High Court has held that c the question was not whether the Managing Director would be biased or not. It is held that the real question was whether his appointment as an authority under Section 32-G would inspire confidence of the entrepreneur or not. The Delhi High Court has held that his appointment would not inspire confidence as the question was not of bias but of the reasonable likelihood of bias. The d Delhi High Court has held that it is against all canons of justice to make a man a judge in his own cause. It is held that justice should not only be done but should be seen to be done as well.

e 6. The Punjab and Haryana High Court has disagreed with this view. It has held that the decision of the Delhi High Court appears to be based on the assumption that the function of the authority was akin to the determination of a lis/dispute between the parties. The Punjab and Haryana High Court has held that the procedure laid down for issuance of recovery certificates does not involve adjudication of a lis in a strict sense. It has held that the only thing which the State Government or the specified authority is to do before f issuing a certificate is to go through the contents of the application filed on behalf of the Corporation and the objection, if any, raised by the persons to whom notice is issued. The Punjab and Haryana High Court has held that ordinarily, the loanee would know his liability which is to be repaid to the Corporation along with interest at the specified rate. It was held that the loanee would know the total period of default and the amount which could be recovered by the Corporation. It was held that even then he was free to raise g all permissible objections. It was held that likewise the guarantor would always be aware of the terms and conditions and could raise objections to the issuance of a recovery certificate. The Punjab and Haryana High Court has held that all that the State Government or the specified authority was required to do was to make a mathematical calculation of the amount due in

h 3 (1969) 2 SCC 262 : AIR 1970 SC 150

4 1959 Supp (1) SCR 319 : AIR 1959 SC 308

5 (1985) 3 SCC 711 : AIR 1985 SC 1651

accordance with the terms of the agreement including the rate of interest and then pass the necessary order for issuance of a recovery certificate. It was held that in such cases no question arises of any departmental or institutional bias. It is held that such appointments cannot be vitiated on the ground of bias or on the ground of violation of the rule that "no man can be a judge in his own cause".

7. To consider which view is correct one needs to look at the law laid down by this Court. In the case of *Gullapalli Nageswara Rao v. A.P. SRTC*<sup>4</sup> a scheme was published by the General Manager of the Andhra Pradesh State transport undertaking. Objections were invited to that Scheme. Those objections were, pursuant to an order of the Chief Minister, heard by the Secretary to the Home Department. The Secretary to the Home Department then placed his note and comments before the Chief Minister who then passed the order approving the Scheme. The Scheme was challenged, inter alia, on the ground that the principles of natural justice had been violated inasmuch as the authority empowered to decide the matter could not have heard the objections. The Constitution Bench of this Court took note of the fact that the Secretary was in charge of the Transport Department and as such he was also the Head of the State Transport Corporation. It was found that the Secretary had been responsible for framing of the Scheme; that he had then received and heard objections; made notes and presumably discussed the matter with the Chief Minister before the latter approved the Scheme. It was noted that even though formal orders were passed by the Chief Minister, the inquiry was conducted and personal hearing was given by one of the parties to the dispute itself. On these facts, it was held that persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter. On these facts, the majority of the Judges applied the principle that "no man can be a judge in his own cause" and struck down the Scheme. However, Justice Wanchoo and Justice B.P. Singh held that the action of the Government was purely administrative and that in such cases it does not follow that the Secretary was an improper person to hear the objections.

8. This question again came up for consideration before a Constitution Bench of this Court in the case of *Lachhman Das v. State of Punjab*<sup>6</sup>. The facts of this case are almost identical to the facts of the present case. In *Lachhman Das case*<sup>6</sup> the statute provided a special procedure of recovery. Under the provisions of the statute the Head of the Department was authorised to determine the exact amount due and recoverable from defaulters. Under the statute the Head of the Department was the Managing Director of Patiala State Bank. The constitutional validity of that procedure was challenged. The question was whether in such cases the doctrine that "no man can be a judge in his own cause" applies. The Constitution Bench of this

Court considered this question and unanimously held as follows: (AIR p. 235, paras 34 & 35)

a "34. We must next refer to the hierarchy of officers constituted under the Act. At the top are the Ministers; then there is a Board of Directors; next comes the Managing Director, and subordinate to him are a host of officers in charge of the several departments and branches. The Board of Directors is to consist of the Prime Minister, Finance Minister, three members nominated by the Ruler, two of whom are non-officials representing important clients of the Bank, and the Managing Director. The Managing Director has power to sanction loans on personal security up to Rs 3000 and on pledge of goods up to Rs 25,000. Beyond that limit, it is the Board that can sanction loans.

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c 35. We may now examine how far the contention of the appellants that the procedure prescribed by the Act and the Rules is opposed to rules of natural justice is well founded. The first complaint is that it is the Managing Director, who is in charge of the day-to-day administration of the Bank, and that therefore he is not the proper person to decide the dispute, because his own action must be under challenge. We see no force in this contention. The Managing Director is a high-ranking official on a salary scale of Rs 1600-100-2500, with a free-furnished residence. He has no personal interest in the transaction and there is no question of bias, or any conflict between his interest and duty. Loans are sanctioned by the appropriate authorities under the Rules, and the customer operates on the account through cheques and deposit receipts, and there could be no question of any attack on the actions of the Managing Director. How unsubstantial this objection is will be seen from the fact that the loan dated 23-5-1953, with which we are concerned could have been sanctioned under the Rules, not by the Managing Director, but only by the Board."

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f At this stage even though this does not concern this point the further observations made may also be reproduced as they have a bearing on other points urged before us: (AIR pp. 235-36, para 36)

g "36. It is then said that the hearing before the Managing Director is perfunctory, that under Rule 6, he is only to examine the objections stated in the written statement 'in the light of the relevant records of the department' and decide the dispute, and that there is thus no real opportunity afforded to the parties to present their case. This argument proceeds on a misconception of the true scope of Rule 6. It does not bar the parties from examining witnesses or producing other documentary evidence. The Managing Director, has, under this rule, to examine the statement and the records of the Bank, insofar as they bear on the points in dispute and that normally, would be all that is relevant. But he is not precluded by the rule from examining witnesses or taking into account other documentary evidence, if he considers that that is necessary for a proper determination of the dispute. And whether he should do so or not

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is a matter left to his discretion. Discussing a somewhat similar question arising on the language of Section 68-D(2) of the Motor Vehicles Act, 1939, this Court observed in *Malik Ram v. State of Rajasthan*<sup>7</sup> (AIR at p. 1578):

'It will therefore be for the State Government, or as in this case the officer concerned, to decide in case any party desires to lead evidence whether firstly the evidence is necessary and relevant to the inquiry before it. If it considers that evidence is necessary, it will give a reasonable opportunity to the party desiring to produce evidence to give evidence relevant to the enquiry and within reason and it would have all the powers of controlling and giving and the recording of evidence that any court has. Subject therefore to this overriding power of the State Government or the officer giving the hearing, the parties are entitled to give evidence either documentary or oral during a hearing under Section 68-D(2).'

9. Faced with this authority, it was submitted that the observations made by the Constitution Bench are per incuriam inasmuch as this authority has not taken note of the judgment in *Gullapalli Nageswara Rao case*<sup>4</sup>. We are unable to accept this submission. It is to be seen that there is a big difference in the facts of the two cases. The doctrine that "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine "no man can be a judge in his own cause". Of course, in individual cases bias may be shown against a particular officer but in the absence of any proof of personal bias or connection merely because officers of a particular corporation are named as the authority does not mean that those officers would be biased. As has been held by the Constitution Bench, a Managing Director is a high-ranking officer. He is not personally interested in the transaction. There is no question of any bias or conflict between his interest and his duty. In *Gullapalli Nageswara Rao case*<sup>4</sup> the Secretary who had framed the Scheme then proceeded to hear the objections and advise the Chief Minister. It is because of the personal involvement of the Secretary that the majority took the view. Even then two Judges held that it did not follow that he was an improper person to hear the objections.

10. At this stage it must also be mentioned that the control of the State Financial Corporations, by virtue of Section 9, vests in a Board of Directors. Of course, the Board of Directors would take the assistance of the Executive Committee and the Managing Director. But the control remains that of the Board of Directors and, therefore, there is no question of presuming that there was any conflict of duty or that the Managing Director would not act fairly.

<sup>7</sup> AIR 1961 SC 1575 : (1962) 1 SCR 978

11. Reliance was also placed upon the decision of another Constitution Bench of this Court in the case of *A.K. Kraipak v. Union of India*<sup>3</sup>. In this case the Acting Inspector General of Forests of Jammu & Kashmir State was himself a candidate for selection to the Indian Forest Service. Even though he was a candidate he became a member of the Selection Board constituted under Regulation 5 for preparing a list of officers of the State Forest Service. In the list which was prepared his name was shown at No. 1. It was pointed out that the Acting Inspector General of Forests did not sit in the Selection Board at the time when his name was considered by the Selection Board. This Court held that even though he may not have sat in the Selection Board at the time his name was considered but he did participate when the names of his rivals were being considered. It was held that he was bound to have influenced the other members whilst the names of his rivals were being considered. Here also, the facts were completely different. It was shown that the Acting Inspector General had a personal interest in seeing that he got selected.

12. Reliance was also placed upon the case of *Krishna Bus Service (P) Ltd. v. State of Haryana*<sup>5</sup>. In this case the General Manager, Haryana Roadways was given powers under the Punjab Motor Vehicles Act and the Rules framed thereunder which could be exercisable by a Deputy Superintendent of Police. The Court noted that the General Manager of Haryana Roadways was personally responsible for proper management of the activities of Haryana Roadways. The Court noted that 'prosperity and profitability of Haryana Roadways would depend upon competition from private operators. The Court noted that the powers given to the General Manager would cast a duty to ensure compliance with the provisions of the Act and that this would include checking, inspection, search and seizure of offending motor vehicles. It was held that even vehicles belonging to Haryana Roadways may have to be checked, inspected, searched and/or seized. It was noted that he would have to take steps to prosecute the officers and this might include officers of his own Department and may even include himself. On these facts it was held that, with the duties entrusted to him as a General Manager, he could not be expected to discharge the abovementioned functions fairly and reasonably as an unobstructed operation of motor vehicles by private owners would affect the earnings of Haryana Roadways. It was held that there was every likelihood that he would be overzealous in stopping, searching and/or seizing motor vehicles belonging to others and at the same time be lenient to the vehicles belonging to Haryana Roadways. It was held that if he was too lenient in inspecting vehicles, the interests of the travelling public at large would be in peril. It was held that either way there was a conflict between his duty on the one hand and his interest on the other.

16. We see no substance in this submission. A plain reading of Section 32-G negates such an argument. Section 32-G provides that "when any amount is due" to the financial corporation, an application can be made to the State Government "for recovery of the amount due". The amount would be due to a financial corporation either from the industrial concern and/or from a surety/guarantor. If the intention were to limit the procedure under Section 32-G only to the principal debtor then the legislature would necessarily have had to use the words "amount due from the principal debtor" or "amount due from the industrial concern". The legislature has purposely omitted to use those words. Further, Section 32-G was incorporated by the same amending Act which incorporated provisions for enforcement against a surety. The fact that it is incorporated at the time when provisions permitting proceedings against a surety were being incorporated indicates that the legislature was aware that proceedings under Section 32-G could apply even against a surety. If at this time the legislature intended that Section 32-G was not to apply to a surety then the legislature would have specifically so provided. It is, therefore, clear that the remedy under Section 32-G is available even against a surety.

17. In support of the submission that the legislature did not intend to apply Section 32-G to a surety, reliance was placed upon the case of *P.K. Unni v. Nirmala Industries*<sup>10</sup> wherein it has been held that the court must proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said. It was held that assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency. It was held that the court cannot add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. It was held that the court is not authorised to alter a word or provide a *casus omissus*. Reliance was also placed on the case of *Union of India v. Elphinstone Spg. and Wvg. Co. Ltd.*<sup>11</sup> which is to a similar effect. There can be no dispute with these propositions. It is on this basis that this Court is holding that words cannot be added in Section 32-G. To accept Mr Mehta's submission would require this Court to add words to Section 32-G to the effect "due from the industrial concern" after the words "amount due to the financial corporation". It is presumed that the legislature made no mistake when it omitted to use these words. It is presumed that the legislature intended what it said, namely, that Section 32-G is to apply wherever any amount is found due to the financial corporation.

18. It was next submitted that Section 32-G is akin to an execution proceeding. It was submitted that before it can be invoked there must be an adjudication and a finding that an amount is due. It is submitted that only after such adjudication the provision of Section 32-G could be invoked. In

<sup>10</sup> (1990) 2 SCC 378

<sup>11</sup> (2001) 4 SCC 139

other words, the submission is that resort must first be had to a civil court before the provisions of Section 32-G could be invoked.

19. In support of this averment, counsel drew our attention to Section 33-C of the Industrial Disputes Act, 1947 which reads as follows:

"33-C. *Recovery of money due from an employer.*—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:"

20. It was submitted that the wordings of Sections 33-C(1) and 32-G are identical. Reliance was then placed upon the authority of this Court in the case of *Fabril Gasosa v. Labour Commr.*<sup>12</sup> wherein Section 33-C was considered. It was held that Section 33-C is in the nature of an execution proceeding designed to recover the dues of the workmen. The distinction between sub-sections (1) and (2) was noticed and it was held that this distinction is mainly in the procedural aspect and not with any substantive rights of workmen. It was held that after the determination is made by the Labour Court under sub-section (2), the amount so determined can be recovered through the summary and speedy procedure provided by sub-section (1). It was held that sub-section (1) does not control or affect the ambit and operation of sub-section (2) which was wider in scope than sub-section (1). It was held that the rights conferred under sub-section (2) were in addition to any other mode of recovery which the workman had under the law. It was further held that sub-section (1) dealt with cases where the money is due to a workman from an employer under a settlement or an

- award whereas sub-section (2) dealt with the cases where a workman is entitled to receive from the employer any money or benefit which is capable of being computed in terms of money. It was held that where the amount due to the workmen, flowing from the obligations under a settlement, was predetermined and ascertained or could be arrived at by arithmetical calculation or verification simpliciter and the only inquiry required to be made was whether it was due to the workmen or not, recourse to the summary proceedings under Section 33-C(1) of the Act was not only appropriate but also desirable. It was held that where the amount due was predetermined amount like the variable dearness allowance then the same would be covered by sub-section (1) as only a calculation of the amount is required to be made.

21. In our view, far from helping the respondents, this authority is against them. It shows where an amount can be ascertained by simple arithmetical calculations or by simple verification then only inquiry as contemplated by sub-section (1) of Section 33-C is required. In cases of amounts due to financial corporations all that is required is a simple arithmetical calculation or a simple verification. It is for that reason that in Section 32-G only a provision identical to Section 33-C(1) has been incorporated. The legislature has knowingly omitted to incorporate a provision like Section 33-C(2). It must be presumed that the legislature intentionally omitted such a provision. The reason of such omission being that the legislature wanted the recovery of dues to the financial corporation in a summary manner on a simple arithmetical calculation or a simple verification. A plain reading of Section 32-G shows that there is no lis or adjudication contemplated under Section 32-G. The Punjab and Haryana High Court is right in holding that all that is contemplated is a mere mathematical calculation after looking into the papers. The borrower and the surety or the guarantor know what the amounts due are, they know what amounts have been repaid, they know when the amounts were to be repaid, what has not been repaid or how belatedly amounts have been repaid. They know what the rate of interest is. Thus a mere calculation has to be made to ascertain the amount due. If on such calculations it is found that an amount due is due to the financial corporation then a certificate of recovery can be issued. Undoubtedly, the provision is in the nature of an execution proceeding but it is not a recovery proceeding pursuant to a decree of a court. It is a recovery proceeding on the amount being found to be due by a simple verification by the State Government or the authority appointed by it. Further, to accept the interpretation suggested by counsel would be to go against the very purpose and object of the Act which is to ensure speedy recovery. It is with that object in view that Sections 29, 31 and 32 have been enacted. These have been found to be inadequate. Thus, by Section 32-G one more remedy of recovery is given to a financial corporation. Merely for execution of a decree of a court no such provision is required. Once a decree is passed it can be executed in the normal manner. That Section 32-G is not for execution of a decree of a court is also clear

from the fact that it does not use the word "decree". All that Section 32-G contemplates is that where an amount is due an officer will make an application to the State Government, the State Government or an authority appointed by them would, after following procedure as may be prescribed, issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount as arrears of land revenue.

22. It must also be noted that in the case of *Haryana Financial Corpn. v. Jagdamba Oil Mills*<sup>13</sup> it has been held that the State Financial Corporations as instrumentalities of the State deal with public money. It has been held that there can be no doubt that the approach has to be public-oriented. It is held that such approach can only operate effectively if there is regular realisation of the instalments. It is held that even though the Corporation is expected to act fairly there is also corresponding duty cast upon the borrowers to repay the amounts in time. It is held that regular payment is the rule and non-payment due to extenuating circumstances is the exception. It is held that if the repayments are not received, as per the scheduled time-frame, it would disturb the equilibrium and financial arrangements of the financial corporations. It is held that these corporations do not have unlimited funds at their disposal. It is held that they have to cater to the needs of the intended borrowers with the available finance and non-payment of the instalment by a defaulter stands in the way of a deserving borrower getting financial assistance. It is held that the corporation cannot be shackled hand and foot in the name of fairness. It has been held that fairness cannot be a one-way street. It is noted that the financial corporations borrow money from the Government or other financial corporations and are required to pay interest thereon. It has been held that a borrower who has no genuine intention to repay and who adopts pretexts and ploys to avoid repayment cannot make a grievance that the financial corporation was not acting fairly, even if the requisite procedure has not been followed. It is held that the fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. Thus a provision incorporated by the legislature with the intention to enable financial corporations to speedily recover amounts due to them cannot be whittled down by giving an interpretation which would render it nugatory.

23. It was next submitted that under Sections 31 and 32 an elaborate procedure has been established. It was submitted that unlike that, Section 32-G does not lay down any procedure. It was submitted that this Court must thus strike down Section 32-G as being arbitrary. It was submitted that such a draconian provision can be exercised without giving any reasons in writing and in the absence of any procedure. It was submitted that absence of procedure means that the principles of natural justice need not be followed. It was submitted that no right of appeal has been provided against the issuance of a certificate of recovery issued under Section 32-G. In support of the

- submission that such a provision must be struck down, reliance was placed upon the case of *Excel Wear v. Union of India*<sup>14</sup> wherein Section 25-O and Section 25-R of the Industrial Disputes Act, 1947, as they then stood, were struck down as being constitutionally invalid amongst others on the ground that the provisions did not require any reasons to be given and that there was no provision for an appeal. However, it must be noted that the abovementioned sections were struck down not only on these two grounds but on a number of other grounds also. Reliance was also placed upon certain observations in the case of *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay*<sup>15</sup>. However, in this case this Court upheld the validity of the provision on the ground that there was provision in the Act for giving notice to the party affected after specifying the grounds on which the order of eviction is proposed to be made. The person concerned can file his objections, produce documents and is entitled to be represented by a lawyer. It was held that these were sufficient safeguards and that in any case appeal against the order of the Commissioner lies to the principal Judge of the City Civil Court in the city and to the District Judge in the district. It was also held that resort could also be had to the High Court under the provisions of Article 226 or Article 227 of the Constitution.

24. The case of *Maganlal Chhaganlal*<sup>15</sup> was considered by this Court in the case of *Director of Industries, U.P. v. Deep Chand Agarwal*<sup>16</sup>. The question in that case was whether a loan amount could be recovered as arrears of land revenue. The recovery was sought to be made by resorting to Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1965 which provided that the Government could send a certificate to the Collector mentioning the sum due from the person and requesting that the sum be recovered as arrears of land revenue. The vires of the section was challenged. It was held that the object of the Act was to provide a speedier remedy. It was held that even though there were no express guidelines, however, it still could not be held that Section 3 conferred arbitrary powers on the State Government and/or that it made hostile discrimination. It was held that the recovery as arrears of land revenue could only be on the basis of the certificate issued. It was held that the officer issuing certificate was expected ordinarily to avail himself of the speedier remedy. It was held that when speedier remedy was available, resort should not be had to the dilatory procedure of the ordinary civil court. It was held that such a section is not discriminatory and is not violative of Article 14 of the Constitution.

25. There is no provision barring jurisdiction of civil courts. Thus a suit can be filed or resort can always be had to the High Court under Article 226 or Article 227 of the Constitution. Section 32-G provides that the State Government or the authority will issue a certificate after following the

<sup>14</sup> (1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009  
<sup>15</sup> (1974) 2 SCC 402  
<sup>16</sup> (1980) 2 SCC 332

procedure. The words "after following the procedure" necessarily indicate that principles of natural justice have to be complied with. Thus, notice would have to be issued, the party concerned would have to be heard and then only the order would be passed. We see no substance in the submission that the order must always be a speaking order or a reasoned order. Considering the fact that the provisions only contemplate arithmetical calculations or simple verification, the question of any reasoned or speaking order does not arise. All that is to be stated is that the amount is found due. On that basis the certificate of recovery is to be issued. We, therefore, see no substance in the submission that the provision is arbitrary or discriminatory.

26. We are told that now a procedure has been prescribed. Even though no procedure was prescribed earlier, it could not be denied that the principles of natural justice were followed. Notices were issued to the parties concerned. They were given a hearing. Their objections were taken into consideration and in their cases speaking orders are passed. Pursuant to those orders the certificates of recovery were issued.

27. It was next submitted by the respondent in Civil Appeals Nos. 4014-17 of 1998 that she had only stood as a surety for the term loan of Rs 39,15,000 and soft loan of Rs 2 lakhs. It was submitted that, apart from these two, the principal debtor had also been given a seed capital loan of Rs 11,50,000 and that she had not stood surety for that amount. It is submitted that she, therefore, cannot be made liable for the entire amount due from the principal debtor. To this, it has been pointed out that the seed capital loan already stands repaid in its entirety and nothing is due in respect of that amount. It is pointed out that what is due and payable is only under the term loan and the soft loan. The question raised is a disputed question of fact which could not be gone into in a writ petition. As the respondent has not filed a suit, we, at this stage, see no reason to interfere on this ground.

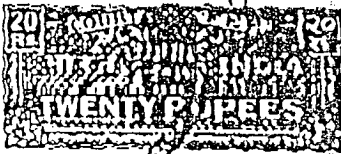
28. In this view of the matter, the judgment of the Delhi High Court is set aside to the extent that it holds that the Managing Director could not have been appointed and to the extent it quashes the certificates of recovery. The other findings are upheld. The judgment of the Punjab and Haryana High Court is upheld.

29. Civil Appeals Nos. 4014-17 and 4018-21 of 1998 are partly allowed to the extent set out above. Civil Appeal No. 7818 of 2002 stands dismissed. There will be no order as to costs.

Annexure B1

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Kind Atten: Shri G. S. Vastav, DGM (Law) R.F.C. JAIPUR



Certified P. S. Copy of order dated 25.7.05

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

PETITIONER:

Hanuman Prasad s/o Shri Mangal Chand Agarwal, A.O. No. 113

Dainik Jupiter, Near-Pratap Talkies,  
Bhilwara.



versus

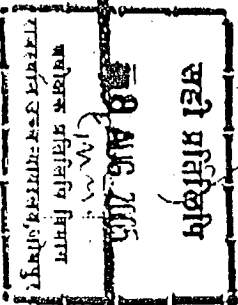
RESPONDENTS:

Rajasthan Financial Corporation,  
Through Secretary/Managing Director,  
Udyog Bhawan, Tilak Marg,  
Jaipur.

Manager (Branch),  
Rajasthan Financial Corporation,  
150 A/A, R.K. Colony,  
Bhilwara.

Tehsildar,  
Bhilwara.

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दिनांक 05/12/05  
राजस्थान न्यायालय  
जोधपुर



Udth. Jodhpur.  
Rel. High Court JODHPUR

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IN THE HIGH COURT OF JUDICATURE FOR PUNJAB AT LUDHIANA  
CIVIL WRITS No. 4592 of 2001

HANUNAN PRASAD

V/S

R.P.C. & ORS

Mr. VINAY JAIN, for the petitioner  
Mr. NM LODHA, ) for the respondent  
Mr. Anil Bhandari)

Date of Order : 25.7.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

By this petition the petitioner seeks to challenge the proceedings initiated against the petitioner for recovery of the amount by taking recourse to the provisions of Section 32-G of the State Financial Corporations Act and has also challenged the notices Annexures 6, 7 and 8.

The petition was admitted on 11.12.2001 and notice of stay application was ordered to be issued, then on 29.4.2003 the same Hon'ble Bench dismissed the stay application. Thereafter on 7.2.2005 Hon'ble Bench directed the respondent to keep the complete file of the petitioner's case available for perusal of the court and then after perusing the file, vide order dated 25.5.2005 certain directions were given to the respondent, but no material relief was given to the petitioner, and the matter was ordered to be to today. That is how the matter comes up today.

Both the learned counsel submit that it was understood on 5.7.2005 that today the matter would be finally heard. In that view of the matter I have heard learned counsel for the parties for final hearing.

Assailing the recovery two submissions have been made. First being that under Section 32-G of the State Financial Corporations Act

*[Signature]*

recovery. Rather the Corporation is required to make an application to the State Government for recovery of the amount and if the State Government is satisfied, after following such procedure as may be prescribed, that the amount is so due, a certificate in that behalf may be issued to the Collector and the Collector shall proceed to recover the amount and the power under Section 32-G cannot be delegated to the authorities of the Corporation itself. Reliance in this regard is placed on a judgment of the Delhi High Court, reported in AIR 1998 Delhi 259. The other submission is, that the petitioner applied for loan and the loan appears to have been sanctioned, but then, the petitioner never received any loan, nor did he purchase any plant and machinery. Thus the petitioner is simply being made scape goat on account of his having merely moved the application for grant of loan. In this regard it was pointed out that on receipt of the first notice Annexure 1 itself, the petitioner immediately reacted vide Annexure 2, and likewise every time on receipt of notice he is clearly maintaining the stand, but then without any inquiry the recovery is being effected from him.

On the other hand, the learned counsel for the respondents submit that the judgment of the Delhi High Court cited by the learned counsel for the petitioner has already been overruled by the Hon'ble Supreme Court, the overruling judgment is reported in 2004 (11) SCC 629, whereunder confirm of the powers of the State Government on the officers of the Financial Corporation itself has been upheld. Regarding second submission it is contended that the question as to whether the disbursement was actually made or not, is a disputed question of fact which cannot be gone into under jurisdiction under Art. 226 of the Constitution.

I have considered the submissions, and find force in the submission of the respondent. A bare perusal of the judgment of the Hon'ble Supreme Court in Rajiv Anand's case shows that it was an appeal against the same judgment which has been relied upon by the learned counsel for the petitioner, and allowing that appeal the confirm of power on the officers of the Corporation has been upheld. In that view of the matter the first submission cannot be sustained.

*[Signature]*

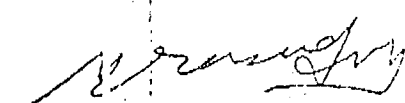
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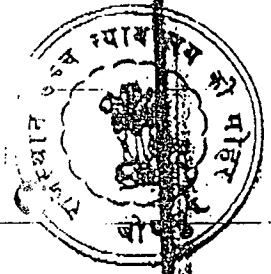
So far the second submission is concerned, may be that the petitioner has been continuously taking stand, right from the inception, that he did not receive any loan nor any disbursement of loan was made on his behalf to any one, but then, the fact remains that the petitioner has simply rested contented with submitting reply. In that view of the matter, it does remain a disputed question of fact as to whether the loan was actually disbursed to the petitioner or not, which question, in my view, cannot be effectively gone into in these proceedings under Article 226 of the Constitution of India. In that view of the matter I am not inclined to interfere in my writ jurisdiction. However, it is made clear that in case any recovery is made from the petitioner, it would be open to the petitioner to take such other legal proceeding whether civil or criminal, or otherwise, as he may deem fit or may stand advised to take to vindicate his stand and dismissal of this writ petition will not come in the way of the petitioner.

The writ-petition, accordingly, is dismissed with above liberty.

  
N.P. GUPTA J.J.

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Certified P. S. Copy of order dt. 9.2.05

Annexure 'C'  
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IN THE RAJASTHAN HIGH COURT  
AT JODHPUR

S. B. CIVIL WRIT PETITION NO 4583 OF 2002

PETITIONER:

SHIV VINAY SINGHAL, Age about 32 years  
S/O Shri Nang Ram Singhal  
R/o 211-212, Murli Tower,  
Textile Market BHILWARA (RAJ.)

-VERSUS-

RESPONDENTS:

STATE OF RAJASTHAN  
Through: District Collector,  
BHILWARA (RAJ.)

2. RAJASTHAN FINANCIAL CORPORATION

Udhyog Bahawan, Tilak Marg,  
'C' Scheme, JAIPUR (RAJ.)  
Through: Deputy General Manager,  
R.F.C. Bhilwara Branch,  
A/A-150. R.K. Colony,  
BHILWARA (RAJ.)

3. TEHSILDAR,  
BHILWARA (RAJ.)

Shri SUSHIL KUMAR CHAPLOT,  
M/s Shanti Syntex,  
132, Anand Cloth market,  
Pur Road, Bhilwara (Raj.)

WRIT PETITION UNDER ARTICLE 226  
OF THE CONSTITUTION OF INDIA

IN THE MATTER OF  
ARTICLE 14, 300A  
OF THE CONSTITUTION OF INDIA.

AND  
IN THE MATTER OF  
STATE FINANCIAL CORPORATION ACT, 1951

AND  
IN THE MATTER OF  
RAJASTHAN LAND REVENUE ACT, 1956

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1-A

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

ORDER

Shiv Vinay Singhal Vs. State of Rajasthan & Ors.

S.B.Civil Writ Petition No.4583/2002  
under Article 226 of the Constitution of  
India.

Date of Order : 09/02/2005

P R E S E N T

HON'BLE MR.JUSTICE PRAKASH TATIA



Mr. T. Gupta, for the petitioner.  
Mr. L.R. Upadhyay, for State.  
Dr. Pratisha Dave, for RFC.

Heard learned counsel for the parties.

Brief facts of the case are that one Industrial unit  
M/s. Shiv Shakti Saw Mill situated in the District Bhilwara was  
defaulter in payment of loan amount of Rajasthan Financial  
Corporation, therefore, the possession of the property was taken  
over by the RFC and the unit was auctioned. The petitioner  
participated and gave his bid. The petitioner's bid was found  
highest and an agreement was executed between the petitioner  
and the RFC on 9.2.1995. The petitioner agreed to purchase the  
unit for a consideration of Rs.2,85,000/-. The petitioner did not

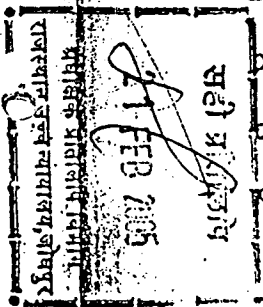
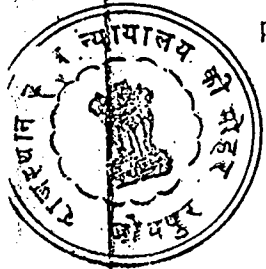
सही प्रतीतिपि  
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राजस्थान न्यायालय, जोधपुर

*(Signature)*

repay the due amount for which he agreed and he committed default in payment of installments of the said amount. The RFC initiated proceedings under Section 29 of the State Financial Corporation Act and took over the property again which was given to the petitioner vide agreement dated 9.2.1995. This property was sold by the RFC for a consideration of Rs.1,55,000/- only. The auction notice before transfer of the property was published in the newspaper on 13.11.1999.

It appears from the reply that the auction was completed in the year 2000.

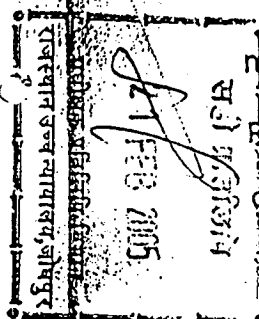
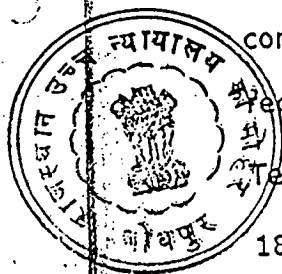
After recovery of Rs.1,55,000/-, the RFC issued notice under Section 32-G of the SFC Act to the petitioner on 28.6.2001 for recovery of the remaining due amount. For this purpose, a certificate was issued by the Officer of the RFC, though no such certificate has been produced by the petitioner on the ground that certificate was not served upon the petitioner. The RFC issued a registered notice to the petitioner under Section 32-G of the SFC Act on 28.6.2001, copy of which is placed on record as Annexure-P/3. Again on 18.7.2001, another notice was issued to the petitioner by the RFC. The petitioner on 28.7.2001 submitted an objection with the RFC stating therein that some of the figures mentioned in the notice



are not legible. He also submitted that property in question has been sold on below the market rate. He submitted that the auction was conducted at the back of the petitioner. He demanded that a complete statement be provided to the petitioner about the account and thereafter, ultimately submitted that the sale of the land in question is conducted with ill-motive.

It appears that the matter was referred to the competent authority under the Rajasthan Land Revenue Act for recovery of the due amount from the petitioner and the Tehsildar, Bhilwara issued a notice to the petitioner on 18.9.2002 calling upon him to pay the amount of Rs.1,15,781/- within 15 days, otherwise the attachment warrant will be issued.

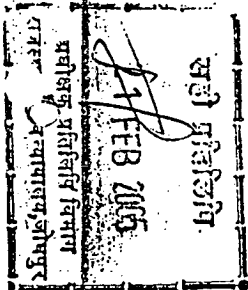
The petitioner is aggrieved against the demand notice dated 18.9.2002 issued under Section 229 of the Rajasthan Land Revenue Act, 1956 Annexure-P/6 in pursuance of order passed under Section 256 and 257 of the same Act of 1955 and against action of the respondents by which the respondents have initiated the proceedings under Section 32-G of the SFC Act. According to learned counsel for the petitioner, the respondent RFC had no jurisdiction to initiate proceedings under Section 32-G of the SFC Act, 1951 because of the reason that the proceedings can be initiated against the Industrial



concern and the Industrial concern has been defined in Sub-clause (c) of Section 2 of the Act of 1951. It is also submitted that since the RFC Initiated the proceedings under Section 29 of the SFC Act and took over the possession of the property, therefore, the RFC could have Initiated all the proceedings by adopting all the modes for recovery of the due amount from the petitioner simultaneously and once, the RFC Initiated the proceedings under Section 29 only and did not choose to proceed with all other modes, then the RFC cannot proceed to recover the amount by invoking the powers under Section 32-G of the Act of 1951 now.



According to learned counsel for the petitioner, the petitioner is not the Industrial unit. It is also submitted that when there are choice of one of the party to recover amount from defaulter through number of modes then the said party should choose all the modes same time, simultaneously and cannot Initiating proceedings under one provision of law at one stage and thereafter under other provision of law at subsequent stage.



Learned counsel for the petitioner also submitted that the certificate has not been Issued by the competent authority for recovery of the amount, therefore, the proceedings Initiated by Tehsildar under Section 229 of the Act of 1956 is

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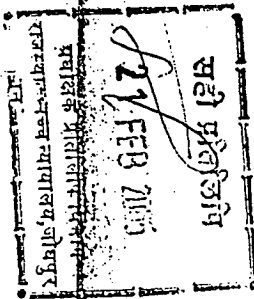
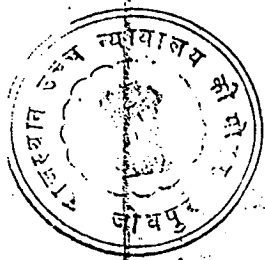
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Illegal.

Learned counsel for the petitioner further submitted that the property in question has not been transferred to the petitioner at any point of time and petitioner did not avail any loan facility from the RFC, therefore also, the proceedings initiated against the petitioner is absolutely illegal.

The arguments raised by learned counsel for the petitioner based on various provision of law are raised for the first time in this writ petition. The petitioner by these objections has raised several disputed question of facts and only on these counts alone, the writ petition can be dismissed.

It is strange that the petitioner who purchased the Industrial unit of which possession was taken over by the RFC by exercising power under Section 29 of the SFC Act which applies to the properties which are financed from the financial Institution and took the possession of the property from RFC then on what ground the petitioner can say that the unit of the petitioner is not an Industrial unit remained explained in entire arguments. If the unit which was taken over by the RFC from their defaulter M/s. Shiv Shakti Saw Mill was not an Industrial unit, then petitioner could not have claimed any right on the basis of the agreement



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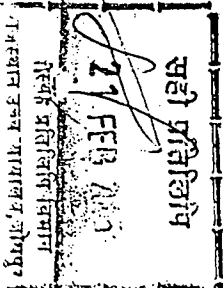
which he executed in favour of the RFC on 9.2.1995 and took the possession of the unit.

The another strange argument raised by learned counsel for the petitioner is that the RFC should have initiated all the proceedings namely under Section 29 of the SFC Act, under Section 31 of the SFC Act, under Section 32-G of the SFC Act, 1951 and even by filing the suit for recovery of the due amount which the RFC is claiming against the petitioner.



The learned counsel for the petitioner submits that his view finds support from the judgment of the Hon'ble Supreme Court delivered in the case of A.P. State Financial Corporation Vs. M/s Gar Re-Rolling Mills and Another reported in 1994 (2)SCC 647 wherein the Supreme Court considered the doctrine of election in the matter of recovery of the loan amount.

This Court is not convinced that the said judgment can be read as requested by learned counsel for the petitioner. It is also relevant to mention here that what can be the logic behind initiating the proceedings under all provisions of law for recovery of the single loan or due amount, has not been explained by the petitioner anywhere. How it will be advantageous to the petitioner or to the financial institution, is also neither explained nor there can be any reason for such a preposition for initiating.



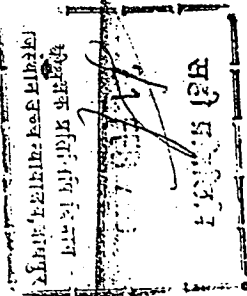
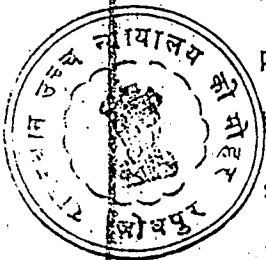
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the proceedings against one defaulter.

The facts reveal In this case are that the petitioner himself treating the unit as industrial unit entered into agreement and purchased the property. The petitioner admitted his liability towards the RFC by entering into agreement Ex.P/1 dated 9.2.1995. The petitioner's loan amount was also opened by the RFC, copy of which is placed on record by the petitioner himself. The petitioner even did not had any objection when the petitioner's property was taken over by the RFC. Not only this, the petitioner's property was auctioned and petitioner when served with a notice dated 28.6.2001 by RFC, thereafter on 18.7.2001, he merely stated that the statement of account is not clear. He did not dispute the liability which has been shown in the notice dated 28.6.2001. The petitioner when served with the demand notice under Section 229 of the Rajasthan Land Revenue Act, 1956, then he straightway come before this Court under Article 227 of the Constitution of India. The RFC could have come to know about the remaining amount due in the petitioner only after the property which was taken over by the RFC is put to auction and before that, they could not know whether any amount remains due in the petitioner or not and, therefore, the RFC could not initiate any proceedings for recovery of the loan amount by adopting other modes.



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In view of the above, the petitioner's contention that the proceedings were initiated not by the competent officer, has no reason to believe because of the simple reason that the petitioner has not disputed his liability before either RFC or before Tehsildar, Bhilwara who issued the notice.

The contention of learned counsel for the petitioner is that property in question has been sold in a low amount, than the market value, is also a disputed question of fact. There is no material available on record by which it can possibly be prima facie found that the property was sold for a low consideration disputing the fact that the petitioner himself purchased the property for a low consideration entered in the agreement for Rs.2,85,000/-.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

  
[Prakash Tatla], J.

Pd.

19/2/05

