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RAJASTHAN FINANCIAL CORPORATION

Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur-302 005

Ref.No.RFC/F.Law-3/22/..02... Dated: 01-04-2010

CIRCULAR
(Lit. Cir No. 178)

Sub: Important Court Decision of Hon'ble Supreme Court regarding recovery of dues u/s 29 in Civil Appeal No. 7910 of 2009 in the case of Punjab Financial Corp. Vs. M/s. Surya Auto Industries

The Hon'ble Supreme Court in Civil Appeal No. 7910 of 2009 in the case of Punjab Financial Corporation Vs. M/s. Surya Auto Industries decided on December 1, 2009 has decided that the state financial institutions are not expected to flounder public money for promoting private interests and therefore cannot be stopped from taking steps to recover loans given to industries. The court has further judged that no court can act as an appellate authority and nullify the recovery steps of these Corporations unless they are against the law, unreasonable and unfair. In the case, the Court found that the borrowing unit had not only adopted a recalcitrant attitude but also failed to avail itself of concessions in installments and interest offered by the corporation, hence observed that in such gross cases, the courts should not help the defaulters.

This is a landmark Judgement of Hon'ble Supreme Court as it strengthens the recovery efforts of the financial institutions. A xerox copy of the order referred to above is being sent for ready reference and guidance.

(Dr. Mohan Lal Yadav)
Executive Director

Encl: a/a

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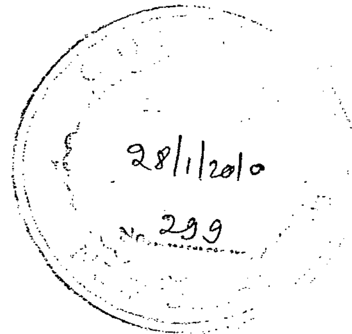
(G.S. Singhvi and A.K. Ganguly, JJ.)

Punjab Financial Corporation ______________ Appellant

v.

M/s. Surya Auto Industries ______________ Respondent



Civil Appeal No. 7910 of 2009, decided on December 1, 2009
[Arising out of S.L.P. (C) No. 2600 of 2009]

The judgment of the court was delivered by
G.S. Singhvi, J.

1. Leave granted.

2. This is an appeal for setting aside order dated 21.11.2008 passed by the Punjab and Haryana High Court whereby it allowed the writ petition filed by the respondent, quashed the action taken by the appellant-Corporation under Section 29 of the State Financial Corporations Act, 1951 (for short, `the Act') for recovery of its dues and also directed review of all pending cases in which penal interest has been compounded.

3. On an application made by the respondent for grant of loan for setting up an industrial unit in District Gurdaspur (Punjab), the appellant- Corporation sanctioned a term loan of Rs.24.25 lacs. For securing repayment of the loan, the respondent mortgaged immovable properties in favour of the appellant-Corporation. As per the terms of agreement executed between the parties, the respondent was required to repay the loan together with interest on specified dates but it failed to adhere to the time schedule and a sum of Rs.2.70 lacs only was deposited till 2002. Therefore, after issuing notice under Section 29 of the Act, the appellant-Corporation took possession of the unit. This action was followed by notices dated 2.12.2002, 3.3.2003, 30.5.2003 and 29.8.2003, whereby the respondent was repeatedly called upon to pay the outstanding dues. The respondent not only ignored the notices but also failed to avail the concession offered by the appellant- Corporation vide letter dated 10.9.2004 to reduce the rate of interest and reschedule the payment of the outstanding dues. The attitude of non- cooperation adopted by the respondent in the matter of repayment of loan and interest forced the appellant-Corporation to issue notice dated 26.6.2007 under Section 29 of the Act for taking over collateral security.

4. The respondent challenged the threatened take over of collateral security in W.P. No.11932/2007 by

contending that action taken by the appellant-Corporation is contrary to the provisions of the Act, rules of natural justice and the law laid down in Central Bank of India v. Ravindra (2002) 1 SCC 367 and Aravali Pipes v. Haryana Financial Corporation (2001) 2 All India Banking Law Judgments 516. The respondent also made a grievance that the officers of the appellant-Corporation had deliberately disposed of the machinery for a paltry sum of Rs.5 lacs and this had the effect of destroying the unit. In the counter affidavit filed on behalf of the appellant-Corporation, it was pleaded that action under Section 29 of the Act was necessitated because the writ petitioner failed to abide by the terms of the loan agreement and mortgage. It was further pleaded that even though the appellant-Corporation offered to reduce the rate of interest and reschedule the payment of outstanding dues, the respondent did not avail the same. Not only this, the respondent failed to take benefit of the schemes notified on 3.1.2005 and 18.3.2005 for restoration of the unit on payment of the principal amount along with 10% of the outstanding interest.

5. On the pleadings of the parties, the High Court formulated the following question:

"Whether after invoking power under Section 29 of the Act, the respondent Corporation has absolute power of retaining the property without taking any steps and to continue to charge the interest and penal interest, without any limit."

6. The Division Bench of the High Court then stated the principle that as per the contract between the parties, the debtor is liable to pay interest till the principal amount is repaid and there is statutory power to take over the mortgaged property and thereafter also, interest continues to run, but observed that being a public authority, the Corporation is duty bound to act fairly; that the power to take possession of the mortgaged property cannot be exercised without any responsibility and that the Corporation is bound to take further steps within reasonable time and if it does not do so, the debtor will not only stand deprived of mortgaged property without any purpose resulting in loss of earning and possibility of repayment by raising money against the property. The Division Bench then held that as the appellant- Corporation is not shown to have taken any steps for a period of six years after taking over the unit and no explanation has been offered for this, it neither charge interest at the contractual rate nor can it proceed against any other property till the earlier taken over property is disposed of. The Division Bench also referred to the judgment of this Court in Central Bank of India v. Ravindra (supra) and held that the Corporation is not entitled to compound penal interest. The conclusions recorded by the High Court and operative part of the impugned order read as under:

"23. In view of above discussion, our conclusions are as under:-

(i) Taking over of unit under Section 29 of the Act casts an obligation on the Financial Corporation to proceed against the property taken over within reasonable time. Failure to do so, will be violation of concept of fair procedure under Articles 14 and 21 of the Constitution.

(ii) If the Court reaches a conclusion that action of the Corporation is unfair, the Court may, to effectuate the right of the borrower, set aside the demand for contractual rate of interest and substitute the same for a reasonable rate of interest, without prejudice to the remedy of the borrower to claim damages in appropriate proceedings. The Court may also direct giving of a fresh opportunity to the borrower to pay the recalculated amount and restrain the Corporation from proceeding against other assets of the borrower.

24. Accordingly, we allow this petition and apart from setting aside compounding of penal interest, declare that from 1.4.2003 i.e. after expiry of period of six months from the date of taking over of unit of the petitioner, the Corporation will be entitled to simple interest @ 10%. The Corporation is directed to make fresh calculation accordingly within one month from the date of receipt of a copy of this order. We further direct the Corporation to allow the petitioner to pay the amount as per fresh demand, if necessary, by selling the mortgaged property which has been taken over, subject to the payment being made directly to the Corporation to the extent of its dues. We also restrain the Corporation from giving effect to its notice Annexure P-8 of taking over other properties till the unit already taken over is disposed of. The Corporation may also review all pending cases where penal interest has been compounded in violation of law laid down by the Hon'ble Supreme Court and where no steps are being taken after taking over of the unit."

7. We have heard Shri T.S. Doabia, learned senior counsel appearing for the appellant and scrutinized the records. The appellant-Corporation was established under Section 3 of the Act. Section 24 of the Act mandates that in discharging its functions under the Act, the Board [as defined in Section 2(a)] shall act on business principles due regard being had by it to the interests of industry, commerce and the general public. Section 25 provides that the Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the kinds of business enumerated in Clauses (a) to (v). These include guaranteeing, on such terms and conditions as may be agreed upon, (i) loans raised by industrial concerns which are repayable within a period not exceeding twenty years, and are floated in the public market; (ii) loans raised by industrial concerns from scheduled banks or State cooperative banks or other financial institutions; transferring for consideration any instruments relating to loans and advances granted by it to industrial concerns; granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be; planning and assisting in the promotion and development of industries; providing export related credit and services; undertaking money market related activities. Section 29 (1) lays down that 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 installment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the latter shall have the right to take over the management or both of the industrial concerns, as well as the right to transfer by way lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

8. Section 29 of the Act has become subject matter of consideration in several cases. In Mahesh Chandra v. Regional Manager, U.P. Financial Corporation (1993) 2 SCC 279, a two-Judge Bench of this Court considered whether the respondent-Corporation could take possession of the mortgaged property even before disbursement of the sanctioned loan and sell the same without giving opportunity to the borrower to pay off debts or bring a better offer and observed that the corporations deal with public money for public benefit and, therefore, their approach has to be public oriented and helpful to the loanee. A helping attitude on the part of the Corporation to constantly monitor the working of the industrial concern or units (it may even charge the overhead expenses on this account) would sub- serve the purpose of the loan, object of the Act, and the constitutional objective of economic justice to the needy.

9. The two-Judge Bench then adverted to the scope of Section 29 of the Act and observed:

"Section 29 confers very wide power on the Corporation to ensure prompt payment by arming it with effective measures to realise the arrears. But the simplicity of the language is not an index of the enormous power stored in it. From notice to pay the arrears, it extends to taking over management and even possession with a right to transfer it by sale........... Power under Section 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act cautiously, honestly, fairly and reasonably. Default in payment of loan may attract Section 29. But that alone is insufficient either to assume possession or to sell the property. Neither should be resorted to unless it is imperative. Even though no rules appear to have been framed nor any guideline framed by the Corporation was placed, yet the basic philosophy enshrined in Section 24 has to be kept in mind. Rationale of action and motive in exercise of it has to be judged in the light of it. Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid. Unfortunately the Corporation was guilty of not acting in accordance with law either at the stage of take over or in transferring the unit. Admittedly the entire loan was not disbursed. Need of the capital in the last stages cannot be doubted. If the Corporation refused to release the amount at a time when the unit is nearing completion or is ready to start functioning, then it falls short of capital and it is bound to land itself in trouble. This is what happened in this case. The partners did not cooperate and the Corporation without any explanation refused to release the full amount. Result was that the appellant stood pressed on one hand from absence of capital and on the other by recovery proceedings. The Corporation, therefore, should honour their commitments of releasing entire loan timely except for very good reasons which should be intimated beforehand to enable the unit holder to comply with shortcomings if any. In its absence of its completion, the proceedings for recovery under Section 29 may not be justified. Similarly various situations may arise which may hamper start of the unit -- delay in electric supply or delayed delivery of machinery vital for the functioning of the unit. Such difficulties do require rescheduling of payment of instalment because, if the unit, for reasons beyond the control of unit holder, could not start, then how will the amount be repaid. Endeavour should be to adjust and accommodate as business considerations require the unit to function for benefit, both, of the general public and the Corporation. It is not mandatory, as a matter of law, to observe the process of taking over strictly. But if there is no option left and the unit is taken over then its transfer requires not only sincere effort but to act reasonably and fairly."

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In paragraph 22 of the judgment, the Court laid down guidelines to be followed by the Corporation while exercising power under Section 29 of the Act.

10. A substantially different view was expressed by another two-Judge Bench in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd (1993) 2 SCC 299. While indicating that the Corporation established under the 1951 Act is not like an ordinary money-lender or a bank which lends money and it is a lender with a purpose that is promoting the small and medium industries, the Court observed:-

"...........At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one............ These corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered -- nay, determined, in the light of all these circumstances. Indeed, in a matter between the corporation and its debtor, a writ court has no say except in two situations: (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints -- self-imposed undoubtedly -- of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless."
(emphasis added)

11. In U.P. Financial Corporation v. Naini Oxygen & Acetylene Gas Ltd. (1995) 2 SCC 754, the Court considered whether the State Financial Corporation was bound to accept the report of Industrial Reconstruction Bank of India which contained recommendation for resurrection of the defaulter company and whether the High Court was justified in commanding the Corporation to hand over possession of the unit to the company without any adjustment and observed:

"However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

We are, therefore, of the view that this is not a matter where the High Court should have stepped in and substituted its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the Company. In matters commercial, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned."

12. In Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd. (1996) 5 SCC 65, the Court referred to the earlier judgments in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation (supra) and U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd (supra), adverted to the

factual matrix of the case and held that in the absence of any violation of the statutory provisions by the appellant-Corporation, its decision to accept the offer made by the particular bidder for rational reasons cannot be interfered with by the High Court in exercise of powers under Article 226 of the Constitution.

13. In Haryana Financial Corporation v. Jagdamba Oil Mills (2002) 3 SCC 496, a three-Judge Bench disapproved the view expressed by two- Judge Bench in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation (supra) and approved the one expressed by another two-Judge Bench in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd (supra). The facts of that case were that the appellant-Corporation had sanctioned a term loan of Rs.7,48,000/- to the respondent. The loan was to be repaid in 8 years in 15 half-yearly installments. After disbursement of the last installment, the respondent made a request to reschedule repayment of the loan. The said request was accepted by the appellant-Corporation.

Despite this, the respondent continued to commit default in repayment of loan. Therefore, after issuing notice under Section 29 of the Act, the appellant-Corporation took possession of the unit. The respondent filed suit for permanent injunction, which was decreed by the trial Court. The first and second appeals preferred by the appellant-Corporation were dismissed by the District Judge and High Court respectively. The three-Judge Bench of this Court noticed the background in which the Act was enacted and proceeded to observe:

"The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance."

The three-Judge Bench then referred to the judgments in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation (supra) and U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd (supra), approved the view taken in the later decision by recording the following observations:

"As was observed by this Court in Gem Cap case the legislative intent in enacting the statute in question was to promote industrialization of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of a creditor and debtor. That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization, which is the intended object, can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As was rightly observed in Gem Cap case promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to private account."

The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd. in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act,

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the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist."
(emphasis added)

Commenting upon the judgment in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation (supra), the three-Judge Bench observed:

"The view in Mahesh Chandra case appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in Gem Cap case appears to be more in line with the legislative intent. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show, not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight of by the courts below. It is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in Mahesh Chandra case the matter has been decided..........

The aforesaid guidelines issued in Mahesh Chandra case place unnecessary restrictions on the exercise of power by Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in Mahesh Chandra case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

The subsequent decisions of this Court in Gem Cap, Naini Oxygen and Micro Cast Rubber run counter to the view expressed in Mahesh Chandra case. In our opinion, the issuance of the said guidelines in Mahesh Chandra case are contrary to the letter and the intent of Section 29. In our view, the said observations in Mahesh Chandra case do not lay down the correct law and the said decision is overruled."

14. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established under Section 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit de hors the financial implications of such exercise. The corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests. The relationship between the corporation and borrower is that of creditor and debtor. The corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair. The court cannot sit as an appellate authority over the action of the corporation and substitute its decision for the one taken by the corporation.

15. If the order impugned in this appeal is examined in the light of the principles laid down in U.P. Financial

Corporation v. Gem Cap (India) Pvt. Ltd (supra) and Haryana Financial Corporation v. Jagdamba Oil Mills (supra), we do not find any difficulty in holding that the High Court committed an error in declaring that the action taken by the Corporation was unfair and unreasonable and the direction issued for review of all pending cases where penal interest has been compounded is legally unsustainable.

While decrying the appellant-Corporation for allegedly going into slumber after taking over the unit of the respondent in furtherance of the first notice issued under Section 29 of the Act, the High Court overlooked many important factors, which are enumerated below:

(i) The respondent miserably failed to discharge its obligation to repay the loan together with interest and as against the outstanding dues of more than Rs.36 lacs in 2002, a paltry sum of Rs.2.70 lacs was deposited.

(ii) The appellant-Corporation issued notices dated 2.12.2002, 3.3.3003, 30.5.2003 and 29.8.2003 to the respondent requiring it to pay the amount specified therein, but the latter did not respond to either of the notices.

(iii) Vide letter dated 10.9.2004, the appellant-Corporation offered to reduce the rate of interest and reschedule the payment of dues, but the respondent did not avail the same.

(iv) The respondent did not take benefit of the schemes notified on 3.1.2005 and 18.3.2005 for restoration of the unit by paying the principal amount along with 10% of the outstanding interest.

16. In our view, the appellant-Corporation had acted in a most reasonable and fair manner and the High Court was not justified in nullifying the second notice issued under Section 29 of the Act by assuming that the appellant-Corporation had not taken effective steps for realization of its dues in furtherance of first notice. Unfortunately, the High Court ignored that the respondent had not only adopted a recalcitrant attitude in the matter of payment of the outstanding dues, but also failed to avail the concessions offered by the appellant-Corporation by reducing the rate of interest and rescheduling the payment of outstanding dues and did not take benefit of the schemes notified by the appellant-Corporation for restoration of unit on payment of the principal amount with a 10% outstanding interest.

17. The High Court also committed serious error in declaring that he appellant-Corporation will be entitled to charge simple interest at the rate of 10% w.e.f. 1.4.2003 i.e., after expiry of six months from the date of taking over of the unit. Undisputedly, the respondent had not challenged the terms of loan agreement. Therefore, the High Court could not have suo motu altered terms of agreement and directed the appellant to make fresh calculation of the outstanding dues and allowed the respondent to pay the amount as per fresh demand by selling the mortgaged property. This approach of the High Court is ex facie contrary to the law laid down in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. (supra) and Haryana Financial Corporation v. Jagdamba Oil Mills (supra).

18. The direction given by the High Court for review of pending cases in the light of judgment of this Court in Central Bank of India v. Ravindra (supra) is also unsustainable because, as mentioned above, the High Court was not called upon to examine the legality or otherwise of the terms of agreement entered into between the appellant-Corporation and respondent under which the latter was obliged to pay interest at the particular rate with periodical rests. Moreover, conclusion No.3 contained in para 55 of that judgment clearly postulates that stipulations incorporated in the contract entered into and binding on the parties shall govern their substantive rights and obligations in the matter of recovery and payment of interest.

19. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondent is dismissed.

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