

THE ANDHRA PRADESH STATE FINANCIAL CORPORATION A

v.

GAR RE-ROLLING MILLS AND ANR. ETC.

FEBRUARY 10, 1994

[KULDIP SINGH AND DR. A.S. ANAND, JJ.] B

State Financial Corporations Act, 1951: Sections 29, 31 and 32—Expression 'without prejudice to the provisions of section 29' appearing in section 31—Meaning and effect of—Nature and scope of sections 29 and 31—Scope of section 29 wider than section 31—Choice of Financial Corporation to initiate proceedings either under section 29 or section 31—Right of Corporation to abandon at any stage the proceedings under either of the Sections and have recourse to the other section—But cannot proceed simultaneously under both the provisions. C

Constitution of India, 1950: Article 226—Equitable extraordinary jurisdiction—To be exercised to prevent perpetration of legal fraud and to promote good faith and honesty—Not to be exercised in favour of a defaulting party which attempts to frustrate the legitimate claim of the order party. D

Equity: Object of—To promote honesty and good faith—To prevent crafty evasion of law. E

Doctrines: Doctrine of election—Applicability of—Not to apply where two remedies available under the same statute differ in ambit and scope.

In the first of the two appeals the respondent Mill borrowed a sum of Rs. 99,500 from the appellant Corporation for carrying on the business of manufacturing agricultural implements. A mortgage deed was also executed. On account of the default committed by the respondent Mill, the appellant corporation filed an application for the realisation of the loan with interest and the District Judge allowed the same but restricted the future interest to 6% as against 8½% claimed. On appeals the High Court stayed the execution subject to the condition that the respondent should deposit 1/4th of the amount due and furnish security for the balance amount. The respondent Mill neither deposited the amount nor furnished the security. The Corporation filed cross objections questioning the reduction of the rate of future interest. High Court dismissed the appeal of the F
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A respondent and allowed the cross objection of the Corporation.

Thereafter the Corporation filed a suit before the City Civil Court to enforce the personal liability of its respondent and his guarantor. Though the suit was decreed the Corporation could not execute it since the respondent shifted his place of business and could not be traced.

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The Corporation issued an advertisement in a local newspaper notifying that sale of the respondent concern would be conducted under section 29 of the State Finance Corporation Act and invited tenders therefore. The second respondent submitted a tender for Rs. 3,05,000 which was duly accepted and he deposited Rs. 52,000 being 1/4th of the tender amount. At this stage the first respondent filed a Writ Petition before the High Court questioning the invoking of section 29 of the Act on various grounds. High Court stayed the same. When the writ petition came up for hearing, it was brought to the notice of the High Court that there was difference of opinion between two Benches of the High Court with regard to the vires of s. 29 of the Act. The writ petition was accordingly referred to a Full Bench. However, the Full Bench did not go into the question of vires of section 29 of the Act, but held that it was not open to the Corporation to invoke the provisions of s. 29 of the Act, having first successfully invoked the jurisdiction of the District Judge under s. 31 of the Act and allowed the Writ Petition.

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In the second of the appeals, the facts were similar. Following the decisions of the Full Bench referred to above, the Division Bench allowed the writ petition in this case as well holding that the Corporation having moved the Court for relief under section 31 of the Act was not entitled to recover the amount of debt by taking recourse to the provisions of s. 29 of the Act. The present appeals by special leave, were filed by the Corporation against the High Court's decisions mentioned above.

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Allowing the appeals, this Court

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HELD: 1.1. The right vested in the Corporation under Section 29 of the State Financial Corporations Act is besides the right already possessed by it at common law to institute a suit or the right available to it under section 31 of the Act. [879-B]

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1.2. Section 29 of the Act deals with not only the rights of the

Financial Corporation in cases of default by the industrial concern with or without possession as well as the right to transfer by way of lease or sale of the hypothecated property to realise its dues. Since Section 29 of the Act provides both the rights and the remedies as also the procedure for enforcement of the rights and is a complete code in itself, it is open to the Corporation to act under section 29 of the Act to realise the dues from the defaulting concern by following the procedure prescribed under Section 29 of the Act. The Corporation does not require the assistance of the court to enforce its right while invoking the provisions of Section 29 of the Act to recover its dues from the defaulting concern. [872-C-E]

1.3. Section 31 of the Act has been enacted also to take care of a situation where any industrial concern, in breach of any agreement, makes default in repayment of the loan or advance or any instalment thereof or the Corporation requires immediate repayment which the defaulting industrial concern fails to make. The Corporation may in any such event without prejudice to its rights and remedies under Section 29 of the Act, apply to the District Judge concerned. [872-F,G]

1.4. The substantive relief under section 31(1) is something in the nature of an application for attachment of property in execution of a decree before the judgment. [875-G]

Gujarat State Financial Corporation v. Naatson Mfg. Co., A.I.R. 1978 S.C. 1765, relied on.

2.1. A conjoint reading of Sections 29 and 31 of the Act shows that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has two remedies available to it against the defaulting industrial concern, one under section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation. The defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. The expression "without prejudice to the provisions of Section 29 of this Act" as appearing in Section 31 clearly demonstrates that the Legislature did not intend to limit the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and

A save its rights and remedies under section 29 of the Act to be availed of at
a later stage, with the sole object of enabling the Corporation to recover
its dues. It is not, however, obligatory on the part of the Financial Cor-
poration to invoke the special provisions of Section 31 of the Act; it can
even without taking recourse to the provisions of the said Section invoke
B the procedure prescribed under Section 29 of the Act for realisation of its
dues. [873-E-H]

2.2. Where the Corporation takes recourse to the provisions of
Section 31 of the Act and obtains an order from the court, it shall
ordinarily and invariably seek its enforcement in the manner provided by
C Section 32 of the Act, which provisions are aimed to act in aid of the orders
obtained under Section 31 of the Act and it cannot simultaneously initiate
and take recourse to the remedy available to it under Section 29 of the Act
unless it gives up, abandons or withdraws the proceedings under Section
31 of the Act, at whatever stage those proceedings may be. The Corporation
cannot simultaneously pursue two remedies at the same time.

D [873-H; 874-A, B]

3.1. The Doctrine of Election clearly suggests that when two remedies
are available for the same relief, the party to whom the said remedies are
available has the option to elect either of them but that doctrine would not
apply to cases where the ambit and scope of the two remedies are essen-
E tially different. [875-H]

3.2. The doctrine of election would not be attracted under the Act in
view of the express phraseology used in Section 31 of the Act, viz. "without
prejudice to the provisions of Section 29 of this Act." While the Corpora-
F tion cannot simultaneously pursue the two remedies, it is under no dis-
ability to take recourse to the rights and remedy available to it under
Section 29 of the Act even after an order under Section 31 has been
obtained but without executing it and withdrawing from those proceedings
at any stage. In other words, it cannot be said that the Corporation after
G obtaining a final order under Section 31 of the Act from a court of
competent jurisdiction, is denuded of rights under Section 29 of the Act.
The Corporation which has the right to make the choice may make the
choice initially whether to proceed under Section 29 of the Act or Section
31 of the Act, but its rights under Section 29 of the Act are not extinguished
if it decides to take recourse to the provisions of Section 31 of the Act. It
H can abandon the proceedings under Section 31 of the Act at any stage of

execution if it finds it more practical, and may initiate proceedings under Section 29 of the Act. [876-E-H; 877-A] A

4. The relief available to the Corporation under Section 29 of the Act to realise its dues in the manner prescribed therein is wider in scope than the limited relief available to it under Section 31 of the Act and is not controlled by Section 31 of the Act. [877-B] B

5. Where, the defaulting party fails to honour the order or decree of the Court made under Section 31 of the Act, it has neither any legal nor even a-moral right to object to the Corporation from taking recourse to the provisions of Section 29 of the Act only on the ground that it has obtained a proper relief under Section 31 of the Act which relief it does not wish to pursue any further. Indeed, if the order of the Court issued under Section 31 of the Act has been fully complied with and honoured by the defaulting concern, no occasion would arise for the Corporation to invoke the provisions of Section 29 of the Act. However, to hold that since the Corporation has initially taken action under Section 31 of the Act and obtained an order/decree from the Court, the Corporation is prohibited from invoking the provisions of Section 29 of the Act, notwithstanding the fact that the defaulting concern has not honoured the court's order or decree made under section 31 of the Act, would amount to putting premium on the activities of the defaulting concern aimed at frustrating the order/decree of the court and depriving the Corporation of recovering its legitimate dues and thereby rendering the expression "without prejudice to" occurring in Section 31 as *otiose*. Courts do not favour such a course. C D E

[877-E-H; 878-A]

6. There is no equity in favour of a defaulting party which may justify interference by the courts in exercise of its equitable extra-ordinary jurisdiction under Article 226 of the Constitution of India to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the Corporation which after advancing the loan took steps to recover its dues from the defaulting party. A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the court are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. Since the Legislature enacted Sections 29 and 31 with a view to aid the Corporation to F G H

A recover its legitimate dues etc. from the defaulting party, the saving clause in Section 31 of the Act, preserving the rights under Section 29 of the Act by giving up the pursuit under Section 31 *at any stage* of the proceedings is available to the Corporation. The two provisions must be so harmonised as to facilitate the Corporation to recover its dues from the defaulting party. The Act was enacted by the Parliament with a view to promote industrialisation and offer financial assistance in the shape of loans and advances etc. repayable in easy instalments. The Corporation has to recover the loans and advances, so as to be able to give financial assistance to other industries and unless it recovers its dues, the money will not remain in circulation for long. It is with this end in view that the Parliament gave the Corporation the right to proceed under Section 31 of the Act, preserving at the same time its rights and remedy under Section 29 of the Act, so that the Corporations are not choked by the defaulting debtors by adopting, frustrating or dilatory tactics in the proceedings in the court initiated under Section 31 of the Act. [878-B-H; 879-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3216 of 1988.

From the Judgment and Order dated 16.12.86 of the Andhra Pradesh High Court in W.A. No. 793 of 1981.

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Civil Appeal No. 3689 of 1987.

F From the Judgment and Order dated 16.12.86 of the Andhra Pradesh High Court in C.W.P.No. 235 of 1982.

D.D. Thakur and Y.P. Rao for the Appellants.

M.B. Rao and A.V. Rangam for the Respondents.

G The Judgment of the Court was delivered by

H DR. ANAND, J. 1. The common question of law which arises in both these appeals, by special leave, is whether the Financial Corporation set up under Section 3 of the State Financial Corporation Act (hereinafter 'the Act') is entitled to take recourse to the remedy available to it under Section 29 of the Act even after having obtained an order or a decree after invoking

the provisions of Section 31 of the Act but without executing that decree/order? The facts in both the appeals are, however, different and we shall first notice the relevant facts in each of the two appeals, before answering the question posed herein above. A

CIVIL APPEAL NO. 3689 OF 1987. B

2. The respondent borrowed a sum of Rs. 99,500 from the appellant, the Andhra Pradesh State Financial Corporation (hereinafter the Corporation), for the purpose of carrying on the business of manufacturing agricultural implements. A mortgage deed was executed by the respondent on 27.12.1966. On account of the defaults committed by the respondent, the Corporation filed an application being OP NO. 211 of 1969 before the District Judge, Guntur, under Section 31 of the Act for realisation of the sum of Rs. 1,09,020,19 paise together with further interest at the rate of 8½ per cent per annum. Vide order dated 7.9.1971, the learned District Judge allowed the petition, though restricting the future interest to 6 per cent per annum. The respondent filed Civil Misc. Appeal in the High Court of Andhra Pradesh and the execution of the order in OP 211/69 was stayed by the Court on 1.3.1973, subject to the condition of respondent depositing 1/4th of the amount due and furnishing security for the balance amount within two months thereafter. The respondent failed to comply with the order dated 1.3.1973 and neither deposited 1/4th of the amount due nor furnished the security. The Corporation had also filed cross-objections in the High Court, questioning the reduction of the rate of future interest from 8 1/2 per cent to 6 per cent per annum. A Division Bench of the High Court dismissed the appeal filed by the respondent but allowed the cross-objections filed by the Corporation on 5.3.1975. The Corporation, it appears, filed OS No. 13 of 1974 before the Chief Judge, City Civil Court, Hyderabad to enforce the personal liability of the first respondent and his guarantor Shri E. Narapareddy as per the provisions of the Act. The suit was decreed by the learned Chief Judge. The Corporation, however, was not able to enjoy the fruits of the decree as the respondent shifted his place of business and could not be traced. Faced with this situation, the Corporation, issued an advertisement in a local newspaper notifying that sale of the respondent-concern would be conducted under Section 29 of the Act and invited tenders for that purpose before 7.1.1982. The second respondent submitted a tender for the sum of Rs. 2,05,000, which was duly accepted by the Corporation. The second respondent, thereupon, deposited H

A Rs. 52000 with the Corporation on 12.1.1982 being 1/4th of the tender amount. It was at this stage, that the first respondent filed Writ Petition No. 235/82 in the High Court of Andhra Pradesh, questioning the calling of tenders by invoking the provisions of Section 29 of the Act on various grounds. The High Court stayed the sale of the concern subject to the condition that respondent No. 1 should deposit a sum of Rs. 35000. When B the writ petition came up for hearing, it was brought to the notice of the High Court that there was difference of opinion between two Benches of the High Court with regard to the vires of Section 29 of the Act. The writ petition was accordingly referred to a Full Bench. The Full Bench did not go into the question of vires of Section 29 of the Act but held that it was C not open to the Corporation to invoke the provisions of Section 29 of the Act, having first successfully invoked the jurisdiction of the District Judge under Section 31 of the Act and consequently the writ petition was allowed. The Corporation has assailed the judgment of the High Court, allowing the writ petition, through this appeal on special leave being granted.

D *CIVIL APPEAL NO. 3216 OF 1988.*

3. The first respondent applied for and obtained loan of Rs. 2,94,000 for the purpose of carrying on its business of rerolling mills at Vijayanagaram in the name and style of M/S GAR Re-Rolling Mills. The E first respondent on loan being sanctioned executed a mortgage deed dated 10.11.1970 in favour of the Corporation. The first respondent committed defaults in the matter of repayment of both the principal amount as well as the interest and the Corporation issued an advertisement for the sale of the unit invoking the provisions of Section 29 of the Act in 1975. The tender F of Sh. Jaganmohan Gupta was accepted by the Corporation in response to the advertisement and he deposited the earnest money. While the matters rested thus, a suit, being OS No. 106/76, was got filed by respondent No. 1, through a third party, in the Sub-Court at Visakhapatnam and an order of attachment before judgment was obtained in respect of the properties of the first respondent which were already under mortgage with the Corporation. The Corporation entered its appearance before the sub-court and G pleaded that it had the first charge on the property. The plea was accepted by the sub-court and it vacated its earlier order and permitted the Corporation to effect the sale under Section 29 of the Act, subject to the condition that the 'excess sale proceeds would be deposited by the Corporation in the Court'. Since, Sh. Jaganmohan Gupta whose tender had H

been accepted by the Corporation was unable to get the property, because of the pendency of proceedings in OS No. 106/76, he resiled from his offer and sought refund of the earnest money deposited by him in view of the pending litigation. Faced with this situation, the Corporation initiated proceedings against the respondent by invoking provisions of Section 31 of the Act by filing OP NO. 162/77 before the District Judge at Visakhapatnam. The petition was allowed on 16.11.78 and the first respondent was given six months' time to make the payment to the Corporation. The first respondent, however, failed to do so even after obtaining a number of extensions of time for making the payment from the Court. The first respondent, it transpires from the record, got yet another suit, O.S. 133/79 filed by the same plaintiff in the High Court who had earlier filed O.S. 106/76 seeking, the setting aside of the sale in favour of Sh. Jagannmohan Gupta, the party whose tender had been accepted in the proceedings under Section 29 of the Act but who had resiled from the same due to pending litigation. An injunction against the Corporation was also sought. However, no injunction was granted and the plaintiff in the suit was given time to make the deposit within the stipulated period but he failed to do so within the period granted for the purpose. The Corporation having remained unsuccessful in enjoying the benefit of the order of the District Judge dated 16.11.1978, because of the pendency of the proceedings in the civil courts, at the instance of the first respondent, once again took recourse to the provisions of Section 29 of the Act and advertised the unit for sale. The first respondent filed CMA NO. 403/79 in the High Court of Andhra Pradesh and obtained an order of stay of the sale by the Corporation. The order of the stay was later on made absolute by the High Court, subject to the first respondent depositing 1/4th of the amount due by 29.12.79 and a further 1/4th by 29.2.80. The time, for deposit, was, however, extended at the request of the first respondent, but despite the extension of time, the first respondent did not deposit the amount and the Corporation, therefore, was once again driven to advertise the unit for sale. The effort of first respondent to obtain stay of the sale pursuant to the fresh advertisement issued by the Corporation, failed on 13.5.80 when CMP 6566/80 filed by it was dismissed by the High Court. Undeterred by various orders against it and the continued default in making repayment or depositing the amounts under directions of the court, it appears that the first respondent filed Writ Petition 4187/80 questioning the fresh invitation of tenders by the Corporation by invoking the provisions of Section 29 of the Act and succeeded in

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A obtaining an order or stay. The writ petition, however, was dismissed on 14.12.81, by the High Court upholding the action taken by the Corporation under Section 29 of the Act and the stay order was vacated. After the vacation of the stay order, tender of one M/S Bhagchandka Brothers was accepted by the Corporation, being the highest bidder, and they were put in possession of the property. The first respondent filed an appeal against the order of the learned Single Judge dated 14.12.1981 in writ petition No. 4187/80 before the Division Bench. The Division Bench relying upon the Full Bench judgment in *Kota Subba Reddy's* case (subject matter of C.A. 3689/87) held that the Corporation having moved the Court for relief under Section 31 of the Act was not entitled to recover the amount of debt due by taking recourse to the provisions of Section 29 of the Act and allowed the writ appeal filed by the first respondent. After obtaining special leave, the Corporation has filed the present appeal.

D 4. Having noticed the facts of both the appeals, we shall now address ourselves to answering the question posed in the opening part of this judgment. But, before doing so, it would be necessary to examine certain relevant provisions of the Act.

E 5. Section 29 of the Act deals with the rights of the Financial Corporation set up under Section 3 of the Act, in cases of default in payment of loans or advances or instalments thereof by any industrial concern. It reads as follows:

F "29. Rights of Financial Corporation in case of default - (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease of sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

H (2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the

transfer had been made by the owner of the property. A

(3)

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges, and expenses and, secondly, in discharge of the debt due to the Financial Corporation and the residue of the money so received shall be paid to the person entitled thereto. B C

(5)"

6. Section 30 then empowers the Corporation to require any industrial concern to discharge forthwith, in full, its liability to the Corporation and Section 31 contains special provisions for enforcement of claims by the Financial Corporation and reads as follows: D

"31. Special provisions for enforcement of claims by Financial Corporation - (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment 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 or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under Section 30 and the industrial concern fails to make such repayment then, without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882 (4 of 1882), any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:- E F G

(a) for an order for the sale of the property pledged, mortgaged, H

A hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(aa) for enforcing the liability of any surety; or

B (b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

C (2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed."

D 7. Section 32 of the Act deals with the procedure and the powers of the District Judge while dealing with applications made under Section 31 of the Act. Section 32 provides as follows:

E "32. Procedure of District Judge in respect of applications under Section 31. - (1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of Section 31, the District Judge shall pass an *ad interim* order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value of the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under Section 31, with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery plant or equipment.

G (1-A) When the application is for the relief mentioned in clause (aa) of sub-section (1) of Section 31, the District Judge shall issue a notice calling upon the surety to show cause on a date to be specified in the notice why his liability should not be enforced.

H (2) When the application is for the relief mentioned in clause (b) of sub-section (1) of Section 31, the District Judge shall grant

an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation. A

(3) Before passing any order under sub-section (1) or sub-section (2) or issuing a notice under sub-section (1-A) the District Judge may, if he thinks fit, examine the officer making the application. B

(4) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed. C D

(4-A) If no cause is shown on or before the date specified in the notice under sub-section (1-A), the District Judge shall forthwith order the enforcement of the liability of the surety. E

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the District Judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction. F

(6) If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908), in so far as such provisions may be applied thereto. G

(7) After making an investigation under sub-section (6), the District Judge may-

(a) confirm the order of attachment and direct the sale of the attached property; H

- A (b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;
- (c) release the property from attachment;
- B (d) confirm or dissolve the injunction;
- (da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or
- C (e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf;

D Provided that when making an order under clause (c) or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e), the District Judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

- E Provided further that unless the Financial Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.
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- G (8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

- H (8-A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be

carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder. A

(9) Any party aggrieved by an order under sub-section (4-A), sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper. B

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of Section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law. C

(11) The functions of a District Judge under this section shall be exercisable- D

(a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and E

(b) elsewhere, also by an additional district judge or by any judge of the principal court of civil jurisdiction.

(12) For the removal of doubts it is hereby declared that any court competent to grant an *ad interim* injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental thereto." F

8. A perusal of the aforesaid provisions of the Act shows that they deal with rights of and the procedure to be followed to enable the Corporation, in the event of breach of agreement or default in payment of loan or advance or an instalment thereof, by the loanee, to recover the same. G

9. An analysis of Section 29 of the Act (supra) reveals that where any industrial concern which is under an obligation and a liability to the H

- A Corporation under an agreement makes a default in repayment of the loan or advance or any instalment thereof or otherwise commits breach of any of the terms of the agreement, the Corporation has the right to take over the management or possession or both of the defaulting industrial concern. It also has the right to transfer by way of lease or sale and realise the property pledged, mortgaged or hypothecated or assigned to the Corporation as security for the loan. Any transfer of property of the defaulter thereafter made by the Corporation shall vest in the transferee all rights in or to the property transferred by virtue of Section 29(2) of the Act. Vide Section 29(3) of the Act, the Corporation has the same rights with respect to the goods manufactured, or produced wholly or partly as it had in respect of the original goods forming part of the security. Section 29 of the Act, therefore, deals with not only the rights of the Corporation in cases of default by the industrial concern, but also provides for a remedy to take over the management of the defaulting industrial concern with or without possession as well as the right to transfer by way of lease or sale of the hypothecated property to realise its dues. Since Section 29 of the Act provides both the rights and the remedies as also the procedure for enforcement of the rights and is a complete code in itself, it is open to the Corporation to act under Section 29 of the Act to realise the dues from the defaulting concern by following the procedure prescribed under Section 29 of the Act. The Corporation does not require the assistance of the court to enforce its right while invoking the provisions of Section 29 of the Act to recover its dues from the defaulting concern.

10. Section 31 of the Act has been enacted also to take care of a situation where any industrial concern, in breach of any agreement, makes default in repayment of the loan or advance or any instalment thereof or the Corporation requires immediate repayment which the defaulting industrial concern fails to make. The Corporation may in any such event without prejudice to its rights and remedies under Section 29 of the Act, apply to the District Judge within the local limits of whose jurisdiction, the industrial concern carries on the whole or a substantial part of its business *inter-alia* for any of the following orders:

- (a) for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance;
- (b) for transferring the management of the industrial concern to the

Corporation; and

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(c) for an *ad-interim* injunction restraining the defaulting industrial concern from transferring or removing its machinery or plant or equipment or any other material from the premises of the concern without the permission of the Board.

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11. An application made under Section 31 must disclose the nature and extent of the liability of the industrial concern as well as the ground on which the application is made. Section 32 is procedural in nature and provides for the procedure which is required to be followed when the District Judge takes cognizance of an application filed under Section 31 of the Act.

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12. Section 31 in terms provides that action under the said provision may be taken "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882." What is the import of the term "without prejudice to the provisions of Section 29 of this Act?"

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13. On a conjoint reading of Sections 29 and 31 of the Act, it appears to us that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has *two* remedies available to it against the defaulting industrial concern, one under Section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. The expression "*without prejudice to the provisions of Section 29 of this Act*" as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at a later stage, with the sole object of enabling the Corporation to recover its dues. It is not, however, obligatory on the part of the Financial Corporation to invoke the special provisions of Section 31 of the Act, it can ever without taking taking recourse to the provisions of the said Section invoke the procedure prescribed under Section 29 of the Act for realisation of its dues. Where the Corporation takes recourse to the

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A provisions of Section 31 of the Act and obtains an order from the court, it shall ordinarily and invariably seek its enforcement in the manner provided by Section 32 of the Act, which provisions are aimed to act in aid of the orders obtained under Section 31 of the Act and it cannot simultaneously initiate and take recourse to the remedy available to it under Section 29 of the Act unless it gives up, abandons or withdraws the proceedings under Section 31 of the Act, at whatever stage those proceedings may be. The Corporation cannot simultaneously pursue two remedies at the same time. The reach and scope of the two remedies is essentially different even if somewhat similar result flows by taking recourse to either of the two provisions in certain respects.

C 14: While dealing with the provisions of Sections 31 and 32 of the Act, this Court in *Gujarat State Financial Corporation v. Naatson Mfg. Co.*, A.I.R. (1978) S.C. 1765 at 1868 after noticing the scope of Section 31 of the Act by observing:

D ".....Section 31(1) prescribes a special procedure for enforcement of claims by the Financial Corporation. The Corporation is to make an application for the reliefs set out in S. 31 (1). The reliefs that a Court can grant under S.31(1) are the sale of the property mortgaged, etc. to a Financial Corporation as security for the loan or advance; transfer of the management of the industrial concern to the Financial Corporation or restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board of the Financial Corporation. An application for such a relief is certainly not a plaint in a suit for recovery of mortgage money by sale of mortgaged property. On a breach of an agreement by an industrial concern the Corporation can seek one or more of the three reliefs set out in S. 31(1)....."

G This Court went on to consider the question as to whether in an application under Section 31(1) of the Act, the Corporation can pray for a decree for its outstanding dues and opined in the *negative*. In the words of the Court:

H ".....At any rate, in an application under S. 31(1) the Corporation does not and cannot pray for a decree for its outstanding dues. It can make an application for one of three reliefs, none of which, if granted, results in a money decree, or decree for recovery of

outstanding loan or advance. Sec. 31(1) of the Act, in the circumstances therein set out, permits the Corporation to seek one or more of the three reliefs therein stated...." A

The Court then considering the conspectus of the provisions of Section 31 and 32 of the Act, went on to say that on an application under Section 31(1) being made it is obligatory upon the court to make an interim order attaching the security with or without interim injunction restraining the industrial concern from transferring or removing its plant, machinery or equipment without the permission of the Board of the Corporation. If the relief claimed in the application under Section 31 is transfer of the management of the industrial concern to the Corporation, the District Judge is also obliged to grant an *ad-interim* injunction and at the same time issue a notice calling upon the defaulting industrial concern to show cause why the interim injunction should not be made absolute. The claim of the Corporation in an application under Section 31 is not the monetary claim of its due to be investigated, though it may become necessary to specify the amount for the purpose of determining how much of security should be attached or sold but the investigation of the claim does not involve the raising of all such contentions as are permissible in a money suit. The claim is not money claim at all. Sub-section (7) of Section 32 prescribes the relief which can be granted after investigation under sub-section (6) is made and gives a clue to the nature of the contest between the parties. Sub-section (8) of Section 32 prescribes the mode and method for executing the order of attachment or sale of property as provided in the Code of Civil Procedure. Indeed, when sub-sections (6), (7) and (8) of Section 32 are read together in the context of the provisions of Section 31(1) of the Act, in the ultimate analysis, the result may be that the property will be sold for repayment of the loan or advance taken by the industrial concern from the Corporation but even then it cannot be said that it is a substantive monetary relief claimed by the Corporation which can be valued in terms of money in proceedings under Section 31 of the Act. The substantive relief under Section 31(1) is something in the nature of an application for attachment of property in execution of a decree before the judgment. B
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15. The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially H

A different. To hold otherwise may lead to injustice and inconsistent results. Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the Act. In our opinion, the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it at *any stage* and take recourse to the provisions of Section 29 of the Act, which Section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Section 32(7) and (8) of the Act. The explanation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A 'decree' under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in AIR (1978) SC 1969, (*supra*), recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act.

E 16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act, viz. "*without prejudice to the provisions of Section 29 of this Act.*" While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage the use of the expression "without prejudice to the provisions of the Section 29 of the Act" in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above quoted expression as redundant in Section 31 of the Act and the courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section

29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act.

17. The relief available to the Corporation under Section 29 of the Act to realise its dues in the manner prescribed therein is wider in scope than the limited relief available to it under Section 31 of the Act and is not controlled by Section 31 of the Act. The Legislature clearly intended to preserve the rights of the Corporation under Section 29 of the Act, by expressly stating in Section 31 of the Act, that its recourse to action under that Section is without prejudice to the provisions of Section 29 of the Act. What alone is not desirable or permitted by the Act is to pursue both the remedies *simultaneously* by the Corporation and not that it cannot withdraw or abandon the proceedings initiated under Section 31 at 'any stage' and then take recourse to the provisions of Section 29 of the Act. Any interpretation which frustrates the right of the Corporation to recover its dues must be eschewed. Similarly, if in a given case, the Corporation has taken recourse to the provisions of Section 29 of the Act, there is no bar for it without taking those proceedings to their logical conclusion to abandon them and approach the Court under Section 31 of the Act to seek one or more of the reliefs available to it under that Section. Where, the defaulting party fails to honour the order or decree of the Court made under Section 31 of the Act, it has neither any legal nor even a-moral right to object to the Corporation from taking recourse to the provisions of Section 29 of the Act only on the ground that it has obtained a proper relief under Section 31 of the Act which relief it does not wish to pursue any further. Indeed, if the order of the Court issued under Section 31 of the Act has been fully complied and honoured with by the defaulting concern, no occasion would arise for the Corporation to invoke the provisions of Section 29 of the Act. However, to hold that since the Corporation has initially taken action under Section 31 of the Act and obtained an order/decree from the Court, the Corporation is prohibited from invoking the provisions of Section 29 of the Act, notwithstanding the fact that the defaulting concern has not honoured the courts' order or decree made under Section 31 of the Act, would amount to putting premium on the activities of the defaulting concern aimed at frustrating the order/decree of the court and depriving the Corporation of recovering its

A legitimate dues and thereby rendering the expression "without prejudice to....." occurring in Section 31 as *otiose*. Courts do not favour such a course.

18. There is no equity in favour of a defaulting party which may justify interference by the courts in exercise of its equitable extra-ordinary jurisdiction under Article 226 of the Constitution of India to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the Corporation which after advancing the loan takes steps to recover its dues from the defaulting party. Thus, the intention of the Legislature in using the expression "without prejudice to the provisions of Section 29 of the Act" clearly appears to be that recourse to the provisions of Section 29 of the Act is not prohibited, where an order or decree under Section 31 of the Act obtained by the Corporation has not been complied with or honoured by the defaulting concern or is otherwise insufficient to satisfy the dues of the Corporation and the Corporation withdraws and abandons to pursue further proceedings under Section 31 of the Act. Passing a money decree for recovery of the outstanding dues, not being within the jurisdiction of the court under Section 31 of the Act, the Corporation retains its right to recover its dues by invoking the provisions of Section 29 of the Act in the manner prescribed therein notwithstanding any order, final or interim, obtained by it under Section 31 of the Act by withdrawing from and abandoning those provisions at any stage of the proceedings. A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. Since, the Legislature enacted Sections 29 and 31 with a view to aid the Corporation to recover its legitimate dues etc. from the defaulting party, the saving clause in Section 31 of the Act, preserving the rights under Section 29 of the Act by giving up the pursuit under Section 31 *at any stage* of the proceedings is available to the Corporation. The two provisions must be so harmonised as to facilitate the Corporation to recover its dues from the defaulting party. The Act was enacted by the Parliament with a view to promote industrialisation and offer assistance by giving financial assistance in the shape of loans and advances etc. repayable in easy instalments. The Corporation has to recover the loans and advances, so as to be able to give financial assistance to other industries and unless it recovers its dues, the money will not remain in circulation for long.

It is with this end in view that the Parliament gave the Corporation the right to proceed under Section 31 of the Act, preserving at the same time its rights and remedy under Section 29 of the Act, so that the Corporations are not choked by the defaulting debtors by adopting frustrating or dilatory tactics in the proceedings in the court initiated under Section 31 of the Act.

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19. The right vested in the Corporation under Section 29 of the Act is besides the right already possessed at common law to institute a suit or the right available to it under Section 31 of the Act. Since, the Corporation can withdraw from the Court its proceedings under Section 31 of the Act *at any stage*, it would imply that it has the right to withdraw from further proceedings under Sections 31 and 32 of the Act even after obtaining an order in its favour and take recourse to the proceedings under Section 29 of the Act without pursuing the proceedings under Section 31 of the Act any further. The Corporation cannot, indeed, execute the order under Section 31 of the Act and yet simultaneously take recourse to proceedings under Section 29 of the Act for the same relief. The position may also be different if the claim of the Corporation is negated, on facts, by the Court in the proceedings under Section 31 of the Act. In that event depending upon the facts of each case, it may be permissible to hold that fair play and justice demand that the Corporation is not allowed to take recourse to the provisions of Section 29 of the Act. Thus from the above discussion it follows that the answer to the question posed in the opening part of the judgment is in the affirmative.

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20. In Civil Appeal No. 3689/87, the Corporation took recourse to the provisions of Section 31 of the Act and obtained an order under Section 31 (1) of the Act but its effort to enforce the liability either against the defaulting concern or the surety was frustrated by the defaulting party by shifting the concern without leaving scope for tracing it. This action of the defaulting concern could not lead to the consequence that the remedy of the Corporation under Section 29 to recover its outstanding dues together with interest was lost because undoubtedly the Corporation did not proceed further with the proceedings under Section 31 of the Act which it abandoned by withdrawing from those proceedings impliedly. Therefore, when the Corporation, in the facts and circumstances of the case, took recourse to the provisions of Section 29 of the Act to recover its outstanding dues by abandoning the proceedings under Section 31 of the Act, it

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A could not be faulted with and the final order/decreed made under Section 31 which had remained unsatisfied, could not debar the Corporation to invoke the provisions of Section 29 of the Act, by giving up further proceedings under Section 31/32 of the Act. The judgment under appeal has laid down the proposition too broadly and not given effect to the expression "without prejudice to the provisions of Section 29 of the Act" occurring in Section 31 and by laying down that if recourse is had to the provisions of Section 31 of the Act, the Corporation must pursue that remedy alone and it cannot abandon or withdraw from those proceedings 'at any stage'. The interpretation placed by the High Court chokes the benefit of recovery proceedings and cannot therefore be sustained and accepting the appeal, we set aside the impugned judgment.

21. In Civil Appeal No. 3216/88, the facts as noticed in the earlier part of this judgment which are rather eloquent show that the respondents did not have any intention of repaying any part of the debt. Even in this court their attitude was no different. They have been merely adopting delaying tactics and putting forward one or the other ploy to keep the Corporation divested of its legitimate dues. The learned single Judge was perfectly justified to dismiss the writ petition, thereby upholding the action under Section 29 of the Act since the Corporation did not further pursue its remedy under Section 31 of the Act. The Division Bench fell in error in setting aside the judgment of the Single Judge by following the Full Bench judgment, (which has been set aside by us while allowing C.A.3689/87) without considering the peculiar facts of the case and the attitude of the respondent - the defaulting party. Consequently, C.A. 3216/88 is also allowed and the impugned judgment under appeal is set aside.

22. Thus both the appeals succeed and are allowed with costs of Rs. 5000 in each of the two appeals.

G.N.

Appeals allowed.