

KARNATAKA STATE FINANCIAL CORPORATION

v.

N. NARASIMAHAIH AND ORS.
(Civil Appeal Nos. 610-612 of 2004)

MARCH 13, 2008

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

State Financial Corporations Act, 1951:

s.29 – Jurisdiction of Corporation to proceed against surety/guarantors under s.29 – Held: Corporation cannot proceed against the surety under s.29 – Right of Corporation in terms of s.29 must be exercised only on a defaulting party – There cannot be any default as is envisaged in s.29 by a surety or a guarantor – Liability of surety or guarantor to repay the loan of the principal debtor arises only when a default is made by the latter.

s.29 – Object of – Held: Is to expeditiously realize the dues of the Corporation – s.29 confers extraordinary power upon Corporation – Transfer of Property Act – s.69 – Contract Act – s.128.

ss.29 and 31 – Interpretation of – Distinction between – Intention of Parliament in enacting s. 29 and s.31 was not similar – Whereas s.29 talks about the property of the industrial concern, s. 31 takes within its sweep the property of industrial concern and also of surety – None of the provisions control each other – Parliament intended to provide an additional remedy for recovery of the amount in favour of Corporation by proceeding against a surety only in terms of s.31 and not under s.29 thereof.

Interpretation of statutes:

Strict construction – Special provisions made in derogation to the general right of a citizen – Held: Such

A *provisions to be strictly construed.*

Reading statute as a whole – Entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word – To interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author – Casus Omissus cannot be supplied.

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C *Ambiguity in the statute – When the language of statute is not clear and two meanings are possible, the object of the statute would be a relevant factor for interpretation.*

When more than one remedy is provided or an option is given to a suitor then such provision is not ultra vires – Constitution of India, 1950 – Article 14 – Alternative remedies.

D **The questions for consideration in these appeals are whether the appellant-Corporation can proceed against the guarantors under s.29 of the State Financial Corporations Act, 1951 and regarding interpretation of s.29 vis-à-vis s.31 of the Act.**

E **Dismissing the appeals, the Court**

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G **HELD: 1.1. A lender of money under the common law has the remedy to file a suit for realization of the amount lent if the borrower does not repay the same. The State Financial Corporations Act, however, provides for a special remedy in favour of the Financial Corporation constituted thereunder enabling it to exercise a statutory power of either selling the property or take over the management or possession or both belonging to the industrial concern. S.29, therefore, confers an extraordinary power upon the 'Corporation'. It, being a 'State' within the meaning of Article 12 of the Constitution of India, is expected to exercise its statutory powers reasonably and *bona fide*. [Paras 8, 9] [869-C-E]**

H **1.2. Apart from the constitutional restrictions, the**

statute does not put any embargo upon the corporation to exercise its power under s.29 of the Act. Indisputably, the said provision was enacted by the Parliament with a view to see that the dues of the Corporation are realized expeditiously. When a statutory power is conferred, the same must be exercised within the four corners of the Statute. Power of a lender to realize the amount lent either by enforcing the charged and / or hypothecated or encumbrance created on certain property and/ or proceeding simultaneously and/ or independently against the surety/ guarantor is a statutory right. Different statutes provide for different remedies. Such a right can also indisputably be conferred by way of contract as has been provided for under s.69 of the Transfer of Property Act in terms whereof a mortgagee is entitled to effect sale without the intervention of the court, subject, of course, to the limitations prescribed therein. [Paras 10, 11] [869-F-G; 870-B]

Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Others (2004) 6 SCC 758 – relied on.

2.1. If special provisions are made in derogation to the general right of a citizen, the statute, should receive strict construction. For the purpose of enforcing a liability of an industrial concern, recourse can be taken both under s.29 and s.31 of the Act. Right of the corporation to file a suit or take recourse to the provisions contained in s.32G of the Act also exists. [Para 12] [870-C-D]

2.2. The heading of s.29 of the Act states “Rights of financial corporation in case of default”. The default contemplated thereby is of the industrial concern. Such default would create a liability on the industrial concern. Such a liability would arise when the industrial concern makes any default in repayment of any loan or advance or any instalment thereof under the agreement. It may also arise when it fails to meet its obligation(s) in relation to

A any guarantee given by the corporation. If it otherwise fails
to comply with the terms of the agreement with the
financial corporation, also the same provisions would
apply. In the eventualities contemplated under s.29 of the
B Act, the Corporation shall have the right to take over the
management or possession or both of the industrial
concern. The provision does not stop there. It confers an
additional right as the words "as well as" is used which
confers a right on the Corporation to transfer by way of
lease or sale and realize the property pledged, mortgaged,
C hypothetical or assigned to the Corporation. [Para 13]
[870-E-H]

2.3 S.29 of the Act nowhere states that the corporation
can proceed against the surety even if some properties
are mortgaged or hypothecated by it. The right of the
D financial corporation in terms of s.29 of the Act must be
exercised only on a defaulting party. There cannot be any
default as is envisaged in s.29 by a surety or a guarantor.
The liabilities of a surety or the guarantor to repay the loan
of the principal debtor arises only when a default is made
E by the latter. The words "as well as" play a significant role.
It confers two different rights but such rights are to be
enforced against the same person, viz., the industrial
concern. It is true that sub-section (1) of s. 29 speaks of
guarantee. But such a guarantee is meant to be furnished
F by the Corporation in favour of a third party for the benefit
of the industrial concern. It does not speak about a surety
or guarantee given in favour of the corporation for the
benefit of the industrial concern. The legislative object and
intent becomes furthermore clear as in terms of Sub-
G section (4) of s.29 of the Act only when a property is sold,
the manner in which the sale proceeds is to be
appropriated has categorically been provided therein.
Sub-section (4) of s.29 of the Act which lays down
appropriation of the sale proceeds only refers to 'industrial
concern' and not a 'surety' or 'guarantor'. [Paras 14-16]
H [871-A-G]

3. The provisions of s.128 of the Indian Contract Act must also be kept in mind. It is only by reason thereof, subject of course to the contract by the parties thereto, the liability of a surety is made co-extensive with the liability of the principal debtor. Banking practice may enable a financial corporation to ask for a collateral security. Such security, assumingly may be furnished by the Directors of a Company but furnishing of such security or guarantee is not confined to the Directors or employees or their close relatives. They may be outsiders also. The rights and liabilities of a surety and the principal borrower are different and distinct. Apart from the defences available to a principal borrower under the provisions of the Indian Contract Act, a surety or a guarantor is entitled to take additional defence, which may be not only against the corporation but also against the principal debtor. He, in a given situation, would be entitled to show that the contract of guarantee has come to a naught. Ordinarily, therefore, when a guarantee is sought to be enforced, the same must be done through a court having appropriate jurisdiction. In the absence of any express provision in the statute, a person being in lawful possession cannot be deprived thereof by reason of default on the part of a principal borrower. Furthermore, construction of a statute would not depend upon a contingency. A statute must be interpreted having regard to the constitutional provisions as also human rights. [Paras 17, 18 and 19] [871-G-H; 872-A-E]

4.1. Reference to implied and/ or incidental power of the Corporation deserves outright rejection. Moreover s.29 of the Act does not deal with a case where express and implied conditions have been laid down in the matter of exercise of power conferred upon a statutory authority under a Statute. S.29 does not envisage any prohibition at all either express or implied. [Paras 20, 21] [872-F; 873-B]

A *Singh*, 9th edition, page 365 – relied on.

4.2. A statutory authority, thus, may have an implied power to effectuate exercise of substantive power, but the same never means that if a remedy is provided to take action against one in a particular manner, it may not only be exercised against him but also against the other in the same manner. It is a trite law that the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. [Para 21] [874-B-D]

C *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors.* (1987) 1 SCC 424; *Deewan Singh & Ors. v. Rajendra Pd. Ardevi & Ors.* 2007 (1) SCALE 32 and *Sarabjit Rick Singh v. Union of India*, 2007 (14) SCALE 263 – relied on.

D *Jamal Uddin Ahmad v. Abu Saleh Najmuddin and Anr.* (2003) 4 SCC 257 – referred to.

5.1. S.31 of the Act provides for a special provision. It, apart from the default on the part of the industrial concern, can be invoked where the financial corporation requires an industrial concern to make immediate repayment of loan or advance in terms of s.30 if and when such requirement is not met. The aforementioned provision could be resorted to by the Corporation, without prejudice, to its rights under the provisions of s. 29 as also s. 69 of the Transfer of Property Act and for the said purpose it is required to apply to the District Judge having appropriate jurisdiction. S.31 of the Act provides for the reliefs which may be sought for by the Corporation strictly in terms thereof. Clause (aa) of sub-section (1) of s.31 of the Act provides for a final relief. It does not speak of any interlocutory order. Clause (aa) has been inserted by Act No. 43 of 1985. Thus, prior thereto even s.31 could not have been taken recourse to against a surety. Such a relief, if prayed for, would also lead to grant of a final relief

and not an interlocutory one. Similarly, clause (b) of Sub-section (1) of s. 31 of the Act also provides for a final relief. Only clause (c) of Sub-section (1) of s.31 of the Act empowers the District Judge in the event any application is filed by the Corporation to pass an ad interim injunction. The very fact that s.31 uses the terminology "without prejudice" to the provisions of s.29 of the Act and/ or s. 69 of the Transfer of Property Act, it clearly postulates an additional relief. What can be done by invoking s.29 of the Act can be done by invoking s.31 thereof also but therefor a different procedure has to be adopted. S.31 also provides for a relief against a surety and not confined to the industrial concern alone. Sub-section (2) of s.31 also refers to industrial concern and not the surety. The legislative intent, therefore, is clear and unambiguous. [Paras 22, 23] [874-F-H; 875-A-E]

5.2. Sub-section (1A) of s.32 of the Act lays down a procedure when clause (aa) of Sub-section (1) of s.31 thereof is invoked. Sub-section (4A) of s. 31 also empowers the court to forthwith order the enforcement of the liability of the surety if no cause is shown on or before the date notified by the parties. However, in the event, a cause is shown upon making an investigation as provided for under Sub-section (6) of s.32, a final order can be passed in terms of Sub-section (7) thereof. Significantly, by Act No. 43 of 1985, s.32G of the Act was also inserted. It does not speak of an industrial concern. S.32G, therefore, can be resorted to both against the industrial concern as also the security. [Para 24 and 25] [875-F-H; 876-A]

6.1 While interpreting the provisions of a statute, the court employs different principles or canons. To interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. Attempt on the part of the court while interpreting the provisions of a statute should, therefore, be to pose a question as to

A why one provision has been amended and the other was not and why one terminology has been used while inserting a statutory provision and a different clause in another it is well-known that *casus omissus* cannot be supplied. [Para 26] [876-C-E]

B *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.* JT (2008) 1 SC 31; *Delhi Financial Corpn. And Another v. Rajiv Anand and Others* (2004) 11 SCC 625; *Ashok Lanka v. Rishi Dixit* (2005) 5 SCC 598 and *J. Srinivasa Rao v. Govt. of A.P. & Anr.* 2006 (13) SCALE 27; *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors.* (2007) 5 SCC 447 – relied on.

D 6.2. The legislative intent, is manifest. The intention of the Parliament in enacting ss. 29 and 31 of the Act was not similar. Whereas s.29 of the Act consists of the property of the industrial concern, s.31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. The Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of s.31 of the Act and not under s.29 thereof. [Para 27] [876-F-G]

F 7. A Corporation, after coming into force of s.32G of the Act has four remedies, viz.: (i) to file a suit (ii) to take recourse to s.29; (iii) to take recourse to s.31; and (iv) to take recourse to s.32G of the Act. [Para 28] [876-H; 877-A, B]

G *A.P. State Financial Corporation v. M/s GAR Re-Rolling Mills and Anr.* (1994) 2 SCC 647 – referred to.

H 8. Right of property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour

of such deprivation. [Para 30] [877-H; 878-A-B]

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P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.
(2007) 6 SCC 59 – referred to.

9. A surety may be a Director of the Company. He also may not be. Even if he is a close relative of the Director or the Managing Director of the Company, the same is not relevant. A Director of the Company is not an industrial concern. He in his capacity as a surety would certainly not be. A juristic person is a separate legal entity. Its veil can be lifted or pierced only in certain situations. [Para 31] [878-F-G]

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Juggilal Kamlapat v. Commissioner of Income Tax, U.P.
(1969) 1 SCR 988; *Kapila Hingorani v. State of Bihar* (2003)
6 SCC 1 – relied on.

Salomon v. Salomon and Co. 1897 AC 22; *Dal Chand and Ors. v. Commissioner of Income Tax, Punjab* (1944) 12 ITR 458 – affirmed.

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10. Interpretation of a statute would not depend upon a contingency. It has to be interpreted on its own. The court would ordinarily take recourse to the golden rule of literal interpretation. It is not a case where a defect in the legislative drafting is pointed out nor can it be presumed. In a case where a court has to weigh between a right of recovery and protection of a right, it would also lean in favour of the person who is going to be deprived therefrom. It would not be the other way round. Only because a speedy remedy is provided for that would itself lead to the conclusion that the provisions of the Act have to be extended although the statute does not say so. The object of the Act would be a relevant factor for interpretation only when the language is not clear and when two meanings are possible and not in a case where the plain language leads to only one conclusion. Even if the legislation is beneficent, the same by itself would not be held to be extendable to a situation which the statute

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A does not contemplate. [Para 32, 33] [879-A-D]

S. Sundaram Pillai, etc. v. V.R. Pattabiraman AIR 1985 SC 582 – relied on.

B – referred to.
Attorney General v. Milne (1914-15) All E.R. Rep. 1061

11. It is now well-settled that when more than one remedy is provided for, an option is given to a suiter to opt for one or the other remedy. Such a provision is not ultra vires. [Para 34] [879-G-H]

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Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and Others (1974) 2 SCC 402, *Director of Industries, U.P. and Others v. Deep Chand Agarwal* (1980) 2 SCC 332 – relied on.

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 610-612 of 2004.

E From the final Judgment and Order dated 26.03.2003 of the High Court of Karnataka at Bangalore in Writ Petition Nos. 37209 & 37907 of 2000, 24452, 13354 & 16614 of 2002 (GM/ KSFC)

K. K. Venugopal, Kiran Suri, S.J. Amith, Piparna Bhat and Ankur Talwar for the Appellant.

F Vikas Rojipura, E.C. Vidya Sagar and P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. INTRODUCTION

G 1. Interpretation of Section 29 vis-à-vis Section 31 of the State Financial Corporations Act, 1951 (for short “the Act”) is in question in these appeals which arise out of a judgment and order dated 26.03.2003 passed by a Division Bench of the Karnataka High Court in Writ Petition Nos. 37209 & 37907 of H 2000, 24452 of 2001, 13354 and 16614 of 2002.

FACTUAL BACKDROP

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2. Respondents herein furnished sureties and/ or guarantees in respect of the loans taken by the industrial concerns (Respondent – Company)

3. We may notice the fact of the matter from the case of AP Rocks Private Limited (Writ Petition No. 37209 and 30907 of 2000) before the High Court.

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AP Rocks Private Limited is an industrial concern. It approached the appellant – Corporation for grant of loan in the form of non-convertible debenture facility to the extent of 100 lakhs to meet its working capital requirements.

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Respondents who were Directors of Company executed deeds of guarantee dated 15.05.1996 and 9.08.1996 agreeing to guarantee repayment/ redemption by the Company to the Corporation of the said non-convertible debenture subscription together with interest, etc. The said Company also executed a deed of hypothecation on or about 9.08.1996 whereby and whereunder its plants and machinery were hypothecated. A collateral security agreement was also executed by Shri S.K. Rajan wherefor a property bearing No. 49, House List Khata No. 100-A, Hennarayanapalya, Hemlet of Cholanayakamahalli, Kasba Hobli, Bangalore North Taluka was mortgaged as a security therefor.

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Respondent No. 1 executed an agreement on 15.05.1996 in terms whereof his property bearing Site No. 55 (old), New No. 59, Annammadevi Temple Extension, Subedar Chatram Road, B.C.C. Division No.22, Bangalore was given as a collateral security. The 'Industrial Concern' allegedly committed defaults.

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PROCEEDINGS

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4. Appellant – Corporation on or about 20.11.2000 in exercise of its power under Section 29 of the Act directed that the possession of the said two properties of the guarantors be taken over. Respondent No. 1 and Shri S.K. Rajan filed writ petitions before the Karnataka High Court on the premise that

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A the appellant – corporation could not have proceeded against the guarantors under Section 29 of the Act.

The High Court by reason of the impugned judgment while upholding the said contention directed:

B “(i) The impugned orders passed by the Karnataka State Financial Corporation under Section 29 of the State Financial Corporations Act authorizing its officers to take possession of the properties of petitioners are quashed.

C (ii) The Karnataka State Financial Corporation is directed not to proceed against the property of the surety, mortgaged/ hypothecated in its favour, under Section 29 of the State Financial Corporations Act.

(iii) Parties to bear their respective costs.”

D Appellant is, thus, before us.

SUBMISSIONS

5. Mr. K.K. Venugopal, learned senior counsel appearing on behalf of the appellant, submitted:

E (i) the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the second part of Section 29 of the Act being an independent provision and having not referred to an ‘industrial concern’, it was within the jurisdiction of the appellant to take possession of the said property also.

F (ii) Section 29 of the Act confers two independent rights, viz., taking over of the mortgaged property and sale of the mortgaged, hypothecated and charged property. Whereas first part of Section 29 of the Act covers taking over possession and/ or management of the mortgaged property, the second part thereof covers the case of sale of the property mortgaged, irrespective of the fact as to whether the same

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- belonged to the industrial concern or not. A
- (iii) Section 29 having taken within its umbrage security and/ or guarantee, the legislative intent being speedy recovery of the dues, the same includes the power to take possession of the mortgaged property of the guarantor also, being incidental to the main power and/ or implied power of the Corporation. B
- (iv) Section 31 confers the same benefit to the Corporation with an additional remedy, viz., to pray for an interlocutory order. C
- (v) Section 69(c) of the Transfer of Property Act also confers power upon the mortgagee to sale the charged property privately wherefor taking over of possession being not a pre-requisite, the High Court committed a serious error in coming to the conclusion that before a property is to be sold, taking over possession thereof is mandatory. D
- (vi) Section 31 of the Act would be applicable only when the loan is called back in terms of Section 30 of the Act. E
- (vii) Special statutory power having been conferred on the Corporation so as to enable it to recover its debts which serves a larger economic interest of the country, Sections 29 and 31 of the Act should be interpreted in such a manner which would help it to achieve the said purpose. F

6. Mr. Vikas Rojipura, learned counsel appearing on behalf of the respondents, on the other hand, submitted:

- (i) It is wrong to contend that similar reliefs can be claimed both under Sections 29 and 31 of the Act as in that event it was not necessary for the Parliament to enact two different provisions. G
- (ii) Clause (aa) of Sub-section (1) of Section 31 of the H

A Act, which was inserted by Act No. 43 of 1985 with effect from 21.08.1985, clearly establishes that the purport and object of two sections are absolutely distinct and separate.

B (iii) Sections 29 and 31 confer two different rights on the corporation which are independent of each other. Whereas Section 29 provides for a limited remedy, Section 31 provides for a composite remedy to the Corporation to realize the dues both from the principal borrower as also from the guarantor.

C (iv) Remedy both under Sections 29 and 31 being equal, speedy and efficacious, it would be wrong to contend that both the reliefs can be claimed simultaneously.

THE ACT

D 7. The Act was enacted to provide for the establishment of State Financial Corporations. Appellant is a Corporation established and incorporated under the Act.

E "Industrial concern" has been defined in Section 2(c) of the Act to mean any concern engaged or to be engaged in any of the activities specified therein.

Section 29 of the Act provides for the rights of financial corporation to realize its dues in case of default.

F We may take notice of Sub-section (1) of Section 29 of the Act which reads as under:

G "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
H the right to take over the management or possession or

both of the industrial concerns, as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.”

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Section 30 of the Act inter alia provides for power to call for repayment before the agreed period.

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Section 31 provides for special provisions for enforcement of claims by Financial Corporation. It reads as under:

“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 authorised 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—

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(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

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

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

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A (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.

B (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."

C Section 32 of the Act provides for the procedure in respect of the proceedings before the District Judge on applications under Section 31; sub-section (1A) whereof reads as under:

D "(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."

E For enforcing a claim envisaged under clause (aa) of Sub-section (1) of Section 31 of the Act, a special procedure has been laid down in sub-section (4A) of Section 32 which reads as under:

F "(4A) If no cause is shown on or before the date specified in the notice under Sub-section (1A) the district judge shall forthwith order the enforcement of the liability of the surety."

Section 32G of the Act, which was also inserted by Act No. 43 of 1985, provides for yet another additional remedy to a financial corporation in the following terms:

G "32G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue

H Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may, without

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

INTERPRETATION – SECTION 29 ISSUE

8. A lender of money under the common law has the remedy to file a suit for realization of the amount lent if the borrower does not repay the same. The Act, however, provides for a special remedy in favour of the Financial Corporation constituted thereunder enabling it to exercise a statutory power of either selling the property or take over the management or possession or both belonging to the industrial concern.

9. Section 29, therefore, confers an extraordinary power upon the ‘Corporation’. It, being a ‘State’ within the meaning of Article 12 of the Constitution of India, is expected to exercise its statutory powers reasonably and bona fide.

10. Apart from the said constitutional restrictions, the statute does not put any embargo upon the corporation to exercise its power under Section 29 of the Act. Indisputably, the said provision was enacted by the Parliament with a view to see that the dues of the Corporation are realized expeditiously. When a statutory power is conferred, it is a trite law that the same must be exercised within the four corners of the Statute. Power of a lender to realize the amount lent either by enforcing the charged and / or hypothecated or encumbrance created on certain property and/ or proceeding simultaneously and/ or independently against the surety/ guarantor is a statutory right. Different statutes provide for different remedies. We may by way of example refer to *Pawan Kumar Jain v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd. and Others*

A [(2004) 6 SCC 758] where a statutory mandate has been given to realize the dues from sale of the mortgaged properties and then to sell other properties of the borrower. We are, however, not concerned with such a situation.

B 11. Such a right can also indisputably be conferred by way of contract as has been provided for under Section 69 of the Transfer of Property Act in terms whereof a mortgagee is entitled to effect sale without the intervention of the court, subject, of course, to the limitations prescribed therein.

C 12. If special provisions are made in derogation to the general right of a citizen, the statute, in our opinion, should receive strict construction. 'Industrial concern' has been defined under the Act. For the purpose of enforcing a liability of an industrial concern, recourse can be taken both under Sections D 29 and 31 of the Act. Right of the corporation to file a suit or take recourse to the provisions contained in Section 32G of the Act also exists.

E 13. The heading of Section 29 of the Act states "Rights of financial corporation in case of default". The default contemplated thereby is of the industrial concern. Such default would create a liability on the industrial concern. Such a liability would arise when the industrial concern makes any default in repayment of any loan or advance or any instalment thereof under the agreement. It may also arise when it fails to meet its F obligation(s) in relation to any guarantee given by the corporation. If it otherwise fails to comply with the terms of the agreement with the financial corporation, also the same provisions would apply. In the eventualities contemplated under Section 29 of the Act, the corporation shall have the right to G take over the management or possession or both of the industrial concern. The provision does not stop there. It confers an additional right as the words "as well as" is used which confers a right on the corporation to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothetical or H assigned to the corporation.

14. Section 29 of the Act nowhere states that the corporation can proceed against the surety even if some properties are mortgaged or hypothecated by it. The right of the financial corporation in terms of Section 29 of the Act must be exercised only on a defaulting party. There cannot be any default as is envisaged in Section 29 by a surety or a guarantor. The liabilities of a surety or the guarantor to repay the loan of the principal debtor arises only when a default is made by the latter.

15. The words "as well as" in our opinion play a significant role. It confers two different rights but such rights are to be enforced against the same person, viz., the industrial concern. Submission of the learned senior counsel that the second part of Section 29 having not referred to 'industrial concern', any property pledged, mortgaged, hypothecated or assigned to the financial corporation can be sold, in our opinion cannot be accepted. It is true that sub-section (1) of Section 29 speaks of guarantee. But such a guarantee is meant to be furnished by the Corporation in favour of a third party for the benefit of the industrial concern. It does not speak about a surety or guarantee given in favour of the corporation for the benefit of the industrial concern.

16. The legislative object and intent becomes furthermore clear as in terms of Sub-section (4) of Section 29 of the Act only when a property is sold, the manner in which the sale proceeds is to be appropriated has categorically been provided therein.

It is significant to notice that sub-section (4) of Section 29 of the Act which lays down appropriation of the sale proceeds only refers to 'industrial concern' and not a 'surety' or 'guarantor'.

17. The provisions of Section 128 of the Indian Contract Act must also be kept in mind. It is only by reason thereof, subject of course to the contract by the parties thereto, the liability of a surety is made coextensive with the liability of the principal debtor.

- A 18. Banking practice may enable a financial corporation to ask for a collateral security. Such security, we would assume, may be furnished by the Directors of a Company but furnishing of such security or guarantee is not confined to the Directors or employees or their close relatives. They may be outsiders also.
- B The rights and liabilities of a surety and the principal borrower are different and distinct.

C Apart from the defences available to a principal borrower under the provisions of the Indian Contract Act, a surety or a guarantor is entitled to take additional defence. Such additional defence may be taken by the guarantor not only against the corporation but also against the principal debtor. He, in a given situation, would be entitled to show that the contract of guarantee has come to a naught. Ordinarily, therefore, when a guarantee is sought to be enforced, the same must be done through a court having appropriate jurisdiction. In the absence of any express provision in the statute, a person being in lawful possession cannot be deprived thereof by reason of default on the part of a principal borrower.

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- E 19. Furthermore, construction of a statute would not depend upon a contingency. A statute must be interpreted having regard to the constitutional provisions as also human rights. We will deal with this aspect of the matter a little later.

IMPLIED POWER

- F 20. Reference to implied and/ or incidental power of the Corporation as was contended by Mr. Venugopal deserves outright rejection.

G 21. Our attention has been drawn to the following passage of 'Principles of Statutory Interpretation' by Justice G.P. Singh, 9th edition, page 365 : 10th edition, page 391:

H "...The rule of implied prohibition is, however, subservient to the basic principle that the Court must, as far as possible, adopt a construction which effectuates the legislative intent and purpose..."

We fail to see how the aforementioned statement of law comes to the aid to the contention of the learned counsel. A

Moreover Section 29 of the Act does not deal with a case where express and implied conditions have been laid down in the matter of exercise of power conferred upon a statutory authority under a Statute. Section 29 does not envisage any prohibition at all either express or implied. B

Let us consider the legal implication of the aforementioned statement of law in the light of a decision of this Court.

In *Jamal Uddin Ahmad v. Abu Saleh Najmuddin and Another* [(2003) 4 SCC 257], this Court stated the law, thus: C

“11. Dealing with “statutes conferring power; implied conditions, judicial review”, Justice G.P. Singh states in the Principles of Statutory Interpretation (8th Edn., 2001, at pp. 333, 334) that a power conferred by a statute often contains express conditions for its exercise and in the absence of or in addition to the express conditions there are also implied conditions for exercise of the power. An affirmative statute introductive of a new law directing a thing to be done in a certain way mandates, even if there be no negative words, that the thing shall not be done in any other way. This rule of implied prohibition is subservient to the basic principle that the court must, as far as possible, attach a construction which effectuates the legislative intent and purpose. Further, the rule of implied prohibition does not negate the principle that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. To illustrate, an Act of Parliament conferring jurisdiction over an offence implies a power in that jurisdiction to make out a warrant and secure production of the person charged with the offence; power conferred on the Magistrate to grant maintenance under Section 125 of the Code of Criminal Procedure, 1973 to prevent vagrancy implies a power to allow interim maintenance; power conferred on D
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A a local authority to issue licences for holding hats or fairs implies incidental power to fix days therefor; power conferred to compel canegrowers to supply cane to sugar factories implies an incidental power to ensure payment of price...”

B A statutory authority, thus, may have an implied power to effectuate exercise of substantive power, but the same never means that if a remedy is provided to take action against one in a particular manner, it may not only be exercised against him but also against the other in the same manner.

C It is a trite law that the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. [See *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others*, (1987) 1 SCC 424, *Deewan Singh & Ors. v. Rajendra Pd. Ardevi & Ors.* 2007 (1) SCALE 32 and *Sarabjit Rick Singh v. Union of India*, 2007 (14) SCALE 263]

SECTION 31 - ISSUE

E 22. Keeping the aforementioned legal principles in mind, we may notice the other limb of the argument of Mr. Venugopal that Section 31 of the Act is to be taken recourse to only when an interlocutory order is required to be sought for and not otherwise.

F Section 31 of the Act provides for a special provision. It, apart from the default on the part of the industrial concern, can be invoked where the financial corporation requires an industrial concern to make immediate repayment of loan or advance in terms of Section 30 if and when such requirement is not met.

G The aforementioned provision could be resorted to by the Corporation, without prejudice, to its rights under the provisions of Section 29 as also Section 69 of the Transfer of Property Act and for the said purpose it is required to apply to the District Judge having appropriate jurisdiction. Section 31 of the Act provides for the reliefs which may be sought for by the

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Corporation strictly in terms thereof. Clause (aa) of sub-section (1) of Section 31 of the Act provides for a final relief. It does not speak of any interlocutory order. Clause (aa), as noticed hereinbefore, has been inserted by Act No. 43 of 1985. Thus, prior thereto even Section 31 could not have been taken recourse to against a surety. A
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23. Such a relief, if prayed for, would also lead to grant of a final relief and not an interlocutory one. Similarly, clause (b) of Sub-section (1) of Section 31 of the Act also provides for a final relief. Only clause (c) of Sub-section (1) of Section 31 of the Act empowers the District Judge in the event any application is filed by the Corporation to pass an ad interim injunction. The very fact that Section 31 uses the terminology "without prejudice" to the provisions of Section 29 of the Act and/ or Section 69 of the Transfer of Property Act, it clearly postulates an additional relief. What can be done by invoking Section 29 of the Act can inter alia be done by invoking Section 31 thereof also but therefor a different procedure has to be adopted. Section 31 also provides for a relief against a surety and not confined to the industrial concern alone. Sub-section (2) of Section 31 also refers to industrial concern and not the surety. The legislative intent, therefore, to our mind, is clear and unambiguous. C
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SUBSEQUENT AMENDMENT -- EFFECT

24. Sub-section (1A) of Section 32 of the Act lays down a procedure when clause (aa) of Sub-section (1) of Section 31 thereof is invoked. Sub-section (4A) of Section 31 also empowers the court to forthwith order the enforcement of the liability of the surety if no cause is shown on or before the date notified by the parties. However, in the event, a cause is shown upon making an investigation as provided for under Sub-section (6) of Section 32, a final order can be passed in terms of Sub-section (7) thereof. F
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25. Significantly, by Act No. 43 of 1985, Section 32G of the Act was also inserted. It does not speak of an industrial concern. Section 32G, therefore, can be resorted to both against H

A the industrial concern as also the security. It is so held by this Court in *Delhi Financial Corpn. And Another v. Rajiv Anand and Others* [(2004) 11 SCC 625] in the following terms:

B "...Thus a provision incorporated by the legislature with the intention to enable financial corporations to speedily recover amounts due to them cannot be whittled down by giving an interpretation which would render it nugatory."

C 26. While interpreting the provisions of a statute, the court employs different principles or canons. To interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. [See *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.* [JT 2008 (1) SC 31] Attempt on the part of the court while interpreting the provisions of a statute should, therefore, be to pose a question as to why one provision has been amended and the other was not? Why one terminology has been used while inserting a statutory provision and a different clause in another? It is well-known that *casus omissus* cannot be supplied. [See *Ashok Lanka v. Rishi Dixit* (2005) 5 SCC 598 and *J. Srinivasa Rao v. Govt. of A.P. & Anr* 2006. (13) SCALE 27 and *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors.* (2007) 5 SCC 447]

F 27. The legislative intent, in our opinion, is manifest. The intention of the Parliament in enacting Sections 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern, Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. The Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of Section 31 of the Act and not under Section 29 thereof.

G THE EFFECT – OF

H 28. A Corporation, after coming into force of Section 32G

of the Act has four remedies, viz.:

- (i) to file a suit
- (ii) to take recourse to Section 29;
- (iii) to take recourse to Section 31; and
- (iv) to take recourse to Section 32G of the Act.

29. In *A.P. State Financial Corporation v. M/s GAR Re-Rolling Mills and Another* [(1994) 2 SCC 647], this Court held:

“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...”

Section 32G of the Act provides for an additional remedy.

It is, however, interesting to note that while upholding the right of the Corporation to opt for either Section 29 or Section 31 of the Act, it was opined:

“...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 Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act...”

30. Right of property, although no longer a fundamental

A right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation.

B Recently, this Court in *P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.* [(2007) 6 SCC 59] dealing with adverse possession opined:

C "Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgement of *Beaulane Properties Ltd. v. Palmer* [2005 (3) WLR 554 : 2005 EWHC 817 (Ch.)] and *JA Pye (Oxford) Ltd v. United Kingdom* [2005] ECHR 921 [2005] 49 ERG 90, [2005] ECHR 921], The court herein tried to read the Human Rights position in the context of adverse possession. But what is commendable is that the dimension of human rights has widened so much that now property dispute issues are also being raised within the contours of human rights."

F 31. A surety may be a Director of the Company. He also may not be. Even if he is a close relative of the Director or the Managing Director of the Company, the same is not relevant. A Director of the Company is not an industrial concern. He in his capacity as a surety would certainly not be. A juristic person is a separate legal entity. Its veil can be lifted or pierced only in certain situations. [See *Salomon v. Salomon and Co.* [1897 AC 22], *Dal Chand and Others v. Commissioner of Income Tax, Punjab* (1944) 12 ITR 458, *Juggilal Kamlatpat vs. Commissioner of Income Tax, U.P.* (1969) 1 SCR 988 = 1969 (73) ITR 702 and *Kapila Hingorani v. State of Bihar* (2003) 6 SCC 1]

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32. Interpretation of a statute would not depend upon a contingency. It has to be interpreted on its own. It is a trite law that the court would ordinarily take recourse to the golden rule of literal interpretation. It is not a case where we are dealing with a defect in the legislative drafting. We cannot presume any. In a case where a court has to weigh between a right of recovery and protection of a right, it would also lean in favour of the person who is going to be deprived therefrom. It would not be the other way round. Only because a speedy remedy is provided for that would itself lead to the conclusion that the provisions of the Act have to be extended although the statute does not say so. The object of the Act would be a relevant factor for interpretation only when the language is not clear and when two meanings are possible and not in a case where the plain language leads to only one conclusion.

33. Even if the legislation is beneficent, the same by itself would not be held to be extendable to a situation which the statute does not contemplate. [*S. Sundaram Pillai, etc. v. V.R. Pattabiraman* AIR 1985 SC 582]

In *Attorney General v. Milne* [1914-15] All E.R. Rep. 1061], Lord Dunedin states:

“Now, prima facie one would expect that the scope of the two sets of provisions would be the same, i.e., in other words that the question must be answered as to those kinds of property which are swept in by s.2, just as much as to those which fall under s.1. Inasmuch, however, as this is a taxing statute, and the duty here is an additional duty, I consider that it must be shown that the words would clearly cover the individual case to which it is right to apply them.”

34. It is now well-settled that when more than one remedy is provided for an option is given to a suiter to opt for one or the other remedy. Such a provision is not ultra vires as has been held by this Court in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and Others* [(1974) 2 SCC

- A 402], *Director of Industries, U.P. and Others v. Deep Chand Agarwal* [(1980) 2 SCC 332] *Rajiv Anand* (supra).

CONCLUSION

- B 35. For the views we have taken, it is not necessary for us to consider the question as to whether before a property is put to sale, possession is required to be taken.

36. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly. Counsel's fee assessed at Rs. 50,000/- in each case.

- C D.G. Appeals dismissed.