A

GUJARAT STATE FINANCIAL CORPORATION

v.

M/s. NATSON MANUFACTURING CO. (P) LTD. & ORS.

August 29, 1978

B [V. R. KRISHNA IYER, D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

State Financial Corporations Act (Act LXIII), 1951—Nature of proceedings under Sections 31 and 32—Court Fee payable on an application that may be made under Section 31(1) of the Act—Whether governed by Article 1 or 7 of Schedule I or by Article 1(c) of Schedule II of Bombay Court Fees Act, 1959.

C The appellant Corporation, which grants or guarantees the loan to be raised by industrial concerns either from the scheduled banks or state Cooperative Banks or those floated in public market, is entitled to make, for one or more of the reliefs set out in Section 31(1) of the State Financial Corporation Act, an application to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or substantial part of its business, when any such concern defaults in repayment of loan or fails to comply with the terms of the agreement. The Corporation made several applications purporting to be under Section 31(1) of the Act in various district courts in the State of Gujarat. D A question was raised in the District Courts about the proper court fee payable on such applications. The Corporation contended that the application would be governed by Article 1(c) of Schedule II of the Bombay Court Fees Act, 1959 and a fixed court fee in the amount of 65 paise would be payable in respect of the application. But the State contended that the application would be governed either by Article 1 of Schedule I or at any rate Article 7 of Schedule I and the court fee payable would be *ad-valorem* on the amount of E value of the subject matter in dispute or on the amount of the monetary gain or loss to be prevented according to the scales prescribed under Article 1 of Schedule I. All the district courts except Broach accepted the contention of the State; but the Broach district court opined that the application under Section 31(1) was in the nature of an execution application and it would be governed by Article 1(c) of Schedule II. Both the Corporation and State of Gujarat F went in revision before the High Court. The High Court by a common judgment held that an application under Section 31(1) should bear an *ad valorem* court fee. In reaching this conclusion, the High Court treated the application under Section 31(1) of the Act on par with a suit by a mortgagee to enforce the mortgage debt by sale of the mortgaged property which is being treated as a money suit falling within the purview of Article 1 of Schedule I. Alternatively, it was held that even if the application under Section 31(1) is not a G plaint within the meaning of Article I of Schedule I it would fall within the purview of Article 7 of Schedule I.

Allowing the appeal, by special leave the Court

HELD : 1. The form of the application, the nature of the relief, the compulsion to make interim order, the limited enquiry contemplated by sub-section (6) of Section 32 and the nature of relief that can be granted and the manner of execution clearly show that the application under Section 31(1) is neither a H plaint as contemplated by Article 1 of Schedule I nor an application in the nature of a plaint as contemplated by Article 7 of the Court-Fees Act, 1870. [382 B-C]

Once Article 7 of the Schedule I of the Court-Fees Act is excluded there was (and could be) no dispute that an application under Section 31(1) of the Act would be covered by the residuary Article 1(c) of Schedule II of the Court Fees Act and it should bear a fixed court fee in the sum of 65 paise. [382 D]

2. Section 31(1) of the Act prescribes a special procedure for enforcement of the claims of the Financial Corporation. The Corporation is to make an application for the reliefs set out in Section 31(1). The reliefs that a Court can grant 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 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 loan. It is not even something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property. The distinguishing features noticeable between a suit for recovery of mortgage money by sale of mortgaged property and an application under s. 31 for one or more of the relief specified therein are that even if the Corporation as applicant so chooses, it cannot in the application, pray for a preliminary decree for accounts or a final decree for payment of money nor can it seek to enforce any personal liability even if such one is incurred under the contract of mortgage. At any rate in an application under Section 31(1) the Corporation does not and cannot pray for a decree for its outstanding dues. It can make an application for one of the three reliefs, none of which, if granted, results in a money decree or decree for recovery of outstanding loans or advance. The form of the relief by itself would not attract one or the other Article of Court-Fees Act. Section 32 of the Act clearly points to the conclusion that the proceedings under Section 31(1) of the Act are not in the nature of a money recovery proceedings. Article 1 of Schedule I would, therefore not be attracted. [378C-H]

3. The whole conspectus of provisions in Section 32 coupled with the nature of relief sought under s. 31(1) makes it clear that special provision is made for certain types of reliefs that can be obtained by a Corporation by an application under Section 31(1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property. Nor can it be said to be a proceeding to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. The substantive relief in an application under Section 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. It may be that in the ultimate analysis the result would be that the property will be sold for repayment of the loan or advance taken by the industrial concern from the Corporation but it could not be said that it is substantive relief claimed by the Corporation which can be valued in terms of monetary gain or prevention of monetary loss as envisaged by Article 7 of Schedule I of Court-Fees Act. [382 A-C & 381G-H]

Sub section (6) of Section 32 of the Act has to be read in the context in which it is placed. It does not expand the contest in the application as if it is suit between a mortgagee and the mortgagor for sale of mortgaged property. [381E]

A *Observation* :

[When dealing with a question of court fee, the perspective should be informed by the spirit of the *magna carta* and of equal access to justice which suggests that a heavy price tag on relief in Court should be regarded as unpalatable.] [382E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1553 of
B 1977.

Appeal by Special Leave from the Judgment and Order dated 5-4-1977 of the Gujarat High Court in Civil Revision Application No. 847 of 1975.

Soli J. Sorabjee, Addl. Sol. General and *P. H. Parekh* for the Appellant.
C

D. V. Patel, Badri Das Sharma and *M. N. Shroff* for Respondent No. 5.

The Judgment of the Court was delivered by

DESAI, J. This appeal by special leave raises a narrow but interesting question on the nature of proceedings under section 31
D and 32 of the State Financial Corporations Act, 1951 ('Act' for short) which has a direct impact on the question of court fees to be paid on an application that may be made under s. 31 of the Act. The question arose in the context of the following facts :

The State of Gujarat set up the Gujarat State Financial Corporation ('Corporation' for short), the appellant herein, under s. 3 of the
E Act. The Corporation was set up *inter alia* for granting or guaranteeing the loans to be raised by industrial concerns either from scheduled banks or State co-operative banks or those floated in the public market. The Corporation guaranteed numerous such loans, advanced to the industrial concerns in the State of Gujarat on certain terms
F and conditions agreed between the parties. When the industrial concern defaults in repayment of loan or fails to comply with the terms of the agreement the Corporation is entitled to make an application to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or substantial part of its business for one or more of the reliefs set out in s. 31(1) of the Act. The
G Corporation appears to have made applications purporting to be under s. 31(1) of the Act in various District Courts in the State of Gujarat against different industrial concerns. A question was raised in the District Courts about the proper court fee payable on such applications. The Corporation contended that the application would be governed by Article 1(c) of Schedule II of the Bombay Court
H Fee Act, 1959, and a fixed court fee in the amount of 65 paise would be payable in respect of the application. On the other hand, the State contended that application would be governed either by

Article I of Schedule I or at any rate by Article 7 of Schedule I and the court fee payable would be *ad valorem* on the amount of value of the subject matter in dispute or on the amount of the monetary gain or loss to be prevented according to the scale prescribed under Article I of Schedule I. It appears that except for the Distt. Judge, Broach, all other District Judges accepted the contention on behalf of the State. The Distt. Judge, Broach was of the opinion that the application unde s. 31(1) was in the nature of an execution application and it would be governed by Article 1(c) of Schedule II. The Corporation preferred revision applications to the High Court questioning the correctness of the decisions directing levy of *ad valorem* court fee. The State of Gujarat also preferred a revision application against the decision of the Distt. Judge, Broach holding that the application under s. 31(1) of the Act was in the nature of an execution application. The High Court by a common judgment held that the application under s. 31(1) should bear *ad valorem* court fee. In reaching this conclusion the High Court treated the application under s. 31(1) of the Act on par with a suit by a mortgagee to enforce the mortgage debt by sale of the mortgaged property which is being treated as a money suit falling within the purview of Article I of Schedule I. Alternatively, it was held that even if the application under s. 31(1) is not a plaint within the meaning of Article 1 of Schedule I, it would fall within the purview of Article 7 of Schedule I which provides an *ad valorem* court fee on an application made for obtaining substantive relief which is capable of being valued in terms of monetary gain or prevention of monetary loss because to all intents and purposes the application is one for recovery of the outstanding claim of the Corporation. In accordance with these findings the revision applications preferred by the Corporation were dismissed and the one preferred by the State was allowed.

Mr. Sorabji, learned counsel who appeared for the appellant Corporation contended that the view taken by the learned Judge of the High Court that on an analogy the application under s. 31(1) by the Corporation is akin to a suit by a mortgagee to enforce his mortgage debt by sale of mortgaged property and, therefore, money suit, falling within the purview of Article 1 of Schedule I of the Bombay Court Fee Act, 1959, or the observation that the substantive relief claimed in the application is one which is capable of being value in terms of monetary gain or prevention of monetary loss and would attract Article 7 of Schedule I, is not correct.

The State Financial Corporations Act, 1951, was enacted by the Parliament with a view to enabling the State Governments to establish a Financial Corporation for enhancing the pace of industrialisa-

A tion by providing credit on easy terms for setting up industrial concerns and/or for expanding the activities of the existing industrial concerns. Section 25 enables the Financial Corporation to carry on and transact any of the business set out therein which includes guaranteeing on such terms and conditions as may be agreed upon (i) loans raised by industrial concerns which are repayable within a B period not exceeding 20 years and are floated in the public market; or (ii) loans raised by industrial concerns from scheduled banks or State Co-operative Banks. It can also underwrite the issue of stock, shares, bonds or debentures by an industrial concern. The Corporation can either guarantee the loan raised by the industrial concern or may even grant itself a loan on such terms and conditions as may be C agreed upon between the Corporation and the industrial concern.

Section 29 confers upon Financial Corporation, in case of default by industrial concern, 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 or sale and realise the property pledged, D mortgaged, hypothecated or assigned to the Financial Corporation, and any transfer of property made by the Corporation in exercise of the power conferred by s. 29 shall vest in it all rights in or to the property transferred as if the transfer had been made by the owner of the property.

The relevant two sections with which we are concerned in this E appeal are ss. 31 and 32. Section 31 provides as under :—

> "31. (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 F 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 G this Act and of section 69 of the Transfer of Property Act, 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 H following reliefs, namely :—
>
> (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

(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.

(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.".

Section 32(1) provides that when an application is made seeking reliefs mentioned in clauses (a) and (c) of sub-s. (1) of s. 31, it is obligatory upon the District Judge to pass an *ad interim* order attaching the security or so much of the property of the industrial concern as would on being sold realise an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation together with the costs of the proceedings with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment. If the applicant seeks relief mentioned in clause (b) of sub-section (1) of s. 31, the District Judge shall pass an order of *ad interim* injunction restraining the industrial concern from transreferring or removing its machinery, plant or equipment. A notice accompanied by copies of the interim order and the application is required to be served upon the industrial concern calling upon it to show cause why *ad interim* order of attachment should not be made absolute or the injunction confirmed or the management transferred to the Corporation. If no cause is shown on or before the specified date, the order is to be made absolute. Sub-section (6) of s. 32 provides that if the industrial concern shows cause, the Distt. Judge is required to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto. On completing the investigation the District Judge may either confirm the order or vary the order or release the property from attachment. An order of attachment or sale of property has to be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908, for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree holder.

A Article 1 of Schedule I of the Court-fees Act provides for *ad valorem* court fee on plaint or memorandum of appeal (not otherwise provided for in the Act) or of cross-objections presented to any civil or revenue court, to be levied according to the scale set out in the Schedule on the value of the subject-matter in dispute. Article 7 provides for court-fees on a plaint or application or petition B other than those provided in the earlier Articles to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss including cases where an application or petition is treated either as a plaint or is described as the mode of obtaining the relief as aforesaid, the fee to be calculated on the amount of the monetary gain or monetary loss to be prevented according to the C scale prescribed under Article 1.

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, D 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 E 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). If the Corporation seeks the relief of transferring the management of the industrial concern to the Financial Corporation it could hardly be said that the application purports to be a plaint F for recovering the mortgage money by sale of mortgaged property. It would be inappropriate to say that on an analogy an application under s. 31(1) is something akin to a suit by a mortgagee to recover mortgage money by sale of mortgaged property. 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 applica- G tion for one of the three reliefs, none of which, if granted, results in a money decree, or decree for recovery of outstanding loan or advance. Section 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. It is difficult to comprehend that merely the form of relief would attract one or the other Article of Court-fees Act. If H relief of sale of mortgaged property is sought which permits an argument that the application is nothing but a suit for realising mortgage money by sale of mortgaged property and, therefore,

ad valorem court-fees is payable, then what would be the nature of the application when instead of sale of mortgaged property the relief asked for is transfer of the management of the industrial concern or an interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment from the premises of the industrial concern without the permission of the Board? In the last mentioned two cases the relief is incapable of any monetary evaluation. The High Court got over this difficult question by merely observing that this need not be answered in the petitions before the High Court. Frankly speaking, they shed some light on the nature of the proceedings contemplated by s. 31, and s. 32 of the Act clearly points to the conclusion that the proceedings are not in the nature of a money recovery proceedings. Article 1 of Schedule I would, therefore, not be attracted and we must say in fairness to Mr. D. V. Patel, learned counsel for the respondent State of Gujarat who specifically stated that the application would not fall under Article 1 of Schedule I but it would be governed by Article 7 of Schedule. I.

Developing the contention, Mr. Patel urged that the substance of the matter is that even if the Corporation applies for an order of sale of mortgaged property, the substantive relief is one of sale of mortgaged property so that the Corporation may reimburse itself of the loan advanced to the industrial concern thereby acquiring monetary gain or at any rate preventing monetary loss. The outward form, it was said, may be different but the substance of the matter is that the Corporation seeks to recover its loan by sale of mortgaged property. It was said that at any rate either the Corporation by the substantive relief seeks to make a monetary gain of reimbursing itself in respect of the loan advanced by it or prevents the loss that it may suffer if the loan is not repaid, by bringing the mortgaged property to court auction and appropriate the sale price towards its loan.

Section 31(1) enables the Corporation in the event of breach of agreement or default in payment of loan or advance or an instalment thereof to make an application not merely for sale of mortgaged property but even for transferring the management of the industrial concern to the Financial Corporation or merely injunct the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the concern without the permission of the Board. An application for transfer of management of the industrial concern could by no stretch of imagination, be said to be an application for repayment of the loan though Mr. Patel did say that the management can only be retained till such time as the Corporation reimburses itself. Further, if an application under s. 31(1) is merely for an injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment with-

A out the permission of the Board, it could hardly, or even remotely, be said that such a relief substantively provides for repayment of the loan or it is a relief to prevent an anticipatory loss. Let it be recalled at this stage that if the Court-fees Act is a taxing statute its provisions have to be construed strictly in favour of the subject litigant (*vide State of Maharashtra* v. *Mishrilal Tarachand Lodha & Ors.,*) (1). In B a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability (*vide Joint Commercial Tax Officer, Harbour Div. II, Madras* v. *Young Men's Indian Association (Regd.), Madras & Ors.*(2). If it is a fee, the enormity of the exaction will be more difficult to sustain. While we do not pronounce, we indicate the implication of the High C Court's untenable view.

What then is the nature of proceedings contemplated by s. 31(1) if it is not a suit by the mortgagee for recovery of mortgage money by sale of mortgaged property. Section 31 would to some extent provide a clue to this question. On an application under s. 31(1) D 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 is transfer of the management of the industrial concern to the Corporation it is obli- E gatory upon the Distt. Judge to grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment. In either event a notice notifying the industrial concern to show cause why the order should not be made absolute is required to be served upon the industrial concern.

F It was said that if cause is shown by the industrial concern it is obligatory upon the Distt. Judge to investigate the claim of the Financial Corporation in accordance with the provision contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto. The contention is that once an industrial concern shows cause and contests the application of the Corporation there G arises a *lis* between the parties which would include the investigation of the monetary claim of the Corporation and *per se* it would be a suit between the mortgagee and the mortgagor in which the ultimate relief is sale of mortgaged property for repayment of the mortgage money. Sub-s. (6) of s. 32 of the Act has to be read in the context in which it is placed. The claim of the Corporation is not the mone- H tary claim to be investigated though it may become necessary to

(1) [1964] 5 SCR 230 at 234.
(2) [1970] 3 SCR 680 at 688.

specify the figure for the purpose of determining how much of the security should be sold. But the investigation of the claim does not involve all the contentions that can be raised in a suit. The claim of the Corporation is that there is a breach of agreement or default in making repayment of loan or advance or instalment thereof and, therefore, the mortgaged property should be sold. It is not a money claim. The contest can be that the jurisdictional fact which enables the Corporation to seek the relief of sale of property is not available to it or no case is made out for transfer of management of the industrial concern. Sub-s. (7) of s. 32 prescribes what reliefs can be given after investigation under sub-s. (6) is made, and it clearly gives a clue to the nature of contest under Sub-s. (6). Sub-s. (8) of s. 32 only prescribes the mode and method for executing the order of attachment or sale of property as provided in the Code of Civil Procedure. Sub-ss. (6), (7) and (8) of s. 32 read together would give an opportunity to the industrial concern to appear and satisfy the District Judge what the situation envisaged by s. 31(1) has not arisen and the relief should not be granted. In the absence of a provision giving such an opportunity to the industrial concern to whose detriment the order is required to be made a serious question may arise about the constitutional validity of the procedure prescribed under s. 31(1) inasmuch as it would be violative of principles of natural justice and that too in a proceeding in a Court of Law. The provision contained in sub-s. (6) does not expand the contest in the application made under s. 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property. If that were so, the Corporation would not be limited to specified reliefs only and if the contract permits it may seek to enforce personal liability of mortgage which it cannot enforce in an application under Sec. 31(1). It may be, as contended by Mr. Patel, that in the ultimate analysis the result would be that the property will be sold for repayment of the loan or advance taken by the industrial concern from the Corporation but it could not be said that it is a substantive relief claimed by the Corporation which can be valued in terms of monetary gain or prevention of monetary loss as envisaged by Article 7 of Schedule I of Court-fees Act. The substantive relief in an application under s. 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree. We are unable to appreciate the view taken by the High Court that the proceeding is not in the nature of execution of a decree because the question of enforcement of the order of attachment or sale would only arise after the same is made absolute under Sub-s. (7). One has to look at the whole conspectus of provisions in s. 32 coupled with the nature of relief sought under s. 31(1)

A and it becomes clear that special provision is made for certain types of reliefs that can be obtained by a Corporation by an application under s. 31(1) which could not be styled as substantive relief for repayment of mortgage money by sale of mortgaged property. Nor can it be said to be a proceeding to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary B loss. The form of the application, the nature of the relief, the compulsion to make interim order, the limited enquiry contemplated by Sub-s. 6 of s. 32 and the nature of relief that can be granted and the manner of execution clearly show that the application under s. 31(1) is neither a plaint as contemplated by Article 1 of Schedule I nor an C application in a nature of a plaint as contemplated by Article 7 of Schedule I of Court-fees Act.

Once Article 7 of Schedule I of the Court-fees Act is excluded there was (and could be) no dispute that an application under s. 31(1) of the Act would be covered by the residuary Article 1(c) of Schedule II of the Court-fees Act and it should bear a fixed court D fee in the sum of 65 paise. Therefore, the High Court was clearly in error in holding that the application should bear *ad valorem* court fee.

When dealing with a question of court fee, the perspective should be informed by the spirit of the *magna carta* and of equal access to justice which suggests that a heavy price tag on relief in Court should E be regarded as unpalatable.

In this view of the matter this appeal is allowed and the order made by the High Court as well as the orders made by the various District Judges except the District Judge, Broach, are set aside. On the question of costs, we looked at the specimen applications filed by the Corporation disclosing a clear lack of wisdom on the part of F the Corporation in asking for a decree for certain amount which could not be granted under s. 31(1). Therefore, there was a misconception on either side and the proper order should be that the parties shall bear their own costs.

S.R. *Appeal allowed.*