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

Ref.No.RFC/F.Law-3/LPM(22)/ 2249. Dated: 5 Sept. 2006

**CIRCULAR**  
(Lit. Cir No. 137)

**Sub: Important decision of Hon'ble DB of High Court, Jodhpur in the matter of M/s. Som Prakash & Sons Bricks Pvt. Ltd., Vs. RFC & Ors.**

The Hon'ble D.B. of High Court, Jodhpur in the case of M/s.Som Prakash & Sons Bricks Pvt.Ltd., Vs. RFC & Ors (DB Civil Spl.Appeal (Writ) No. 230/2005) has decided an important point that during the span of seven years before the Corporation took steps in terms of Section 29 of the SFCs Act or, in deed, even thereafter during pendency of Writ Petitions, not a single paise much less any instalment was paid by the appellant to the Corporation towards the payment of loan. The plea of calamity in the form of Cyclone on 03.06.94 and the alledged resultant loss. The another point regarding calculation of correct MRV was also disputed. On these grounds the appelliant has challenged the validity of sale.

The Hon'ble D.B. of High Court has considered the following decided cases:-

1. U.P.Financial Corporation & Ors. Vs. Naini Oxygen & Acetylene Gas Ltd., & Anr. (1995) 2 SCC 754.
2. Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd., & Ors. (1996) 5 SCC 65.
3. Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr., (2002) 3 SCC 496.

The Hon'ble D.B. of High Court has held that appellant cannot seek remedy simultaneously in the Writ Petition and in the Suit pending in the Court and appellant is not entitled to discretionary relief. He having not approached the Court with clean hands, no relief can be granted to it. A photo copy of judgement dated 07.04.06 is enclosed for record and reference to be used in the similar cases.

All concerned are advised to make a note of it and ensure that this judgement is brought to the notice of our Advocates for taking use in the cases being contested by or against the Corporation, considering the facts and merit of the particular case in which it can be applied.

  
(Karmi Singh Rathore)

Chairman & Managing Director

Encl: a/a

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

JUDGMENT ::

M/s Som Prakash & Sons Bricks(P) Ltd  
Vs  
Rajasthan Financial Corporation and ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 230/2005  
UNDER SECTION 18 OF THE RAJASTHAN HIGH  
COURT ORDINANCE.

DATE OF JUDGMENT :: 7<sup>th</sup> April 2006

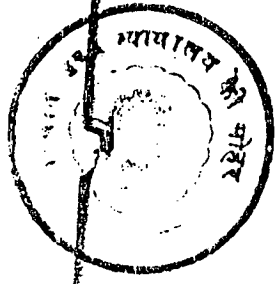
:: PRESENT ::

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA  
HON'BLE SHRI JUSTICE GOPAL KRISHAN VYAS

Mr. Avinash Acharya, for the appellant.  
Mr. D.S. Rajvi, for the Financial Corporation.  
Mr. B.D. Purohit, for respondent No.3.

This special appeal is directed against the order of the learned single judge dated 2.6.2005 in S.B. Civil writ petition No.2811/2004 dismissing the writ petition of the appellant. The appellant had filed the writ petition for setting aside the sale of the industrial unit under section 29 of the State Financial Corporations Act, 1951, and direction upon the Rajasthan Financial Corporation to hold fresh auction in respect of the assets of the unit allowing the petitioner opportunity to participate in the process of sale, and certain other incidental reliefs.

Facts of the case, briefly stated, are as follows. On 13.2.1990 a term loan of Rs.53.60 lacs was sanctioned by the Rajasthan Financial Corporation (in short the 'Corporation') to the petitioner for establishing industrial unit for manufacturing bricks. On 23.3.1991 subsidy of Rs.7.8 lacs was also sanctioned out of which a sum of Rs.5.54 lacs was



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disbursed. Case of the appellant is that on 3.6.1994 the unit suffered huge loss on account of cyclone and the production came to a halt. Sickness certificate was granted by the District Industries Centre (DIC) and the appellant was entitled to further financial assistance but, instead, the Corporation initiated action under Section 29 of the State Financial Corporation Act (in short the 'Act'). Section 29 of the Act confers right on the Financial Corporation established under the Act to take over management and possession of the industrial concern and transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Corporation in case of default in the payment of any loan or advance or any instalment, etc. It is relevant to mention here that by the time action was initiated, dues of the Corporation had accumulated to Rs.1.05 crores. On 3.1.1997 the Corporation took over possession of the unit. On 1.10.1997 notice was issued inviting tenders for sale of the mortgaged assets. The appellant challenged the action in SBCWP No.1066/1997. In course of hearing of the writ petition, on 6.12.1999 an order was passed to the effect that if the appellant deposits 1/3<sup>rd</sup> of the dues, the Corporation shall handover possession of the unit. This was admittedly not done and the writ petition was ultimately dismissed as withdrawn on 19.2.2001 though with liberty to file fresh writ petition if need arises. On 24.3.2003 the unit/assets was sold in auction for a sum of Rs.20 lacs. The sale was confirmed on the same day. The appellant filed suit for redemption of mortgage being suit No.77/2003 in the district Court at Hanumangarh. On 24.4.2003 temporary injunction was issued. The injunction however, was vacated and the application for temporary



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injunction was dismissed on 3.6.2004. The appellant filed S.B. Civil Misc. Appeal No.882/2004 in this Court challenging the said order dated 3.6.2004. On 1.7.2004 the connected writ petition given rise to this appeal was filed in the aforesaid misc. appeal. The misc. appeal was dismissed on 14.9.2004. Earlier the single Bench had passed an interim order of status quo on 16.7.2004. Meanwhile, the appellant had submitted proposal in the light of some order passed in the aforesaid misc. appeal which was rejected by the Corporation on 9.5.2005. The writ petition was dismissed thereafter by the impugned order on 2.6.2005.

Before proceeding further, it may be relevant to mention here that during span of seven years, before the Corporation took steps in terms of Section 29 of the Act or, indeed, even thereafter during pendency of the writ petitions, not a single paisa much less any instalment was paid by the appellant to the Corporation towards re-payment of loan. The plea of calamity in the form of cyclone on 3.6.1994 and the alleged resultant loss was a make-belief story. Even if it is accepted that the appellant unit was hit by cyclone, admittedly nothing had been paid earlier.

Shri Avinash Acharya, appearing for the appellant fairly did not dispute the case of the respondent regarding non-payment of even single paisa to the Corporation. He agreed that the appellant was a 'chronic' defaulter. He nevertheless submitted that unit/assets had been sold for an amount which was far less than its real value. It was contended that the Market Realisable Value (MRV) of the assets was

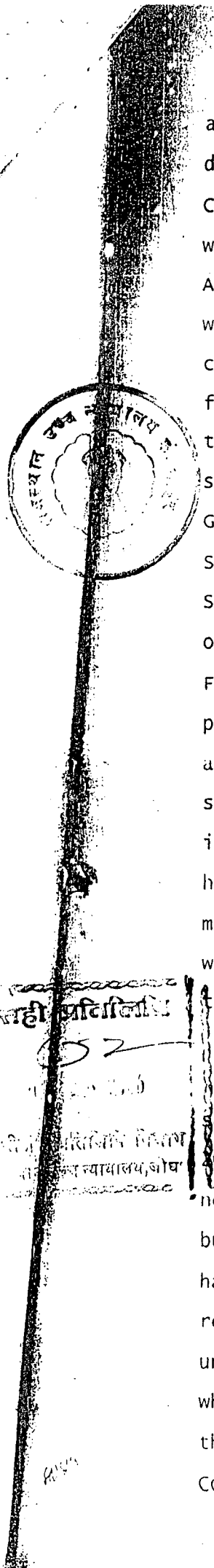
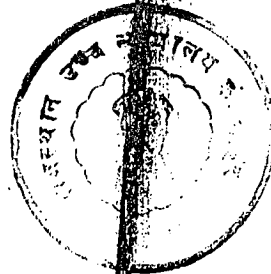
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assessed in a most perfunctory manner at Rs.25 lacs in disregard of the norms and guidelines fixed by the Corporation itself for fixation of the MRV. Reference was made in support of the contention to ~~the~~ Annexure-R/3 to the reply of the Corporation and it was submitted that a Committee be constituted to calculate the MRV as per the prescribed norms. This in fact was the solitary prayer made by the counsel for the appellant in course of hearing of the appeal. In support of the submission, reliance was placed on Gajraj Jain vs. State of Bihar and others, (2004) 7 SCC 151 and S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and others, (2004) 7 SCC 166. Relying on the said decisions it was submitted that the Financial Corporation has right to take over possession of the industrial concern and sell the assets charged with debt in case of default under sub-sections (1) and (4) of section 29 of the Act, but it is the duty of the Corporation, as a first charge-holder to obtain best possible price which means fair market value, so as to protect its own interests as well as interests of the subsequent charge-holder and the mortgagor.

On behalf of the respondents, it was submitted that between October, 1997 and February, 2003 as many as 15 notices had been published in the newspaper etc. for sale of the industrial unit/assets but in absence of offers/bid to buy the unit, the sale had to be postponed. Finally, after negotiations, respondent No.3 Ashok Kumar Agarwal agreed to buy the unit on deferred payment basis for Rs.20 lacs, 25% of which was paid on the date of sale i.e. 24.3.2003 and the sale was approved. As per policy of the Corporation, sale once approved is not reopened. As

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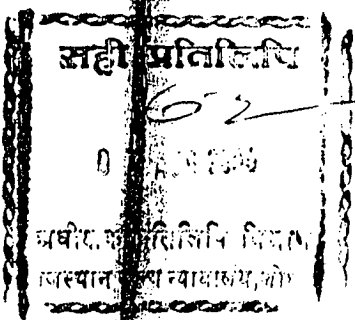
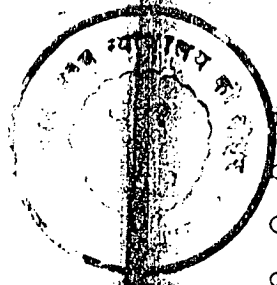
regards case of the appellant that the price for which unit was sold was less than the real market value it was submitted that assets such as building, plant & machineries had become unfit and unsuitable on account of disuse or development of new technology and their market value had diminished.

The only point for consideration is whether it is a fit case in which the sale of the unit should be put on hold pending fixation of the MRV by a Committee as suggested on behalf of the appellant. In other words, whether in the facts and circumstances of the case, it would be fit and proper to interfere with the sale at this stage?

In U.P. Financial Corporation and Others Vs. Naini Oxygen & Acetylene Gas Ltd and anr. (1995) 2 SCC 754, while considering the validity of sale under section 29 of the Act in a case where the industrial concern had made persistent defaults in payment of loan instalments, the Supreme Court observed as under:

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

.....



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

In Karnataka State Financial Corporation Vs. Micro Cast Rubber & Allied Products (P) Ltd. and others, (1996) 5 SCC 65, while considering the scope of interference with sale under Section 29 of the Act, the Supreme Court observed:

"In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e., unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation."

The observations in Haryana Financial Corporation and another Vs. Jagdamba Oil Mills and another, (2002) 3 SCC 496 also appear to be apposite and may usefully be quoted as under:

"The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the



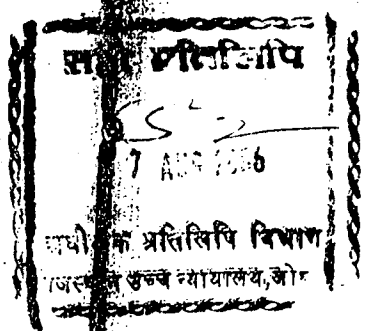
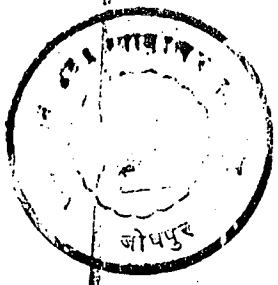
scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

.....

Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show, not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight of by the courts below. It is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material."

Section 29 gives a right to Financial Corporation inter alia to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to Financial Corporation. This right accrues when the industrial concern, which is under a liability to Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives Financial Corporation in the event of default the right to take over the management or possession or both and thereafter deal with the property."

In Gajraj Jain vs. State of Bihar (supra), the assets of the concern had been sold without ascertaining the market value and computing the sale consideration by merely adding its dues to the claim of the Central Bank of India which had second charge over the assets. Even the sale consideration was not received in full. The Corporation accepted downright payment of its own dues leaving the dues of the Central Bank in the form of promise to pay in future. The Supreme Court held that there was no sale for distribution of sale proceeds in terms of Section 29(1) of the Act since there was no realisation of the property charged with debt and the interest of the



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Central Bank and the mortgagor stood totally defeated by the sale agreement. In these facts, the Court interfered with the impugned sale.

In S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar (supra) the Supreme Court found on facts that there was unusual haste in conducting the sale and deviations from the norms and there was no explanation for the same. The sale was held to be unfair and invalid by reason of inexplicable and unexplained circumstances.

In the instant case, as mentioned above, it took 15 attempts and over five years to get the unit sold. The prospective buyers were not forthcoming and the Corporation had to negotiate. Apparently, the attending circumstances left open to the Corporation to scale down and agree to sell the unit for lesser sum i.e. Rs.20 lacs on deferred payment basis. We do not think in the circumstances, the Corporation acted unfairly and unreasonably to warrant interference by this Court.

In course of hearing, it was submitted on behalf of the appellant that the appellant has arranged a prospective buyer in one Ajay Gupta who is prepared to pay Rs.40 lacs for the unit. Counsel in fact produced an undated cheque for Rs.40 lacs alleged drawn by said Ajay Gupta in favour of the Corporation. We are not impressed by the so-called offer. A similar submission was made before the learned single Judge that the said Ajay Gupta was agreeable to buy the unit for Rs.25 lacs. The present offer is contained in a letter dated 20.6.2005 i.e. after the decision of the learned single Judge, brought on record as enclosure

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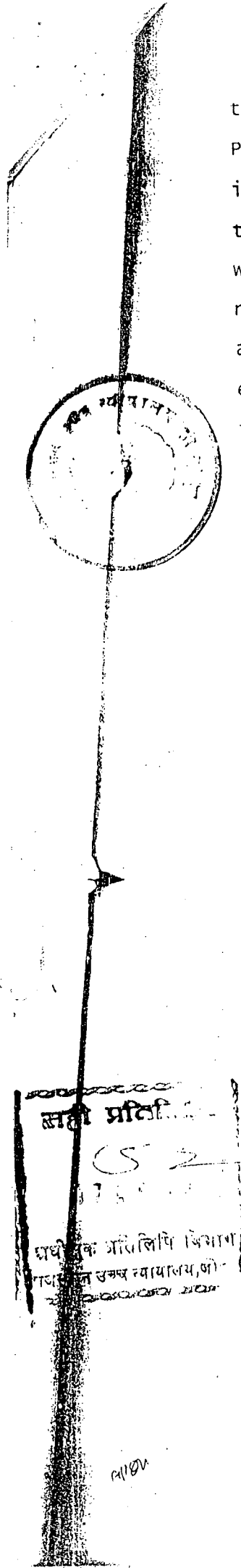
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to the application under Order 41 Rule 27 of the Civil Procedure Code by the appellant. we do not think that it would be appropriate to accept the ipsi dixit of the appellant. If the said prospective buyers was willing to buy the unit for Rs.40 lacs or 25 lacs, nothing prevented him from participating in the auctions held on 24.3.2003 or earlier. There is no explanation in this regard. There is no affidavit by the so called prospective buyer. we are inclined to think that the so-called offer is merely an attempt to stall the process of sale approved more than three years ago. we do not think the so called offer is bona fide.

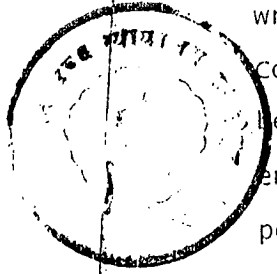
while considering any plea of the appellant, his past conduct cannot be overlooked. The fact that appellant failed to pay a single instalment, indeed single paisa, all these ~~three~~ years cannot be lost sight of. His only plea in this appeal is that Annexure-R/3 does not reflect the correct MRV and a Committee should be constituted for. correct determination of the MRV. There is no contra evidence regarding the MRV and simply on the ground that MRP was not correctly fixed by Annexure-R/3 as per the prescribed norms, the fixation made by Annexure-R/3 cannot be termed as mala fide. The plea, in our opinion is just a ploy and a desperate attempt to put spoke in the wheel to sabotage the sale.

Respondent No.3 on the other hand has already paid 1/4<sup>th</sup> of the sale price. On account of pendency of the present litigation and the orders passed - whether in the writ petition/appeal or in the suit referred to above, he has not been able to get the fruits of his investments. In fairness to the



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respondent No.3, we may notice his submission that there is nothing on record to doubt the bonafide of the sale and being bonafide purchaser, while considering the case of the appellant, his claim cannot be ignored. It was also submitted that appellant cannot seek remedy simultaneously in the writ petition and in the suit still pending in the Court at Hanumangarh. It was also submitted that being a chronic defaulter, the appellant is not entitled to discretionary relief. In the earlier writ petition, he was given opportunity to deposit 1/3<sup>rd</sup> of the dues which it had failed to do. Having not approached the Court with clean hands, no relief can be granted to it.

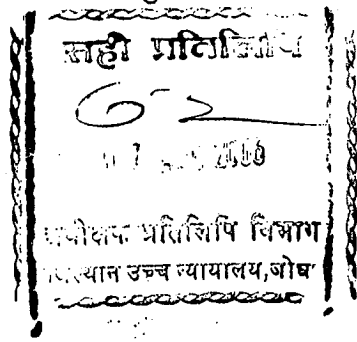


In the facts and circumstances of the case, we are satisfied that the appellant is not entitled to any relief in present proceedings. we thus, do not find any error in the order of learned single Judge dismissing the writ petition.

In the result, the appeal is dismissed but without any order as to costs.

*G.K.Vyas*  
[GOPAL KRISHAN VYAS], J.

*S.N.Jha*  
[S.N. JHA], C.J.



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D.B. CIVIL SPECIAL APPEAL (W) NO.230/2005  
M/s. Som Prakash & Sons Bricks(P) Ltd.  
Vs.  
Rajasthan Financial Corporation and Ors.



For favour of consideration of Hon'ble Mr. Justice Gopal  
Krishan Vyas

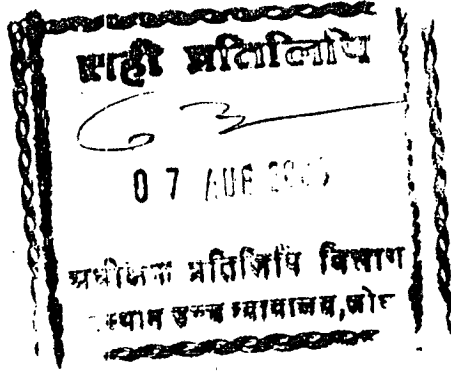
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CHIEF JUSTICE

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