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

Ref. No. RFC/F.Law-3/LPM/22/6118 Dated: 17<sup>th</sup> June, 2003

CIRCULAR  
(Lit.Cir.No. 90)

Sub : Important Court decision - Abdul Gani S/o  
Allah Noor V/s RFC & Ors.

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The Hon'ble Rajasthan High Court Bench at Jodhpur in the case of Abdul Gani S/o Allah Noor V/s RFC & Ors in SB Civil Misc. Appeal No. 826/2001 has passed the judgement on 10.04.2003 copy of which is enclosed for ready reference.

The Hon'ble Court has dismissed the appeal in favour of the Corporation with the observation that the order has been passed by the Learned Trial Court while deciding a regular suit, inasmuch as issues had been framed, evidence had been recorded and judgement and decree had been passed. While a look at the provisions of Sec. 31 and 32 together makes it clear that the proceedings are in the nature of execution proceedings.

It was already confirmed and held in different pronouncement made by the Hon'ble Supreme Court that proceedings filed by the Corporation U/S 31(1) are akin to an application for attachment of property in execution of a decree, at a stage posterior to the passing of the decree.

In that view of the matter, the request of the counsel for the appellant, like the Corporation should permit the appellant to shift the looms to Bhilwara, or to make easy instalments of the outstanding loan, or to reduce the amount of interest being charged, ARE ALL NOT OPEN TO BE CONTESTED IN THIS APPEAL.


It is therefore enjoined upon that the judgement passed by the Hon'ble Court may be used making it clear that proceedings pending before the Lower Courts U/S 31 are in the nature of the post decreetal proceedings hence, required to be dealt accordingly and no borrower can take any sort of the plea in the proceedings pending U/S 31(1) which can be taken in a suit under the CPC hence, the matter U/S 31 of the SFCs Act are required to be dealt as if the application is nothing but the post decreetal proceedings.

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The above judgement and necessity of application of law accordingly may be argued before the Court to get the case decided in favour of the Corporation.

A copy of this Judgement may also be circulated to all the panel Advocates of the Corporation for use of same in our cases and to review all the cases pending U/S 31 (1) (a) and (aa) in reference to the enclosed judgement and get the same decided in the interest of the Corporation also to curtail time which is being consumed in want of evidence and delay being caused by making different objections and applications.

All concerned are advised to make note of above for compliance.

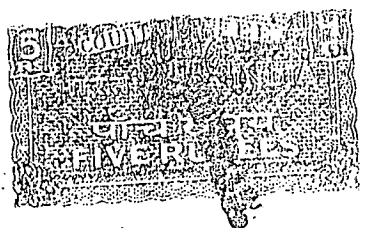
  
EXECUTIVE DIRECTOR

Encl: As above

Copy to:

1. All ROs/BOs/SOs
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3. DGM(A&I), WZ, Ajmer
4. DGM(FR)s, HO

दस्तावेज नं. 3018/01  
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राजस्थान न्यायालय  
जोधपुर



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Certified P.S. Copy of Order dt. 10/4/03  
IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

S.D. CIVIL MISC. APPEAL NO. 826 2001

stay 453/01

APPELLANT: NON APPLICANT:

ABDUL GHANI S/O SH. ALLANOR, Aged 60 Years  
BY CASTE MUSLIM RESIDENT OF MAIDAR MOHALA  
BADI SARI, DISTRICT CHITTORGARH (RAJ.)

-|| VERSUS ||-

RESPONDENT/APPLICANT:

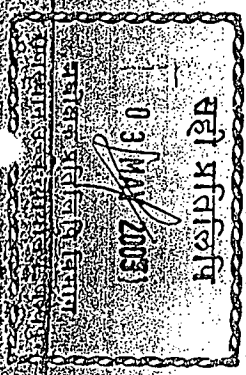


1.

Rajasthan Financial Corporation (R.F.C.)  
Registered Head Office, Ushyog Bhawan,  
Tilak Marg, Jaipur (Raj.), Through  
Branch Manager, R.F.C. Industrial Area,  
Chittorgarh (Raj.)

2.

Pateh Mohammed S/O Sh. Mabaeb by caste  
Muslim R/O Pinjaron Ki Masjid, Badi  
Sagri, District Chittorgarh (Raj.)  
( Surety ).



S.D. CIVIL MISC. APPEAL UNDER  
SECTION 32 OF STATE FINANCIAL  
CORPORATION ACT, 1951 AGAINST  
THE ORDER DT. 27.7.2001 PASSED  
BY LEARNED ADDITIONAL DISTRICT  
JUDGE NO.1, CHITTORGARH (RAJ.)

2013/01/11/01

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10.4.2003 S.B.C.M.A. NO. 826/2001  
HON'BLE SHRI N.P.GUPTA, J.

Mr. M.A.Siddiqui, for the appellant.  
Mr. Sangeet Lodha, for the respondent.

Heard learned counsel for the appellant.

Learned court below has passed the order in proceedings under Section 31 of the State Financial Corporations Act 1951. Though the order has been passed as if the learned trial court was deciding a regular suit, inasmuch as issues had been framed, evidence had been recorded, and judgment & decree had been passed, while a look at the provisions of Sec. 31 and 32 together makes it clear that the proceedings are in the nature of execution proceedings, as held by Hon'ble the Supreme Court in Gujarat State Financial Corporation Vs. M/s. Natson Manufacturing Co. Pvt. Ltd. reported in AIR 1978 SC-765, which has been consistently relied upon by Hon'ble the Supreme Court in subsequent judgments in Everest Industrial Corporation Vs. Gujarat State Financial Corp. reported in AIR 1987 SC-1950 and Maganlal Vs. Jaiswal Industries reported in AIR 1989 SC-2113, wherein it has been held that an application under Section 31(1) of the Act is neither a plaint, nor an application in the nature of plaint, rather it is not even something akin to a suit of a mortgagee to recover mortgage money by sale of mortgaged property, and that even if the Corporation so chooses it cannot pray for a preliminary decree for accounts, or final decree for payment of money, nor can it seek any personal liability. It has also been held that 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. That apart in Everest Industrial Corp's case supra the Hon'ble Supreme Court has further held that the interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid. In this case the Hon'ble Supreme Court expressly overruled the judgment of Hon'ble Karnataka High Court in the case of Karnataka State Financial Corp. Vs. Sri Nithyananda Bhavan, reported in AIR 1982 Kant 179, wherein the High Court had applied Section 34 of the Code to a proceeding instituted under Section 31 of the Act. Likewise, now after the decision of the Hon'ble Supreme Court, in Central Bank of India V/S Ravindra and Ors., reported in JT 2001(9) SC-101, wherein the Hon'ble Supreme has authoritatively clarified the expression 'principal amount' to include the interest accrued thereon up till the date of institution of the suit. Therefore, also, even on merits, the contention about rate of interest claimed by the respondent being excessive cannot be entertained.



श्री न. प. गुप्ता  
श्री स. लोधा  
श्री म. अ. सिद्दीकी

In that view of the matter, the submissions made by the learned counsel for the appellant, like the Corporation should permit the appellant to shift the looms to Bhilwara, or to make easy installments of the outstanding loan, or to reduce the amount of interest being charged, are all not open to be contended in this appeal.

Admittedly the loan was taken way back in 1980's and, admittedly even after passing of the impugned order dt. 27.7.2001 no payment has been made by the appellant. This conduct shows that the appellant is not entitled even to invoke any sympathy of this Court.

The appeal thus has no force, and is dismissed summarily.

*(Signature)*  
(N.P.GUPTA), J.



31/5/03

सही प्रतिलिपि  
03 MAY 2003  
प्रवीणक प्रतिनिधि विभाग  
राजस्थान उच्च न्यायालय, जोधपुर