

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P GUPTA)

First Appeal No. 767/2008

Trilochan Singh Chawla

vs.

M.P. State Financial Corporation and ors.

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Smt. Nirmala Nayak, Advocate with Smt. Sushma Pandey,
Advocate for the appellant.

Shri Rakesh Johari, Advocate for the respondent no. 1.

None for the respondent no.2 though served.

Shri Sameer Seth, Advocate for the respondent no. 3.

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Whether approved for reporting : (Yes/No).

J U D G M E N T

(19.09.2019)

This appeal has been filed under Section 96 of the CPC challenging the judgment and decree dated 7.7.2008 passed by 5th Additional District Judge, Bhopal in Civil Suit No. 17-A/2003 whereby the suit filed by the appellant/plaintiff for declaration, permanent injunction and for possession as well as mesne profit of suit property has been dismissed.

2. Facts giving rise to this appeal, briefly stated, are that the

suit property is a building known as Chawla Mansion and hotel Kanchan is also part of it, situated at Berasia Road, Bhopal. The appellant was owner of the property. He took loan from the respondent no. 1 M.P. State Financial Corporation for running hotel business, however, the appellant failed to pay due amount of the loan of Rs. 27,92,000/- to the respondent no. 1, therefore, the respondent no. 1 gave notice to the appellant/plaintiff on 14.8.1992 under Section 30 of the State Financial Corporation Act and lastly exercising power under Section 29 of the aforesaid Act, on 17.6.1993 the possession and management of the suit property which was pledged under english mortgage, was taken by the respondent no. 1 and after exercising process for selling property through auction and negotiation, the suit property was sold to the respondent no.3 at the price of Rs. 24,00,000/- on 29.10.94.

3. Challenging the aforesaid process of the auction of the respondent no. 1, earlier the appellant filed several litigations before this court and lastly on account of being unsuccessful, the appellant filed civil suit before the District Court, Bhopal stating that the respondent no. 1 wrongly exercising the power under Section 29 of the S.F.C. Act, wrongly took the management and possession of the property. The loan amount was not disbursed in one installment and on account of disbursement of amount in 27 installments, the loan amount could not be utilized fruitfully, therefore, auction of the respondent no. 1, under Section 29 of the Act is bad in law and deserves to be set aside. Apart from it, whole suit property was not pledged before the respondent no.1, only the premise of Kanchan Hotel was pledged, therefore, the suit premises except the Kanchan Hotel was wrongly taken into possession, therefore, that extended the action of the respondent no. 1 is contrary to law and deserves to be set aside.

The respondent no. 1 had no right to sell out the property, therefore, the process of selling out the property is null and void. Apart from it, the process of selling out the property was not fair and reasonable and it was malice as no precaution was taken to ensure highest price of the property and before selling the property to the respondent no. 3 the appellant was not given opportunity to pay the sell amount. Neither the wide publicity was made nor efforts to conduct public auction was made and the highest offer given by M/s. Khaskar Press Private Limited to purchase the property at the price of Rs. 30,00,000/- was refused without any reasonable cause and the property was sold to favour the respondent no. 3, who is brother of near relative of the officer conducting sale process without calling M/s. Khaskar Press Private Limited, who offered highest price earlier. As the sale process was not fair and not conducted with a view to get highest price, caused injustice to the appellant, therefore, the same also deserves to be set aside.

4. In response to the summons, all the three respondents preferred to file separate written statements. Respondent no. 1, M.P.S.F.C. stated in reply that the appellant has no right to file suit for possession as the appellant had mortgaged the suit property in favour of respondent no. 1 under three registered deeds of English Mortgages dated 18.3.1982, 10.8.1983 and 28.9.1985 for repayment of the sanctioned loan of Rs. 11,00,000/- and on 17.6.1993 respondent no. 1 took the possession of the mortgaged property in terms of the mortgage deeds exercising powers conferred under Section 29 of the Act and the respondent no. 3 was only Supurdgidar of the suit property and the appellant has no right to dispossess respondent nos. 1 and 3 and in view of the order dated 12.9.1996, passed by the High Court of M.P. Jabalpur in Civil Revision No.387/96,

the appellant is estopped from disputing the sale proceedings of the sale property and the appellant had also taken part in the sale proceedings and he offered only Rs. 14,00,000/-. Despite of the demand by written notice, no dues were cleared, therefore, mortgaged property was put to auction sale, therefore, the respondents took possession of the suit property in accordance with the law. During the sale proceedings the appellant approached to this court and also filed a civil suit but did not get any relief to get the sale proceedings stayed. In the sale proceedings, notice inviting tenders were published in daily news paper on 14.7.1993, 30.12.1993 and 19.5.1994. The tenders received were negotiated with the tenderers in various meetings of the Standing Committee, Recovery Committee and Default Review Committee, convened on different places at Indore and Bhopal. The highest offer was received of Rs. 19,00,000/-, in this regard, information was given to the appellant but he was not prepared to pay more than Rs. 14,00,000/-.

5. On account of multiple litigations started by the appellant, there was no more purchasers of the property and lastly on 29.10.1994. The previous bidders were called for and on 29.10.1994 the Standing Committee accepted further proposal of respondent no. 3 enhancing from 19,00,000/- to Rs. 24,00,000/- and as the appellant earlier refused to enhance his offer from Rs. 14,00,000/-, therefore, the offer given by respondent no. 3 was accepted. Thus, the allegation that no efforts were made to ensure best price of the suit property is not true. Similarly, the respondent no. 3 is not brother or close relative of the officer of the respondent no. 1 and the sale process was conducted in the manner that the best price could be secured. Hence the suit deserves to be set aside as the appellant cannot get any relief against respondents no.1 and 3.

So far as respondent no. 3 is concerned, his stand is that the respondent no. 1 had right to take possession of the property and the property has been sold out in accordance with law in the fair manner and he had no connivance with the officers of the respondent no. 1 to purchase the aforesaid property maliciously and the actual market value was paid by him, therefore, the appellant has no right to get any relief against him.

6. Respondent no. 2 in his reply renders support to the case of the appellant. According to him he was occupying four shops in the Chawla Mansion as tenant of the appellant since last more than 18 years but respondent no. 1 and respondent no. 3 having conspired to take possession of these shops illegally and had thrown his all belongings in the street, therefore, he claimed Rs. 1,00,000/- as damage from respondents nos. 1 and 3.

7. The trial Court earlier vide judgment and decree dated 10.8.2004 has dismissed the suit. The said judgment and decree was challenged before this court by way of filing First Appeal No. 659/2004 by the appellant and this court vide order dated 10.5.2007 set aside the judgment and decree and remanded the case to the trial Court, in the light of allowing amendment application in the pleading and observing that without going into the merit of other contention to some extent, non calling of Ms. Khaskar Press Private Limited for negotiation, who had submitted its offer of Rs. 30,00,000/- vide letter dated 3.11.1993 for negotiation, so as to know, if it would still adhere made by it or not, by itself was indicative of the fact that every endeavor was not made to secure the best possible price of the suit property. No plausible or valid reason had been assigned by M.P.S.F.C. for not being able to call Ms. Khaskar Press Private

Limited in negotiation before finalizing the deal in favour of respondent no. 3 for a sum of Rs. 24,00,000/-.

8. Then, after due compliance of the direction of this court, after fresh trial, the impugned judgment and decree has been passed. Learned trial Court has arrived at the conclusion that the whole suit property was pledged before the respondent no. 1 by registered deeds and on account of failure of appellant of due amount by exercising power under Section 29 of the Act, respondent no. 1 took management and possession of the property which was in accordance with law. So far as the sale process is concerned, as the appellant did not offer of more than Rs. 14,00,000/-, therefore, the property was sold out for Rs. 24,00,000/- which was the price near to prevailing market price. In this regard, the respondent no. 1 has published notices in newspapers number of times and invited tenders and lastly by process of negotiation the sale was finalized in favour of actual purchaser who was ready to pay the amount in accordance with the conditions settled during the negotiation and Ms. Khaskar Press Private Limited, who earlier offered Rs. 30,00,000/-, but it was not accepted as the party was not ready to pay 25 % amount in first installment and later on withdrawn this offer, therefore, it cannot be said that the respondent no. 1 deliberately without any reasonable cause refused the offer of the highest bidder and did not call without any reason. The appellant has also failed to prove that the respondent no. 3 is brother or near relative of one of the officers of the respondent no. 1, who was conducting the sale process. Therefore, the appellant has failed to prove that the respondent no. 1 conducted the sale process in unfair, unreasonable manner and maliciously thus the appellant is not entitled to get any relief and the suit was dismissed.

9. This appeal has been preferred on the ground that the aforesaid findings of the learned trial Court are contrary to record and the act of the respondent no. 1 with regard to taking management and possession of the suit premises is illegal and consequently, the process of selling of the property is without jurisdiction and illegal. Similarly the sale process is illegal, arbitrary, unfair and malice as no efforts were made to ensure the best price of the property and the respondent no. 1 has failed to prove that the sale process was conducted to bring the best price of the suit property. The offer of Rs. 30,00,000/- given by Ms. Khaskar Press Private Limited was highest which should have been accepted and before finalizing the sale in favour of respondent no. 3, the appellant was not given opportunity to pay the sale prices. The respondent no. 3 earlier gave offer of Rs. 24,50,000/- and later on, the property was sold out for Rs.24,00,000/- to the same persons, who are relatives of the officers of the respondent no. 1. In this way the act is malice, therefore, the sale deserves to be set aside and the judgment and the decree passed by the trial Court be set aside and the suit be decreed.

10. On behalf of the respondent no. 1, arguments have been made to support the findings of the learned trial Court and the prayer is made to dismiss the appeal as the judgment and decree of the trial Court is based on legal appreciation of evidence after applying the relevant law. The respondent no. 3 has also supported the contention of the respondent no. 1. So far as respondent no. 2 is concerned he is ex-parte.

11. Before considering the arguments of both the parties, it would be appropriate to have a look on the relevant provisions

and law governing the subject matter of this case. The respondent has exercised the power vested under Section 29 of The State Financial Corporation Act, 1951 which is as under :-

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

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

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

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

(5) [Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of [the concern].”

12. With regard to sale process, there is no provision in the State Financial Corporation Act and no rule and regulation have been framed to conduct the sale process. Earlier, Hon’ble the Apex Court in case of **Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and ors, AIR 1993 SC 935** has laid down certain guidelines and this suit was earlier filed in the light of aforesaid guidelines but the aforesaid judgment of **Mahesh Chandra** (Supra) has been over ruled by a three Judge Bench of the Apex Court in the case of **Haryana**

Financial Corporation and another vs. Jagdamba Oil Mills and another (2002) AIR SC 834, considering it to be contrary to the judgment of **UP Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and others AIR (1993) SC 1435** and held as under :-

"15. The view in **Mahesh Chandra** case appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in **Gem Cap** case appears to be more in line with the legislative intent. 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 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. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in **Mahesh Chandra** case, the matter has been decided.

16. 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 the Financial Corporation. This right accrues when the 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 as envisaged in Section 29 of the Act. Section 29 (1) gives the Financial Corporation in the event of default the right to take over the management or possession or both and thereafter deal with the property.

17. The aforesaid guidelines issued in **Mahesh Chandra** case place unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be

associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. The procedure indicated in **Mahesh Chandra** case will only lead to further delay in realization of the dues by the Corporation by sale of assets. It is always expected that the Corporation will try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible.

18. The subsequent decisions of this Court in **Gem Cap, Naini Oxygen, and Micro Cast Rubber** run counter to the view expressed in **Mahesh Chandra** case. In our opinion, the issuance of the said guidelines in **Mahesh Chandra** case are contrary to the letter and the intent of Section 29. In our view, the said observations in **Mahesh Chandra** case do not lay down the correct law and the said decision is overruled”.

13. In the last Hon’ble the Apex Court directed that it shall be upon the Corporation to dispose all the sick units in accordance with law in such manner as would bring in the highest price.

14. Later on, the Apex Court in case of **Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Limited and ors. (2005) 4 SCC 456** further summarized the legal principle. In the case the sale process was challenged before the writ court. The Apex Court

has summarized the legal provisions in Para 19 and 20 which are as under :-

“19. From the aforesaid, the legal principles that emerge are :

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations;

(a) there is a statutory violation on the part of the Corporation or

(b) where the Corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation 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 Financial 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.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial

Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

“20. True, the exercise of the right by a Financial Corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether the action of the Financial Corporation is bona fide or not would depend on the facts and circumstances of each case”.

15. Further, the Apex Court in case of **Punjab Financial Corporation vs. Surya Auto Industries (2010) 1 SCC 297** held as under :-

“22. The relationship between the Corporation and borrower is that of creditor and debtor. The Corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the Corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair. The court cannot sit as an appellate authority over the action of the Corporation and substitute its decision for the one taken by the Corporation.”

16. In view of the aforesaid analysis of the law the power exercised under Section 29 of the Act can be challenged only on the ground that exercise was not fair and reasonable and the reasonableness and the action of the financial corporation under Section 29 of the Act should be decided against the dominant consideration to secure the best price.

17. Having heard learned counsel for the parties and perusal of the record and keeping in mind the aforesaid legal proposition, following questions arises in this appeal for determination.

1. Whether the respondent no. 1 has committed illegality in taking of the management and possession of the suit property ?

2. Whether the manner in which the suit property was sold was not fair and reasonable and resultantly, failed to ensure best price of the property.

3. If yes, whether the appellant is entitled to get relief claimed in the suit ?

Question No. 1 :-

Appellant Trilochan Singh Chawla P.W. 1 has admitted in the cross examination that he took loan from the respondent no.1 and executed mortgage deed Exs. D-1, D-2, D-3. The mortgage deeds Ex. D-1 to D-3 show that the entire suit premises was pledged before the respondent no. 1 in which

constructed part of Kanchan Hotel and other part of the building namely Chawla Mansion situated at ground floor was also pledged. The appellant Trilochan Singh, P.W. 1 has also admitted that on behalf of the respondent no. 1, notice dated 14.8.1992 Ex. D-4 was given to him whereby due amount of Rs. 27,92,000/- was demanded and he replied to the notice which is Ex. D-5 dated 31.8.1992 in which there was no objection with regard to due amount and six months time was sought to pay the amount with the permission of sharing the business with new partner and it is not a case of the appellant that the amount has been paid by him or at any time he offered to pay the whole due amount.

18. The appellant Trilochan Singh Chawla, P.W. 1 has stated that he offered Rs. 22,00,000/- by letter Ex. P-21 after inducting Kuwar Shyam Choudhary as partner and post dated cheques were given but post dated cheques were dishonored, therefore, respondent no. 1 started recovery proceedings and the appellant challenged it before this court, filing Misc. Petition No. 2976/1992 which was disposed of vide order dated 29.4.1993 Ex. D-6 observing that the "The petitioner, admittedly is a defaulter. The post-dated cheque given by him has been dishonored. Under the circumstances, the proceedings initiated by the respondents for recovery of the amount due, cannot be said to be illegal or unjust and the submission of the learned counsel for the appellant for grant of two months time to pay the outstanding dues, this request deserves sympathetic consideration of the respondents."

19. Admittedly on 17.6.1993 by Panchnama Ex. D-7 the management and suit property was taken invoking power under

Section 29 of the Act. The contention, that before expiring of the aforesaid two months given under the order Ex. D-6, the possession of the property was taken which is contrary to the order of this court, therefore, the act of the respondent no. 1 is illegal, has no substance as this court by order Ex. D-6 did not direct to provide two months time to the appellant. There was only the observation that the prayer be considered sympathetically and the appellant has not stated that in compliance with the observation made in the order Ex. D-6 he took any initiative to arrange the money and offer the same and further, ever offer to pay Rs. 22,00,000/- to the respondent.

20. In view of the discussion, on the basis of the said facts and circumstances established in the case, it is found that the respondent no. 1 has not committed any illegality by invoking the power under Section 29 of the Act and taking management in possession of the whole suit property.

Question No. 2 :-

On behalf of the appellant, the procedure followed to sell out the suit property has been challenged on the ground that there was no wide publicity for inviting the potential purchaser and private negotiation was not made properly and the highest offer of Rs. 30,00,000/- given by M/s. Khaskar Press Private Limited was not called for meeting on 29.10.1994 and the offer of Rs. 24,00,000/- given by respondent no. 3 was accepted without considering the fact that earlier he offered Rs. 24,50,000/- and it appears that it was done to favour him on account of his relationship with the officers of respondent no. 1. Apart from it, before finalization the offer of respondent no. 3, the appellant was not given opportunity to pay amount of Rs.

24,00,000/-, consequently, the conduction of sale process cannot be said to be fair and reasonable and in accordance with law.

21. Appellant Trilochan Singh P.W. 1, has given his statement narrating the aforesaid averments and also placed reliance on the documents, the publications with regard to inviting tender to sale out the property in the newspaper which are Ex. P-13 dated 17.7.1993 in Nav Bharat, Ex. P-14 dated 30.12.1993 newspaper Dainik Bhaskar and Ex. P-15 dated 20.5.1994 newspaper Dainik Bhaskar and the minutes of Recovery Committee Meeting of the respondent no. 1 are Ex. P-17-A, 17-B, 17-C, 17-D and 17-E from 18.3.1994 to 29.10.1994 and letter dated 2.11.1994 Ex. P-18 written by him to the Managing Director of Respondent No. 1 in reply of offer of Rs. 30,00,000/- and the letter dated 24.1.1994, Ex. P-19 written to the General Manager and the letter dated 4.4.1994 Ex. P-20 written by Deputy Manager of the respondent no. 1 to the appellant with regard to rejecting of the offer and the letter dated 5.10.1992 Ex. P-21 written to the Regional Manager of the respondent no. 1. With regard to fresh offer of Rs. 22,00,000/- and written statement by the respondent Ex. P-22 and Ex. P. 23 with regard to acceptance of the aforesaid offer. The genuineness and contents of the aforesaid documents are not disputed by the respondents.

22. On behalf of the respondent no. 1, R.G. Dwivedi, Deputy General Manager, D.W. 1, has stated the procedure followed by the respondent no. 1 to sell out the property and in this regard, it is stated that the notices for invitations of tenders, were published as Ex. P-13, P-14 and P-15 and besides of it on 17.7.1993 in newspaper Nai Duniya by Ex. D-13 and in M.P. Chronicle, by Ex. D-14 and on 30.12.1993 in Newspaper Nav

Bharat by Ex. D-16, the publications were also made. He has also proved the letter Ex. P-19 and P-20, whereby the offer of Rs. 14,00,000/-, given by the appellant, was again rejected and also proved the negotiations between respondent no. 1 and the appellant taken place as per the letters Ex. D-11, dated 17.7.1994 and Ex. D-12 dated 19.8.1994 and other communications Ex. D-23 to Ex. D-28 and D-30 and inspection report Ex. D-29 dated 25.10.1994 and the copies of minutes of proceeding of committee of the respondent no. 1 Ex. D-32 C dated 13.8.1993 Ex. D-33 C dated 29.10.1994.

23. Shri P.K. Gupta, D.W. 6 has also proved the minutes of the committee, Ex. D-32 C and 33 C. Saroj Kumar Jha D.W. 2 has proved inspection report dated 25.10.1994 Ex. D-29 as Technical Manager and opined that at that time, value of suit property was between Rs. 20,00,000/- to Rs. 24,00,000/- and P.K. Paliwal D.W. 3 being Regional Manager has stated that the appellant did not offer more than 14,00,000/- on deferred payment and he and R.C. Paliwal, Deputy Manager are not relative of respondent no. 3 purchaser of the suit property and Dr. J.P. Paliwal D.W. 4 has stated that in response of the publication of the notice, he submitted his offer to purchase the property and during the process of selling the appellant was also offered in several meetings to pay more than Rs. 14,00,000/- but the appellant did not pay and did not offer more than Rs. 14,00,000/- and also stated that neither P.K. Paliwal or the Deputy Manager are related to him and they have no role in the meeting of Recovery Committee or Standing Committee by which the decisions were taken and he has purchased the suit premises in accordance with law as he offered highest price of Rs. 24,00,000/- and was in possession of the property.

24. The genuineness and contents of the aforesaid documents have not been challenged by the appellant.

25. On the basis of aforesaid oral and documentary evidence, following facts are found to be proved :-

(1) NIT was published on 17.7.1993 in three daily newspaper, Nav Bharat, Nai Duniya and M.P. Chronicle. As per the publication Ex. P-13, D-13 and D-14 and the second publication was made on 30.12.1993 in two newspapers Nav Bharat and Dainik Bhaskar Ex. D-16 and D-17 and the third publication was made in Dainik Bhaskar on 20.5.1994 by Ex. D-18.

(2) In response of the aforesaid publications by letter Ex. D-23, respondent no. 3 offered Rs. 18,00,000/-. M/s. Khaskar Press Private Limited by letter Ex. D-24 offered Rs. 8,00,000/- and Jeevan Singh Chatwal by letter Ex. D-25 offered Rs. 12,50,000/- and Mohd. Anwar by letter Ex. D-26 offered Rs. 18,00,786/- and R.C. Garg and Nitesh Garg jointly by letter Ex. D. 27 offered Rs. 7,51,000/-.

(3) The minutes of the Standing Committee dated 13.8.1993 Ex. D. 33 C established that all the offerers were called for with a view to revise their offers to meet the actual price of the property. In the meeting, the three offerers were present and submitted revised offer in which M/s. Khaskar Press Private Limited offered Rs. 30,00,000/- on deferred payment basis and respondent no. 3 offered Rs. 24,50,000/- on deferred

payment basis and Mohd. Anwar offered Rs. 28,00,786/- on deferred payment basis.

(4) Accordingly, the offer given by M/s. Khaskar Press Private Limited was accepted subject to 25 % initial payment of the sale price within 15 days from the date of receipt of acceptance letter from the corporation, respondent no. 1, in response of this decision, M/s. Khaskar Press Private Limited put condition of 10 % initial payment in place of 25 % which was not accepted, therefore, M/s. Khaskar Press Private Limited by letter dated 3.11.1993 Ex. D-28 withdraw the offer and request was made to return the security amount but this request was turned down and the security amount of Rs. 20,000/- was forfeited as proved by Shri R.G. Dwivedi P.W. 1 by his statement.

(5) After the aforesaid, the actions taken by respondent no. 1 have been recorded in the minutes of the meeting of the Standing Committee/Recovery Committee of the respondent no. 1 which are the documents Ex. P-17 B, C, D and E.

(6) The relevant minutes dated 15.7.94 Ex. P-17 B are as under :-

“The Committee also noticed that the unit is in the possession of the Corpn since last one year and in spite of advt. more than twice, suitable offers could not be received. It was also noted that in the last Standing Committee, the offers were discussed, but the offers were much below the amount offered

by the borrower for settlement. Therefore, it was decided by the Standing Committee that before considering the tender, the borrower may be given one more opportunity for discussion. The Committee also noted that in view of deteriorating condition of the assets as well as some portion of the ground floor in the possession of a tenant who had approached the court for non-vacating the same. The Corpn may not get suitable offer for purchase of assets. Therefore, the borrower was called, but the borrower could not receive the information to attend the meeting. However, a telephone message was received from our Bhopal Office. After discussion, the Committee decided to call the borrower before the next Standing Committee proposed to be held at Bhopal in the last week of July and discuss the proposal for settlement”.

(7) The minutes of the meeting Ex. P-17 C dated 27.7.1994 are as under :-

“10. The Committee noted the contents of the memorandum.

The General Manager (R) apprised the Committee that Shri Trilochan Singh Chawla, partner of the firm, called on us at the office and informed that he is arranging funds to get the possession of the hotel back. He has also requested that the possession of the hotel be given to him. It was made him clear that until and unless he deposits Rs. 5.00 lacs. the

possession cannot be given back. Shri Chawla has also requested to consider his request for settlement of the loan account at Rs. 14.00 lacs which too on deferred payment, which was not found acceptable. However, he was advised to come on 27.7.94 before the Committee for discussions.

Neither Shri Chawla nor his representative turned up: therefore, nothing could be discussed. However, the Committee authorised the Managing Director to discuss with the borrower if he submits a suitable proposal and in case of no proposal from the borrower, the earlier offerers be called again for negotiation. In case of no solution, the Committee decided to re-advertise the sale.

11. The Committee noted the position of units taken-over and their disposal. The Committee desired that the disposal of the units should be accelerated further.

12. The matter of disposal of the unit on deferred payment basis was also discussed. The Committee was of the view that the period for payment of deferred amount should be reduced from 3-5 years to 3 years only. It was also decided that whenever it is necessary, collateral security for deferred amount be obtained to secure the amount as well as safeguard

of the assets sold on deferred payment basis.”

(8) The minutes of the meeting Ex. P-17-D dated 20.10.1994 are as under :-

“The Committee also noted that the Hotel is in the possession of the Corporation since 17.6.93 and a series of discussions had taken place for finalising the matter. Though the sale of the unit was finalized in the Standing Committee dated 13.8.93 at Rs. 30.00 lacs. It was all in vain. After discussions, the Committee decided to call the borrower for further negotiations on the proposal submitted by him for settlement of the loan account. Sardar Trilochan Singh, Proprietor of the Hotel appeared before the Committee. After discussions, the Committee informed him that his offer to settle the loan account at Rs. 14.00 lacs is not acceptable because of the huge outstanding in the loan account as well as there being a huge difference in his offer for settlement and the realisable value of the assets. Shri Sardar Trilochan Singh has argued for extending for facilities like waiver of interest etc, which was also not accepted by the Committee. When the Committee advised him to increase his offer so that his case for settlement can be finalized, he could not enhance his offer. The Committee thereafter advised him to

increase his offer atleast to the simple net amount for which he has shown his inability. Therefore, the Committee declined his offer for settlement of loan at Rs. 14.00 lacs.

The Committee was also apprised that recently one Dr. J.P. Paliwal has shown his willingness to purchase the Hotel alongwith Rs. 19.00 lacs and requested for negotiation.

Since the Committee could not arrive at a positive view for settlement of the loan account decided to get the assets revalued and call the offerer i.e. Dr. J.P. Paliwal for further discussions alongwith the earlier offerers as decided by the Standing Committee in its meeting dated 27.7.94."

(9) The minutes of the meeting as per Ex. P-17-E dated 29.10.1994 are is as under :-

"The Committee went through the memorandum and noted the contents. The Committee also noted that the case has been discussed by the Standing Committee as well as the Recovery Committee a number of times but nothing could be finalised. In the last Recovery Committee meeting i.e. 20th Oct 94, the borrower was given last opportunity for negotiation. The Committee also directed to get the assets

revalued. Accordingly, the Manager (T) has inspected the assets and valued the same at Rs. 22.00 to Rs. 24.00 lacs. However, the borrower could not submit his offer acceptable to the Committee. Therefore, the Committee decided to call the earlier offerer as well as the recent offer received from Dr. J.P. Paliwal. Accordingly, Dr. J.P. Paliwal and Shri Mohd. Anwar and M/s. Heavy Cargo Movers were informed to appear before the Committee for negotiation. Dr. J.P. Paliwal and Shri Jeevan Singh Chhatwal (on behalf of Heavy Cargo Movers) appeared before the Committee. None from Shri Mohd. Anwar attended.

After discussion, the Committee enquired from both the offerers whether they are interested in purchase of the assets on cash down basis. Dr. Paliwal was not interested. However, Shri Jeevan Singh Chhatwal agreed to purchase the assets on cash down basis, at Rs. 15 lacs, but this was not acceptable to the Committee. Therefore, the Committee decided to go for open bidding or deferred payment basis. Accordingly, the bidding process was started as under :-

<u>J.P. Paliwal</u>	<u>Heavy Cargo Movers</u>
19.00	19.25
19.50	20.00

20.25	20.50
21.00	21.25
21.50	21.75
22.00	22.25
22.50	22.75
23.00	23.25
23.40	23.50
23.60	23.70
23.80	23.90
24.00	

Withdrew

After discussion, the Committee noted that the offer amount is equal to recent valuation and to avoid further delay in the matter, the offer can be accepted. Therefore, the Committee decided to accept the offer of Dr. J.P. Paliwal for purchase of the entire assets of the hotel at Rs. 24.00 lacs on deferred payment basis payable within 3 years on following terms and conditions :-

"1. The purchaser will pay a sum of Rs. 6.00 lacs (Rs. Six lacs) being 25 % of the offered amount within 15 days from the date of receipt of acceptance letter from the Corporation by way of initial payment. The possession of the unit will be handed over.

(b) The balance sale price of Rs. 18.00 lacs (Eighteen Lacs) will be paid by the purchaser in 6 half yearly installments of

Rs. 3.00 lacs each. First of such installments will be payable after 6 months from the date of giving possession.

* * * * *

The Committee further decided that on receipt of 25% initial payment, the possession of the assets be given to the purchaser immediately.”

10. Before finalizing the sale proceedings a fresh report with regard to assessment of the valuation of the properties was called for which was submitted by Technical Manager S.K. Jha P.W. 2 which is Ex. D-29 and the price was between Rs. 20,00,000/- to Rs. 24,00,000/- and in the light of the aforesaid report the sale process was finalized.
11. It is also found to be proved that after the first offer of Rs. 24,50,000/- of the respondent no. 3 till 25.10.1994, property was devalued on account of natural decay as lying uncared and on account of continuous litigation.
12. The appellant has failed to prove the fact that there was relationship between the respondent no. 3 and officers of the respondent no. 1 and they acted in connivance with the respondent no. 3.
26. In the light of the aforesaid established facts, the contention and objection of the appellant that no wide

publicity was made to call for or to give opportunity to the potential purchaser to participate in the process has no substance. Three times, NIT was published in the newspaper. So far, the contention, that the publications were not made in the newspapers having circulation nationwide, is concerned, in absence of requirement of any mandatory provision by statutory rules and regulations or established practice of the institute, it cannot be said that on account of it, the exercise made by the respondent no. 1 was not fair and reasonable. The decision depends upon the possible price of the property and past experience with regard to availability of potential purchaser of the property and in this regard, the discretion vested in the officers cannot be enquired or tested, in view of the appellant or of this court.

27. Similarly, in response of the NIT, no suitable offers were received. Thus, the respondent no. 1 exercised method of private negotiation to find out actual and potential purchaser with the offer of best price, therefore, as per the minutes of the meeting Ex. P-17-B, the appellant was given further opportunity for settlement which was not availed by him as he remained absent on 27.4.1994 as clear by the minutes of the meeting Ex. P-17-C and the appellant last offer of Rs. 14,00,000/- was declined on 20.10.1994 as mentioned in the minutes of the meeting Ex. P-17-D and lastly after getting the fresh report with regard to revaluation of the assets, the earlier offerers as well as the recent offerers, the respondent no. 3 Dr. J.P. Paliwal, Mohd. Anwar and Ms. Cargo Movers were called for negotiations and the respondent no. 3 Dr. J.P. Paliwal and Jeevan Singh Chatwal on behalf of M/s. Cargo Movers

appeared before the committee and in open bidding between the present parties, the last highest offer, given by respondent no. 3 was accepted as the same was matching with the amount of the assets revalued.

28. Shri R.G. Dwivedi, D.W. 1 has stated that M/s. Khaskar Press Private Limited was not informed and called for to participate in the proceeding dated 29.10.1994 as earlier his offer was accepted and failed to deposit 25 % amount of the sale price and withdraw his offer and his security amount was also forfeited.

29. In view of the circumstances, not calling of M/s. Khaskar Press Private Limited was not arbitrary and malice act. On account of forfeiture of the security he was out of the list of the persons who earlier offered bid, therefore, the proceeding dated 29.10.1994 Ex. P-17 E cannot be said to be malice, arbitrary or unfair. Similarly, the acceptance of bid of the respondent no. 3 for Rs. 24,00,000/- while earlier he offered Rs. 24,50,000/- cannot be said to be arbitrary and unreasonable act, in the light of the devaluation of the property, as mentioned earlier and proved by Ex. D-29 Revaluation Report.

30. It is also contended by the appellant that before the sale proceeding in favour of the respondent no. 3, he was not given an opportunity to pay Rs. 30,00,000/-. This contention has no substance as there is no statutory provision, rule and regulation or established practice that before finalizing last highest bid, the owner of the property be given the opportunity to deposit the said amount. In this regard, the appellant placed reliance on the guidelines issued by the Apex Court in the case of **Mahesh Chandra**

(supra) but the same judgment has been overruled by the Apex Court in the case of **Haryana Financial Corporation** (supra).

31. Apart from it, in this case the communication between the appellant and respondent no. 1 and in the minutes of the meeting dated 20.10.1994 Ex. P-17 D prove the fact that the last offer of the appellant was of Rs. 14,00,000/- and earlier several time he was given opportunity to settle the matter by offering reasonable amount but he never offered beyond Rs. 14,00,000/-, therefore, if the appellant had been called for, no purpose would have been served. Therefore, it cannot be said that the appellant was not informed because it was conspiracy with the respondent no. 3 or the officer of the respondent no. 1 acted maliciously and contrary to the object of getting highest price of the property.

32. The other objection of the appellant is that there was illegal nexus among the respondent no. 3 and officer of the respondent no. 1, conducting the sale process with a view to provide opportunity to the respondent no. 3 to purchase the property by unfair manner but this fact was not found to be proved as the appellant Trilochan Singh Chawla P.W. 1, has failed to establish any relationship among respondent no. 3 and officers of the respondent no. 1. Merely on the basis of similarity in the surnames, he has bounced the ball targeting the officers of the respondent no. 1 and contrary to it P.K. Paliwal D.W. 3 with Dr. J.P. Paliwal D.W. 4 have negatived the same.

33. Accordingly, in view of the aforesaid findings, it is considered view of this court that the learned trial Court has

not committed any error holding that the appellant has failed to establish that the respondent no. 1 conducted the process of sale of the suit property in unfair, unreasonable manner and maliciously or contrary to law and the sale process was not conducted with a view to get highest price of the assets. Thus, the sale process cannot be said to be illegal, unreasonable and unfair or contrary to law, therefore, the same does not deserve to be set aside. Hence this court affirm the finding of the trial Court. Resultantly, the appellant is not entitled to get any relief prayed in the suit. Thus this appeal is dismissed.

34. The appellant will bear the cost of litigation of the respondents nos. 1 and 3 throughout. Counsel fee Rs. 20,000/-, if certified.

(J.P.GUPTA)

JUDGE

VKV/-

HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR

1	Case Number	First Appeal No. 767/2008
2	Parties Name	Trilochan Singh Chawla vs.M.P. State Financial Corporation and ors.
3	Date of Judgment/Order	19.09.2019
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	Hon. Shri Justice J.P. Gupta
6	Whether approved for reporting	YES
7	Name of the counsel for the parties	Smt. Nirmala Nayak, Advocate with Smt. Sushma Pandey, Advocate for the appellant. Shri Rakesh Johari, Advocate for the respondent no. 1. None for the respondent no.2 though served. Shri Sameer Seth, Advocate for the respondent no. 3.
8	Law laid down & Significant paragraphs number	1. The sale process conducted by State Finance Corporation can be challenged only on the basis of unfairness, unreasonableness, maliciously and contrary to law without following the process to ensure highest price of the assets and the Court has no power to examine the process as an Appellate Authority of the Officers conducting the sale process which was intended to recover the loan amount. 2. The sale process cannot be set aside on the ground that before finalising the sell in favour of bidder, no opportunity or offer be given to the borrower to pay the equal amount as there is no such statutory requirement and on the aforesaid reason the sale process cannot be held to be unfair, unreasonable and malicious or contrary to law. 3. During the sale process, if any highest bidder withdraw himself on account of non-agreement with the conditions of the sale and his security has been forfeited and later on during the further sale process, if he is not called for with other offerers for negotiation and bidding without changed the condition, it cannot be said that on this account the sale process was not fair and reasonable or was contrary to law.

(J.P. GUPTA)
JUDGE