

(3) Before passing any order under sub-section (1) or sub-section (2) ¹[or issuing a notice under sub-section (1A),] the district judge may, if he thinks fit, examine the officer making the application.

²(4) At the same time as he passes an order under sub-section (1), the district judge shall issue to the industrial concern or to the owner of the security attached a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it or him to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

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

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the district Judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the district judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908) insofar as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the district judge may—

- (a) confirm the order of attachment and direct the sale of the attached property;
- (b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;
- (c) release the property from attachment;
- (d) confirm or dissolve the injunction; ³[* * *];

⁴[(da) direct the enforcement of the liability of the surety or reject the claim made in this behalf; or]

- (e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c) ⁴[or making an order rejecting the claim to enforce the liability of the surety under clause (da) or making an order rejecting the claim to transfer the management of the industrial concern to the Financial Corporation under clause (e)], the district judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

1. Ins. by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).
 2. Subs. by Act 43 of 1985, sec. 20, for sub-section (4) (w.e.f. 21-8-1985).
 3. The word "or" omitted by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).
 4. Ins. by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).

Provided further that unless the Financial Corporation intimates to the district judge that it will not appeal against any order releasing any property from attachment ¹[or rejecting the claim to enforce the liability of the surety or rejecting the claim to transfer the industrial concern to the Financial Corporation], such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure 1908 (5 of 1908) for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

²[(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.]

(9) Any party aggrieved by an order ³[under sub-section (4A), sub-section (5)] or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of section 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

⁴[(11) The functions of a district judge under this section shall be exercisable—

- (a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and
- (b) elsewhere, also by an additional district judge ⁵[or by any judge of the principal court of civil jurisdiction].]

⁶[(12) For the removal of doubts it is hereby declared that any court competent to grant an *ad interim* injunction under this section shall also have the power to appoint a Receiver and to exercise all the other powers incidental thereto.]

COMMENTS

(i) If any property is mortgaged under section 32, the debtor can take the help of Order 34 Rule 5 of the Code of Civil Procedure and get the mortgaged redeemed; *Maganlal v. M/s. Jaiswal Industries*, AIR 1989 SC 2113.

1. Ins. by Act 43 of 1985, sec. 20 (w.e.f. 21-8-1985).
 2. Ins. by Act 56 of 1956, sec. 16 (w.e.f. 1-10-1956).
 3. Subs. by Act 43 of 1985, sec. 20, for "under sub-section (5)" (w.e.f. 21-8-1985).
 4. Subs. by Act 6 of 1962, sec. 15, for sub-section (11) (w.e.f. 16-4-1962).
 5. Ins. by Act 77 of 1972, sec. 21 (w.e.f. 30-12-1972).