

(2006) 01 PAT CK 0014
In the Patna High Court
Case No : M.A. No. 464 of 2003

Ancient Bihar Cold Storage and Another	APPELLANT
Vs	
Managing Director, Bihar State Financial Corporation and Another	RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 3, Order 43 Rule 1
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2006 Patna 98 : (2006) 2 PLJR 7

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : Manik Vedsen, Subhash Chandra Bose and Nitu Kumari, for the Appellant; Vijay Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—It is really very surprising that in this appeal the original plaintiffs have assailed, rather, an unusual order of the trial Court dated 20-9-2003, passed in Title Suit No. 190 of 2002 by Sub-Judge, 1st Bihar Sharif, Nalanda, in an application seeking interlocutory relief under Order XXXIX, Rules 1 and 2 of the CPC (CPC).

2. The appellants original plaintiffs initiated the legal battle against the respondent Bihar State Financial Corporation (for short "the Corporation") against the demand for outstanding dues over the loan transaction. In course of pendency of the suit, the appellants applied for an interlocutory relief of injunction. The trial Court, upon consideration of the facts and circumstances, directed that the respondent-defendant Corporation, shall not auction the mortgaged properties of the appellants for a period of six months.

3. During the course of hearing, learned Counsel have stated at the Bar that even after the passing of the impugned order of the trial Court, nothing has been paid towards the arrears and the instalments due and payable, arising out of the

loan transaction between the parties. Huge amount has fallen due over the arrears of re-payment, as well as, further instalments and interest.

4. The very underlying design and purport of the provisions of Section 29 of the State Financial Corporations Act, 1951 is to see that the amount of advance and interest thereon, if is not re-paid in time, the Corporation is empowered to realise the same by putting the mortgaged property on public auction.

5. Presently, the grievance voiced before this Court in this appeal by invocation of the provisions of Order XLIII, Rule 1(r) CPC has been that the trial Court should not have granted interlocutory injunction for a spell of six months. In that regard it has been submitted that the relief should have been granted till the disposal of the suit.

6. In fact the impugned order ought not to have been passed even for a period of six months in a liability emerging and arising out of a contractual obligation, more so, between the Corporation or the Bank. Any interception in demanding or recovering the amount of loan or interest thereon would tantamount to nullifying the provisions of the law. Recovery of dues of the Bank or financial institutions is very essential, as non-payment of such amount does not only augment the graph of non producing assets but also hampers the economic growth for want of such amount to the entrepreneurs, waiting in queue for loan.

7. Considering the factual profile and the relevant provisions of law i.e. three celebrated principles for grant/refusal of interlocutory relief, namely, "prima facie" case, balance of convenience, and irreparable injury, this Court has no hesitation in finding that the appeal is without any substance and merit and deserves to be dismissed.

8. Accordingly, this appeal shall stand dismissed with a clarification that it will be open for the respondent Corporation to recover the amount due and payable under the contract of the loan transaction together with interest in accordance with law. No costs.