

(1997) 03 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 912 of 1995

Andhra Pradesh State Financial Corporation

APPELLANT

Vs

M/s. Rama Spinners Private Limited and another

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 1997 AP 415 : (1997) 4 ALT 649 : (1998) 94 CompCas 233

Hon'ble Judges : P. S. Mishra, C.J;D. H. Nasir, J

Bench : Division Bench

Advocate : P. Badri Premnath, for the Appellant; E. Manohar and C. V. Mohan Reddy, for the Respondent

Judgement

P. S. Mishra, C. J.,

1. This appeal under Clause 15 of the Letters Patent is preferred by the Andhra Pradesh State Financial Corporation, who, it is alleged, has failed to meet the commitment under an agreement to release the loan amount of Rs. 60 lakh although it is alleged, pursuant to the contract, did release Rs. 40 lakh only to the writ petitioner respondent. Petitioner-respondent is a Private Limited Company incorporated under the Companies Act on 22-5-1990. It applied for loan and the Andhra Pradesh Industrial Development Corporation sanctioned a term loan of Rs. 80.40 lakh vide its letter No. DGM(P)3M(T-I)RSPI/ 1417/90 dt. 6-7-90/11-6-90 under the IDBI Refinance Scheme Banking pari passu incharge with a term loan of Rs. 60 lakh with the appellant herein i.e. Andhra Pradesh State Financial Corporation. Accordingly, the appellant sanctioned a term loan of Rs. 60 lakh to the writ petitioner-respondent vide letter dt. 25-7-1990 in No. AFC/PAD-A/Team-1/63894416/90-91. Petitioner-respondent, it is alleged, acquired land to an extent of Ac.2.04 in a village in Medak District in Jan, 1991 at a cost of Rs. 2,62,500/-, constructed building and sheds in the said land covering a plinth area of about 2550 sq. feet incurring an expenditure of Rs. 26,26,065/-

and proposed to purchase machinery from M/s. Lakshmi Reiter, Coimbatore at a cost of Rs. 141.34 lakh, It is alleged, subsequent to, the approval of the project report, the petitioner-respondent came to know that the machinery which they proposed to purchase from M/s. Lakshmi Reiter was of high rate and lesser cost better machinery of foreign make could be acquired. Accordingly, the petitioner-respondent approached M/s. Apex Marketing Services, 42-A, 2nd Bhowwada, Bhuleswar, Bombay for supply of the required machinery. According to the petitioner, it made advance payments to M/s. Apex Marketing Services. It appears, entire term loan of Rs. 80.40 lakh was released by the A.P. Industrial Development Corporation in four equal instalments of Rs. 20.10 lakh each on 30-1-1992, 12-2-1992 and 15-4-1992. Appellant : however, released a sum of Rs. 20. lakh out of sanctioned amount of Rs. 60 lakh commencing from April, 1992 till Sept. 1992. According to the petitioner-respondent. however, when M/s. Apex Marketing Service, Bombay agreed to deliver the goods/ machinery, it approached the appellant for release of the loan and eventually it informed the petitioner-respondent that since it deviated from the list of machinery proposed in the scheme without obtaining prior approval from the institution, no further payment could be made and that up-to-date (vide letter dt. 27-3-1993) Rs. 88.71 lakh was outstanding in its account. It informed the petitioner-responds, action would be taken under S.29 of the State Financial Corporation Act. 1951, if the loan amount was not paid on or before 5-4-1993. The petitioner-respondent filed two writ petitions before this Court. Writ Petitions Nos. 364 of 1993 and 4242 of 1993. In the first petition, it questioned the communication dt. 15-3-1993 to pay back the entire amount it had borrowed from it i.e. the appellant. In W.P.No.4242 of 1993, it questioned the validity of invoking provisions of S. 29 of the State Financial Corporation Act. Before learned single Judge, it was contended on behalf of the appellant that in view of the agreement reached on 5-1-1993, since respondents had agreed to release the term loan to an extent of Rs. 30 lakh, subject to the petitioner-respondent providing additional guarantee/security towards the said amount, they could not retract and deny thus to the petitioner-respondent the benefit of the agreement. Learned single Judge accepted the above as a plea of "proprietary estoppel" if not "promissory estoppel" and allowed bulb the writ petitions and directed the appellant to release the balance amount on taking sufficient security.

2. We have stated in brief the facts only to consider whether the petitioner-respondent has complained before this Court any violation of law by the appellant-herein and/or of its failing to perform a "public duty". It is well settled that the plea of estoppel is ordinarily used as a plea of defence, except in the "public law" where it can be permitted to be used as a cause of action when it is found that some one has failed to perform the public duty or has chosen to dishonour the promise. thus violating a public law right, which is created under the agreement. Law on the subject is well settled that no mandamus is issued, for. the enforcement of a contract or agreement violation of it may cause damages, but does not in any manner create any such obligation, which can be

enforced by a mandamus. In private law the petitioner-respondent is entitled to sue for damages if he is able to show that on account of non-fulfilment of promise by the appellant it has incurred any loss, it can sue the appellant for the alleged breach of contract, but obviously not for the enforcement of the contract. Under "public law", as we have said, this Court, if satisfied that a public duty is created even under a contract, may issue a mandamus for performance of the public duty. Thus, however, the contract for enforcement. if at all it has existed, create such a public duty upon the appellant State Financial Corporation to fulfil its commitment under the alleged agreement to release full amount of loan to the petitioner-respondent. Answer to us of the above is a firm negative. Learned single Judge has been persuaded to accept the plea of estoppel as if the appellant had no reason to doubt the genuineness of the expenses incurred by the petitioner-respondent. On admitted facts, we can safely say the petitioner-respondent had deviated from its representations that it was purchasing machinery from a firm in Coimbatore, it did not obtain prior sanction of the appellant and thus what it did apparently could create serious doubts in the mind of the appellant. One cannot, on the facts as above, say that Corporation had absolutely no ground for not honouring the agreement, if at all there has been any such agreement.

3. Having considered the case in all aspects, we are of the view that if the appellant seeks to allege any violation of the agreement, it is required to prove the AGREEMENT and when agreement is proved, it will be necessary to consider whether it created any public duty upon the respondent before the writ is issued by this Court. Thus, a fair dealing with the instant proceeding by this Court would be to declare to issue any mandamus to the appellant-herein and to leave the parties to seek their remedies in appropriate proceedings in accordance with law.

4. In the result, the appeal is allowed. The impugned judgment is set aside. The writ petition is dismissed, but on the facts and in the circumstances of the case, without costs.

5. Appeal allowed.