(2001) 12 AP CK 0097

In the Andhra Pradesh High Court

Case No : W.A. No. 435 of 1998

Andhra Pradesh State Financial Corporation — APPELLANT

Vs

Sri Devi Varaprasad Steels Private Limited — RESPONDENT

Date of Decision : 31-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 14
State Financial Corporations Act, 1951 — Section 29

Citation : (2001) 12 AP CK 0097

Hon'ble Judges : S.R. Nayak, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : P. Suresh, for the Appellant; C. Kodandaram, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ appeal is field by the A.P. State Financial Corporation questioning the legality and validity of the order of the learned single judge dated 29.7.1997 made in Writ Petition No.1010/1994 directing the appellant Corporation to pay interest to the respondent herein at the rate of 18% per annum on the sum of Rs.11,37,150-60 with effect from 1.4.1991 upto the date of payment.

2. The respondent herein had borrowed a sum of Rs.28,80,000/- and in terms of the agreement, the respondent had to repay the loan amount in 13 equal half-yearly installments commencing from 11.9.1987. When the respondent committed default, statutory notice was issued u/s 29 of the State Financial Corporation Act and despite statutory notice, the respondent company did not repay the loan amount and the interest accrued thereon. Under those circumstances, the Corporation served Recall-cum-Sale Notices and finally seized the unit on 7.6.1989. Thereafter, The A.P.S.F.C. issued advertisement on 6.2.1991 calling for tenders from the prospective purchasers and in pursuance of that advertisement, one G. Seetha-ramaiah and others offered their bids.

Ultimately, on 9.3.1991 the sale was knocked down in favour of the highest bidder, namely, the said G. Seetharamaiah for a sale consideration of Rs.57.00 lakhs.

3. There is no controversy between the parties that the sale price at which the sale was knocked down in favour of G. Seetharamaiah was in excess to the tune of Rs.11,37,150-60 over and above the liability of the respondent company. It is also admitted fact that the excess money payable to the respondent company out of the sale proceeds was in fact paid to the respondent company only through three cheques dated 6.2.1992, 17.2.1992 and 22.2.1992 through State Bank of India, Ongole. It is also an admitted fact that the Corporation permitted the highest bidder to pay 75% of the bid amount in instalments and it has collected interest from the highest bidder at the rate of 18%. Therefore, the only question for our consideration in this appeal is whether the learned judge was justified and acted legally in directing the appellant Corporation to pay interest at the rate of 18% on the sum of Rs.11,37,150-60 w.e.f. 1.4.1991 till remittance was effected.

4. The learned counsel appearing for the appellant Corporation by placing reliance on the judgment of the Apex Court in H.P. STATE FINANCIAL CORPN., SHIMLA vs. PREM NATH NANDA & OTHERS, AIR 2001 SC 5 and U.P. FINANCIAL CORPORATION vs. M/s. GEM CAP (INDIA) PVT. LTD., & OTHERS AIR 1993 SC 1435 would maintain that the Court could direct payment of interest only if in a given case the concerned Statute, if any, permits payment of interest or where the agreement between the parties provides for it and that except in those two circumstances, the Court would not be justified in issuing direction to the Corporation to pay interest in the absence of the aforementioned two circumstances.

5. On the other hand, the learned counsel for the respondent Company placing reliance on the judgment of the Supreme Court in Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, would maintain that admittedly there was delay on the part of the appellant Corporation in crediting the excess amount of Rs.11,37,150-60 immediately after the sale was knocked down in favour of the highest bidder on 9.3.1991 and therefore, the learned single judge is fully justified in awarding interest in favour of the respondent company particularly having regard to the fact that the appellant Corporation itself has recovered interest at the rate of 18% from the highest bidder having granted facility to pay balance of 75% bid amount in instalments. The Supreme Court in H.P. STATE FINANCIAL CORPORATION''s case (supra-1) held:

"Powers conferred u/s 29 of the Act are intended to achieve the object of the Act. The amount realized in consequence of the sale or lease of the property of the defaulter can be adjusted in the liability of the defaulter and the excess amount thus realized, if any, to be paid to the person whose unit was proceeded against u/s 29 of the Act. The activities of the Corporation are visualized not as profit earning concern but an extended arm of the State to harness the business potential of the country to benefit the common man. There is no statutory obligation on the part of the Corporation to pay the interest on the excess amount realized. However, in appropriate cases interest may be awarded in lieu of compensation or damages for allegedly wrongfully retaining the amount payable to a party. Interest can be awarded on equitable grounds as was held by this Court in Satinder Singh and Others Vs. Amrao Singh and Others, ; Laxmichand Vs. Indore Improvement Trust, Indore and Another, and Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi, .

A perusal of the impugned order shows that the High Court has not referred to any ground justifying the payment of interest to the respondents. The respondents have also not referred to any circumstance warranting the exercise of powers of equity in their favour. The reliance of the learned counsel for the respondents on Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi, is misplaced. In that case this Court has held (para 6 of AIR):

"There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed u/s 34 of the CPC as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorize the Redressal Forums and Commission to also grant interest appropriately under the circumstances of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in Satinder Singh and Others Vs. Amrao Singh and Others, ."

From the record it appears that after getting a loan in the year 1983 and 1986 the respondents committed persistent defaults in repayment which necessitated the action against them u/s 29 of the Act in the year 1991. As no amount was paid till 13th April, 1993, the Corporation sold the Industrial unit, a hotel, for an amount of Rs.39.75 lacs. Before the excess outstanding amount could be paid to the respondents, they filed a writ petition in the High Court challenging the action of the Corporation and thus preventing it from making the payment. The counsel of the respondents even made an offer that there was a buyer to purchase the hotel for a sum of Rs.60 lacs. The negotiations with the prospective buyer could not mature on account of application filed by the earlier purchaser. The High Court instead of deciding the application of the earlier purchaser disposed of the writ petition vide the order impugned. As noticed earlier, the High Court has not assigned any reason much less a cogent one for the payment of interest. In the absence of an agreement and the statutory provision, interest could not be claimed by the respondents as a right. The Court did not refer to any circumstances on the basis of which the interest could have been granted as an equitable relief."

6. A careful reading of the observations of the Supreme Court in the above case

would make it very clear that it is not outside the scope of the power of the Court to grant interest in appropriate cases. The Supreme Court itself, as could be seen from para (6), has held that in appropriate cases the Court can award interest in lieu of compensation or damages for wrongful retaining of the sum of money due to a party and such interest can also be awarded on equitable grounds. The question therefore is whether the facts and circumstances of this case would warrant award of interest/compensation in lieu of interest in favour of the respondent company, if not for any other reason, but at least on equitable grounds. It cannot be gain said that in the sale of the unit of the respondent, the respondent company had no role to play. Since the respondent company failed to pay the borrowed loan amount in terms of the agreement, the appellant Corporation brought the respondent''s unit to sale, in order to realize the outstanding dues, and in its wisdom and discretion, knocked down the sale of the unit of the respondent company in favour of the highest bidder on 9.3.1991 for a sale consideration of Rs.57.00 lakhs. As pointed out supra, that this Rs.57.00 lakhs was in excess to the tune of Rs.11,37,150-60 and over and above the actual liability of the respondent company . If that is so, as on 9.3.1991, the appellant Corporation incurred a liability to pay the excess amount to the respondent company. It is admitted position that the excess amount was remitted to the State Bank of India by three cheques dated. 6.2.1992,17.2.1992 and 22.2.1992. It is nobody''s case that the respondent company had played any role of obstacle preventing the appellant corporation from making payment of Rs.11,37,150.60 ps promptly and immediately after 9.3.1991. The resultant position is that the lawful money belonging to the respondent company was in the hands of the appellant Corporation for no fault of the former, and that the appellant Corporation having retained the money due to the respondent company cannot be permitted to contend that it is not liable to pay interest for the period during which it had no legal authority to retain the amount. It is also very relevant to note that not only the appellant Corporation retained the money of the petitioner without authority but also collected interest at the rate of 18% from the highest bidder for the facilities given to him to pay 75% of the bid amount in instalments. Although, as rightly observed by the Apex Court in para-10 of the judgment in U.P. STATE FINANCIAL CORPORATION''s case (cited 2nd supra), the appellant corporation cannot be equated to a private financing money lending institution, at the same time, the Corporation being a statutory authority its actions and deeds should be in conformity with the postulates of Article 14 of the Constitution, namely, fairness in action, non-arbitrariness and reasonableness. We are of the considered opinion that the stand taken by the Corporation is totally arbitrary and unreasonable. In the garb of statutory veil, the Corporation cannot be permitted to make unlawful gain at the peril of the respondent company. We would have appreciated the argument of the learned counsel for the appellant Corporation if the Corporation had not collected interest from the highest bidder for having granted the facilities to pay 75% of the bid amount in instalments. What the Apex Court has observed in paras (24) and (25) of the judgment in KERALA STATE ELECTRICITY BOARD''s case (supra-3) in the context of this case, is quite apt and apposite. It held:

"There is no manner of doubt it is an imperative duty of the court to ensure that the party to the lis does not suffer any unmerited hardship on account of an order passed by the Court. The principle of restitution as enunciated by the Privy Council in Rodger case'' has been followed by the Privy Council in later decisions and such principle being in conformity to justice and fair play be followed. It should, however, be noted that in an action by way of restitution, no inflexible rule can be laid down. It will be the endeavour of the court to ensure that a party who had suffered on account of decision of the Court, since finally reversed, should be put back to the position, as far as practicable, in which he would have been if the decision of the court adversely affecting him had not been passed. In giving full and complete relief in an action for restitution the Court has not only power but also a duty to order for mesne profits, damages, costs, interest etc., as may deem expedient and fair conforming to justice to be done in the facts of the case. But in giving such relief, the Court should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken. In deciding appropriate action by way of restitution, the Court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of the parties.

In the instant case, the Company and other consumers though have liability to pay on the basis of revised tariffs, they had not paid on such basis because of erroneous decision of the High Court. Not only they did not pay on the basis of the revised tariffs, but they got adjustment of payments already made prior to the decision of the High Court against future bills to be drawn only on the basis of the un-revised tariffs, in a phased manner. The company is an ongoing business concern and must have utilized the money, saved on account of the decision of the High Court, gainfully, in its commercial activities. Similarly, other consumers have gainfully utilized the amount saved for being not required to pay on the basis of revised tariffs. The Board had to suffer financial loss because of the said erroneous decision of the High Court. In the aforesaid circumstances, it will be lawful, conforming to equity and well-established principle of restitution for the board to claim interest at 18% on the unpaid portion of the Bill drawn on the basis of revised tariffs. The Company had agreed to pay interest at 18% on the bills if not paid when it became due and payable. Even otherwise, claim of 18% interest per annum also appears to be just and proper."

7. Strictly speaking, in the instant case, the respondent company was entitled to claim interest from 9.3.1991 the day on which the unit was sold finally in favour of the highest bidder for a sale consideration of Rs.57.00 lakhs. Be that as it may, the learned single judge in his discretion directed the appellant corporation to pay the interest only with effect from 1.4.1991. To that extent, the appellant company is benefited. We do not find any substantive ground to interfere with the order of the learned single judge.

8. In the result, the writ appeal is dismissed. No costs.

