(2008) 12 PAT CK 0031

In the Patna High Court

Case No : CWJC No. 12835 of 2007

Anil Kumar Verma APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Citation : (2009) 2 PLJR 375

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Sushmita Mishra, for the Appellant; Y.V. Giri and Jyoti Saran, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—With the consent of parties this writ application was heard for final disposal at the stage of admission itself, pleadings being complete. The petitioner had entered into an agreement dated 18.5.1990 with the Bihar State Financial Corporation (hereinafter referred to as the Corporation) for financial assistance, under which petitioner had received a term loan of Rs. 5 lacs to set up and run a hotel namely Satkar Hotel at Motihari in the district of East Champaran. It is stated by the petitioner that right from very beginning because of law and order problem the hotel could not break even and subsequently because of disturbances in Nepal which is close by and other problems it could only be partially run. He was therefore in default of the Corporation''s dues.

2. In September 2006, the Corporation came up with a One Time Settlement Scheme, 2006 (OTS). Under this scheme various options were given to defaulting units to make payments and compromise the outstanding dues in order to enable the units to make an honorable exist. The petitioner being desirous of availing the benefit made an application on or about 17.10.2006 for one time settlement making an upfront payment by bank draft for Rs. 2,25,310/-, which was about 50% of the outstanding principal due and waited for response of acceptance. By letter dated 19.1.2007 the Managing Director of the respondent-Corporation

accepted the settlement offer and directed payment of Rs. 2,71,171/- being the balance payable for full and final settlement to be made within one month of the said order. Soon after receipt of the said order the petitioner finding a difficulty to arrange for the balance money immediately filed an application on 12.2.2007, within payment period of one month pointing out difficulties and praying that for making final payment one month time may be extended. Having received no response another reminder was sent on 19.2.2007 to the Corporation again without response. The petitioner submits that thereafter he tried to persuade the authorities to accept payment with delayed payment interest if any but the same was refused on the ground that petitioner having not complied with the order of settlement and the period having expired nothing could be done and the amount was to be adjusted against outstanding in the account. This is what has brought the petitioner to this Court. While the matter was pending before this Court the Corporation exercising its right u/s 29 issued a tender notice dated 17.8.2008 in the newspaper for selling the hotel for recovery of its dues. This led to filing of I.A. No. 5103 of 2008 in the present writ application.

3. A counter affidavit has been filed by the Corporation followed by a supplementary counter affidavit and petitioner''s rejoinder, thereto. In the counter affidavit of the Corporation, the Corporation has stated that the petitioner was a chronic defaulter. In my view, this makes little difference, because, so far as the OTS Scheme or any such scheme is concerned, it is meant for defaulters to settle their dues. It is admitted in the counter affidavit that having been given a term loan of Rs. 5 lacs from time to time the petitioner has deposited a total payment of about Rs. 8 lacs, which all virtually been adjusted against outstanding dues. It is then stated that petitioner had applied for settlement under the OTS, 2006 scheme, but failed to adhere to the time schedule of making payment within one month from the date of issue of settlement order. The settlement order thus lapsed and the OTS Scheme also lapsed.

4. The reply to petitioner''s specific averment with regard to seeking one month extension all that is stated is that the request was placed before the Managing Director of the Corporation, who informed the Branch Manager at Motihari (admittedly not to the petitioner) that extension was not possible under the provisions of the OTS Scheme and could not be granted. With regard to the reminder sent by the petitioner with regard to his request, all that is stated is that One Time Settlement Scheme was provided as a relief to defaulting lonees. In event of default in adhering to the scheme of settlement the original agreement would revive and operate and as such the Corporation did not think it necessary to entertain any representation from any promoter.

5. When the matter was taken up for admission by this Court, on behalf of Corporation, it was disclosed that pursuant to the tender published for sale of the hotel, an offer to purchase the hotel at about Rs. 28 lacs was received. In the counter affidavit another important fact was mentioned that pursuant to the

advertisement for sale of the petitioner''s hotel five offers were received, maximum whereof was for Rs. 12.60 lacs but after negotiations one of the tenderer raised his offer suddenly to Rs. 28.25 lacs, even though, this offer was less than the offer as made by the Corporation. What was intended to be conveyed to the Court was that for a default in payment of settlement amount of about Rs. 2.71 lacs, petitioner''s hotel was to be distress sold for Rs. 28 lacs. This shocked the conscience of the Court. The Court enquired from the Corporation to disclose whether they had granted any extension to any person under the OTS Scheme.

6. To the query of the Court aforesaid, supplementary counter affidavit was filed by the Corporation. In the supplementary counter affidavit, the Corporation very clearly and fairly now disclosed that the Board of Directors of the Corporation, which includes the Managing Director, did in fact relax the rigour of timely payments in large number of cases, 11 to be precise based on exceptional and rational considerations. What was sought to be impressed was that all of them had paid the amounts more or less within the "grace" period granted or agreed to shift to other schemes under the OTS Scheme, but the petitioner having not paid the balance amount within the one month period allowed under the scheme or even thereafter could not be considered for the relaxation.

7. Thus, from the facts as found above, it is amply clear that though petitioner''s application for extension by one more month to pay the settlement amount was outrightly rejected on the ground that there was no provision for extension of time and even that was not communicated to the petitioner, others were granted grace period and various other accommodations to help them get out of the debt trap and make an honorable exit. Petitioner contends that this is gross hostile discrimination, as the scheme was of the Corporation itself and they could have extended time but the same was withheld unjustly and unfairly when it came to the petitioner, who was a man of small means far away from Patna. On the other hand, Mr. Y.V. Giri, learned Senior Counsel for the Corporation submits that considering the reasonableness of the consideration relaxations were given in deserving cases. In my view, one thing is clear from the stand of the Corporation that they did reserve discretion to extend the time and they did exercise the discretion in several cases even beyond grace period time is granted, but chose not to do so in case of petitioner for reasons neither disclosed nor apparent.

8. In my view, before this Court, the question is not whether there existed reasonable ground for granting extension or not but the question is, whether there was power to relax or not. Because, the Corporation''s stand that it had no power to relax, stands belied by its own conduct, where they did relax the conditions in favour of others and one month extension asked by the petitioner, refusal whereof was not even conveyed to the petitioner much less any reason disclosed.

9. In my view, this by itself establishes highly unfair, arbitrary and grossly hostile discrimination meted by the Corporation. The OTS Scheme was meant for

defaulters. Petitioner had established his bona fide for settlement by making payment of almost 50% of the settlement amount alongwith his application for settlement. This was responded by the Corporation after almost two months directing petitioner to make payment of balance amount of Rs. 2.71 lacs within one month. Within the said period one month petitioner asked for extension of time by another one month. While others were granted grace periods/extension even after grace period expired, petitioner was denied the extension and petitioner''s hotel set up for auction. In my view, these facts call for interference by this Court.

10. I, therefore, in the facts and circumstances stated above, direct that within one month from today on petitioner depositing the balance amount of Rs. 2,71,171/- the tender for sale of petitioner''s hotel would be cancelled by the Corporation. The Corporation would then calculate interest for the delay in payment of this amount, even though, the delay here is not attributable to the petitioner, who was ready and willing to pay the amount within one month extension, calculated @ 12% per annum and intimate the same to the petitioner by registered post and through its Branch Office at Motihari and the petitioner would pay the same within one month of its communication. On such payment the total outstanding of petitioner would be deemed to be settled and accounts closed. This would be just and equitable settlement in the facts and circumstances of the case. With these observations and directions, the writ application stands allowed.

