
(2016) 12 CAL CK 0021
In the Calcutta High Court
Case No : AST 338 of 2014

Arjun Palit

APPELLANT

Vs

West Bengal Financial Corporation

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2017) 170 AIC 569 : (2017) 1 BC 544

Hon'ble Judges : Debasish Kar Gupta and Mohd. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Mr. Saptangshu Basu and Mohd. Hafiz Ali, Advocates, for the Respondent Nos. 4 and 5; Mr. Amiya Kr. Sur, Advocates, for the Respondent Nos. 1 to 3; Mr. Malay Basu, Mr. Dilip Kumar Samanta, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J. - This appeal is directed against a judgment dated July 15, 2014 passed in W.P. No.19398 (W) of 2014 by virtue of the impugned judgment the writ application of the appellant was dismissed.

2. The case made out in the writ application was that the father of the appellant/writ petitioner entered into an agreement dated January 17, 1990 for sale of a property of the West Bengal Financial Corporation (respondent no.1) for purchasing a property of a defaulter (M/s. Iswari Ceremics). The father of the petitioner failed to pay the entire consideration money within February 23, 1990 in terms of the above agreement. Further, by a communication dated April 7, 1990, he withdrew his offer of purchasing the property under reference. Subsequently, the respondent no.1 informed the father of the appellant by a communication dated November 15, 1990 that unless the payments in terms of the agreement under reference were made, the agreement for sale would be treated as cancelled and payment received from him would stand forfeited.

3. On March 20, 2014, the respondent no.1 published advertisement in "Business

Standard" and "Sambad Pratidin" for auction sale of the property in question. The respondent no.1 received a communication dated March 31, 2014 from the petitioner for completion of sale of the property in question on the basis of the agreement dated January 17, 1990. In reply the respondent no.1 informed the appellant by a communication dated April 11, 2014 that the agreement for sale dated January 17, 1990 had been terminated as also the earnest money paid for execution of the above agreement had also been forfeited due to nonpayment of the entire money within the period mentioned in the agreement. However, it was stated in the above communication that in the event the appellant was willing to pay a sum of Rs.2,26,15,905.15/- as down payment, his order for purchasing the property in question would be considered. However, it was written in the above communication that the above offer was made without prejudice to the rights of the respondent no.1 for selling out the property in question to anyone in accordance with the provisions of Section 29 of the State Financial Corporations Act, 1951.

4. Thereafter, the petitioner filed the writ application for cancellation of the tender notice dated March 20, 2014 as also for a writ in the nature of mandamus.

5. It is submitted by Mr. Malay Basu, learned senior advocate, appearing on behalf of the appellant that the learned single Judge failed to arrive at a conclusion that the action on the part of the respondent no.1 was arbitrary. According to him, invitation of tenders from the intending purchasers in exercise of powers under Section 29 of the State Financial Corporations Act, 1951 was published in two newspapers namely, "Business Standard" and "Sambad Pratidin". The learned single Judge failed to take into consideration the submissions made on behalf of the appellant that those newspapers had no wide circulation. It is further submitted by him that while a subsequent offer was made to the appellant by the respondent no.1 by its communication dated April 11, 2014 to sell the property in question on down payment of Rs.2,26,15,905.15/-, the respondent no.1 suppressed the fact of initiating the process of sale of the property in question informing the tenders from intending purchasers. It is also submitted by him that there was an attempt to sell out the property in question to the respondent nos.4 and 5 at Rs.20 lakh only in violation of the dominant consideration to secure the best price for the property in question.

6. Mr. Basu relied upon the decision of Kerala Financial Corporation v. Vincent Paul and Anr., reported in II (2011) BC 242 (SC) : II (2011) SLT 681 : II (2011) CLT 61 (SC) : (2011) 4 SCC 171 in support of his above submission.

7. In reply it is submitted by Mr. Saptangshu Basu, learned senior advocate, appearing on behalf of the respondent nos.4 and 5, that there was no pleading in the writ application raising a dispute with regard to wide circulation of the newspapers, namely, "Business Standard" and "Sambad Pratidin". It was a submission from the bar before the learned single Judge. According to him, no party can be permitted to travel beyond its pleading and that all necessary and

material facts should be pleaded by the party in support of the case set up by it. It is also submitted by him that the appellant was not a participant in the tender process on the basis of the tender notice dated March 20, 2014. Therefore, according to him, the action on the part of the respondent no.1 to sell the property in question by way of auction in accordance with the provisions of Section 29 of the State Financial Corporations Act, 1951, could not be questioned by the appellant.

8. Reliance is placed by him on the decisions of *Union of India v. Ibrahim Uddin & Anr.*, reported in ((2012) SLT 461 : III (2012) CLT 142 (SC) : (2012) 8 SCC 148.), *M/s. SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co. Pvt. Ltd.*, reported in ((2011) SLT 697. : (2011) 14 SCC 66 and *Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr.*, reported in((2002) BC 568 (SC) : I (2002) SLT 571 : (2002) 3 SCC 496.)in support of his above submissions.

9. Having heard the learned advocates appearing for the respective parties as also after considering the facts and circumstances of this matter we find that the petitioner made out a case of non-performance of sale of the property in question to him on the basis of the agreement for sale dated January 17, 1990. Though a prayer was made for setting aside the publishing of the notice informing tender in two newspapers namely, "Business Standard" and "Sambad Pratidin" dated March 20, 2014, no pleading was made in the writ application raising dispute regarding wide circulation of the above newspapers. The above submission appears to be made from the bar on behalf of the appellant which was recorded in the impugned judgment.

10. After careful consideration of the facts and circumstances of this case we find that the predecessor in interest of the appellant i.e. his father relinquished his right to purchasing the property in question on the basis of the agreement for sale dated January 17, 1990. It was also not in dispute that no material was produced before the learned single Judge to show that any action was taken by the father of the petitioner on receipt of the communication dated November 15, 1990 from the respondent no.1 with regard to cancellation of the above agreement for sale and forfeiture of the payment which had been received by the respondent no.1. Therefore, there was no scope for the appellant to claim any right on the basis of the agreement for sale dated January 17, 1990 so far as the sale of property in question was concerned.

11. So far as the next contention of the appellant raising dispute regarding wide circulation of the aforesaid two newspapers were concerned, there is no dispute with regard to the settled principles of law that a case not specifically pleaded cannot be considered by the Court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In absence of pleadings, a Court cannot make out a case not pleaded suo moto. Reference may be made to the decision of *Bachhaj Nahar v. Nilima Mondal*, reported in (2008) 17 SCC 491 and the relevant portion of the above decision is set out below:-

"23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicate, estoppel, acquiescence, non-joinder of causes of action or parties, ect., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery possession of property "A", court cannot grant possession of property "B". In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

12. At the cost of repetition let it be recorded that no dispute was raised before the learned single Judge with regard to wide circulation of the newspapers in which the tender notice under reference was published. So, we do not find any infirmity in the impugned judgment on this point.

13. So far as the question of compliance of the provisions of Section 29 of the State Financial Corporations Act, 1951, is concerned, we find substance in the submissions made on behalf of the respondent nos.4 and 5 that the corporation is an independent autonomous body having its own constitution to abide by, and functions and obligation to discharge. It is not for the Courts or a third party to substitute its decision. Needless to point out that in view of the facts and circumstances discussed herein above the appellant was a third party so far as the tender process for selling the property in question was concerned.

14. In the decision of Kerala Financial Corporation (supra) the Hon"ble Supreme Court considered the grievance at the instance of a participant in the tender process and not at the instance of a third party. So, the above decision does not help the appellant.

15. In view of the above this appeal is dismissed. The respondent/Corporation is directed to refund the sum of Rs.25 lakhs, which has been deposited by the appellants with the respondent/Corporation in terms of the order dated August 7, 2014 passed in this appeal, together with interest arising out of midterm fixed deposit of the above sum to the appellant within a period of fortnight. The above refund must be made within a period of fortnight.

16. There will be, however, no order as to costs.

17. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, on priority basis.

Mohd. Mumtaz Khan, J. - I agree.