(2002) 05 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5021 of 2001

Arto Craft India APPELLANT

Vs

Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Bihar State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2002) 05 JH CK 0061

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S. Sinha and P.P.N. Roy, S.B. Gadodia and T. Kabiraj, for the Appellant; A. Sahay and Manoj Prasad, for the Respondent

Judgement

M.Y. Eqbal, J.—This writ application has been filed by the petitioner M/s Arto Craft India against respondent Nos. 1 to 4 and 6, namely, the Bihar State Financial Corporation and its officers and respondent No. 5, Sub-ordinate Judge-Ill. Civil Court. Ranchi. The reliefs sought for in the writ application are reproduced herein below:--

(i) Rule NISI for issuance of an appropriate writ or a writ of or in the nature of a writ of mandamus commanding upon the respondent No. 2 in particular to certify and show-cause before this Hon''ble Court as to why the order dated 5.8.2000 (Annexure-6) passed by the respondent No, 3 whereby and whereunder the Executive Committee of the Corporation in its meeting held on 3.7.2000 has approved the sale of the mortgaged/ hypotheticated assets of the petitioner in favour of M/s Trinity Traders Private Limited. Hinoo. Doranda. Ranchi in BE NOT STAYED by this Hon''ble Court in view of the fact that the application filed on behalf of the petitioner under Order 39. Rules 1 and 2 read with Section 151 of the CPC in Title Suit No. 192/1994 is pending and has not been disposed of as yet by the respondent No. 5;

(ii) Rule NISI for issuance of an appropriate writ or a writ of or in the nature of a writ of mandamus restraining the respondents No. 1 to 4 from dispossessing the petitioner from his unit and also to restrain the respondents from taking possession of the unit in view of the fact that the petitioner has filed an application in Title Suit No. 192/1994 under Order 39. Rules 1 and 2 read with Section 151 of the CPC wherein the petitioner has prayed that the petitioner has already deposited a sum of Rs. 1,40,000/- towards principal amount and the remaining principal amount, he is ready to deposit within a period of three months, but the said application is also pending and has not been disposed of as yet;

(iii) Rule NISI for issuance of an appropriate writ or a writ of or in the nature of mandamus directing the respondent No. 5 to immediately and forth-with pass orders on the application filed on behalf of the petitioner under Order 39. Rules 1 and 2 read with Section 151 of the CPC so that the petitioner could get some relief from threats of the respondents to dispossess the petitioner from the unit.

2. Petitioner''s case is that it is a proprietor-ship concern and is a small scale industry. In the year 1980, petitioner was granted loan of Rs. 1,15.000/- and in 1982 a sum of Rs. 2.05 lakhs was also sanctioned by way of loan to the petitioner. It is alleged that in November. 1984, just after assassination of late Smt. Indira Gandhi, the then Prime Minister of India, a riot took place in the town of Ranchi and the petitioner became victim of the riot and the entire articles were looted away. The rehabilitation matter of the petitioner remain pending with the Corporation but despite recommendation, nothing was paid to the petitioner. In 1994, a notice under Sections 29 and 30 of the Bihar State Financial Corporation Act was issued by the respondent-Corporation to the petitioner and thereafter petitioner filed a suit being Title Suit No. 192/94 for declaration that the petitioner is entitled to the benefit of rehabilitation. The petitioner also filed an application in the said suit for grant of injunction to restrain the respondents from dispossessing the petitioner from the premises in question. It is further stated by the petitioner that on 5.8.2000 an order was passed by respondent No. 3. Deputy Manager of the Corporation, whereby the Executive Committee approved the sale of the mortgaged assets of the petitioner in favour of M/s Trinity Traders Private Limited. In the meantime, the Sub-Or-dinate Judge passed the order dated 30.8.2000 on the injunction application filed by the petitioner directing him to deposit the principal amount by 6.11.2000 and the Corporation was directed not. to take any further action for the sale of the assets of the petitioner. The petitioner instead of depositing the amount, filed an application in the suit stating therein that he had filed writ petition being CWJC No. 2943/99(R) against the State Bank of India, which is pending. Since the amount was not deposited, the Sub-Ordinate Judge, Ranchi recalled/vacated the order dated 30.8.2000. Petitioner thereafter filed Misc. Appeal before this High Court which was converted into Civil Revision No. 37/2001. and was ultimately disposed of. Petitioner then filed the instant writ application. In the meantime, petitioner deposited Rs. 1,40.000/-towards principal amount in the said suit and stated that the Corporation should not have taken any action in auction sale of the unit and dispossessing the petitioner therefrom.

3. In the counter-affidavit filed by the respondents-Bihar Financial Corporation (in short the Corporation), it is stated that huge amount of Rs, 41,71,673,51 is lying due against the petitioner firm and the petitioner has tailed to deposit the aforementioned outstanding dues to the Corporation and consequently the assets of the petitioner''s firm was auction sold in favour of M/s Trinity Traders (P) Ltd. on 29.7.2000. It is, therefore, clear that the relief sought for by the petitioner restraining the respondents from taking possession of the unit is unjustified. Further case of the Corporation is that the petitioner filed Title Suit, and sought injunction upto the High Court and it was only after the petitioner failed to comply the order passed by the Sub-Judge, the instant writ application has been filed.

4. It appears that the instant matter was listed before a bench of this Court on 5.10.2001 and this Court passed following order:--

"It appears that a suit for similar relief has been preferred by petitioner. The petitioner, who is present in person, undertakes to withdraw the suit so that he may persue the present writ petition.

Counsel for the Corporation is granted six weeks time to tile counter-affidavit.

The case may be disposed of at the stage of admission.

Place this case ''For ORDERS'' on 20th December. 2001 for further order.

During the pendency of the writ petition, if the petitioner deposits a sum of Rs. four lakhs by 31st October. 2001 and another sum of Rs. four lakhs by 30th November. 2001, the respondents will not give possession of the petitioner''s unit to any one or other person without prior leave of the Court.

However, it will be open to the concerned respondents to ask for appropriate modification/clarification of the interim order."

5. On 20.12.2001 the intervention application filed by the M/s Trinity Traders (P) Ltd. was allowed and the matter was listed on 22.1.2002 and again the following order was passed:--

"Counsel for the Financial Corporation is allowed time to obtain instruction from the Board of Directors as to whether they intend to settle the matter with the petitioner on payment of lumpsum amount, say to Rs. 30 lacs towards the total dues in some installment or not.

Place the case for further hearing for admission on 20th February. 2002 on the top of specially fixed cases.

Let a copy of this order be handed over to Mr. A. Sahay, learned counsel for the respondents."

6. In compliance of the aforesaid order, the Corporation filed supplementary affidavit on 10.4.2002 stating inter alia that the Board of Directors of the Corporation resolved in its meeting held on 12.2.2002 that the concern should be

allowed to pay 90% of the balance outstanding within two weeks and the balance 10% may be allowed to be paid within a period of one year and on this 10% no interest shall be charged from the date of receipt of 90% payment. It is further stated that the total outstanding dues against the petitioner comes to Rs. 35.34.635.51.

7. As noticed above, in 1994 the Corporation was intended to issue notice under Sections 29 and 30 of the Act for auction sale of the Unit, petitioner filed Title Suit No. 192/94. The suit remain pending for more than 6-7 years and on the injunction application the Sub-Judge passed order directing the petitioner to deposit the principal amount by 6.11.2000. Instead of depositing the amount, the petitioner filed application in the suit stating therein that he had filed writ petition being CWJC No. 2943/99 (R) against the State Bank of India which is pending. Since the amount was not deposited the Sub-Judge Rancni vacated the order of injunction dated 30.8.2000. The said order was challenged by the petitioner by filing appeal /revision before this Court which was ultimately disposed of against the petitioner. Petitioner then filed instant writ application and in the meantime a sum of Rs. 1,40,000/- was deposited. This Court on 5.10.2001 passed interim order directing the respondents not to give possestion of the petitioner''s unit to any other person, if the petitioner deposits a sum of Rs. 30 lacs by 30th October, 2001 and another sum of Rs. 4 lacs by 30th November. 2001. Petitioner has not complied the aforesaid order inasmuch as no amount has been deposited by the petitioner.

8. Taking into consideration all these tacts. 1 am of the opinion that this Court cannot stay the hand of the Corporation in recovery of a huge amount of money lying due against the petitioner particularly when petitioner did not comply the order dated 5.10.2001 passed by this Court. However. this Court, gives one more indulgence to the petitioner and directs him to deposit atleast 50% of the total dues within a period of one month from today. In the event, 50% of the total dues is deposited by the petitioner within the aforesaid time then the Corporation shall consider the case of the petitioner and allow sufficient time for payment of the remaining amount in installment. It is made clear that if petitioner fails to deposit 50% of the total dues within one month the Corporation shall be entitled to proceed further for the recovery of the dues.

9. With the aforesaid observation and direction this writ application is disposed of.

