
(1999) 05 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 111 of 1998 (R)

Ashvi Electric, Adityapur

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2000 Patna 27 : (2000) 48 BLJR 413 : (2002) 108 CompCas 857 : (1999) 9 PLJR 673

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

Bench : Single Bench

Advocate : A.K. Sinha and A.K. Mehta, for the Appellant; S. Srivastava and Ritu Kumar, J.C. to Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of an appropriate writ for quashing the order of sale dated 16-9-97 in favour of respondent No. 3 on the ground, inter alia, that respondent No. 1, Bihar State Financial Corporation illegally and arbitrarily without affording opportunity to the petitioner to purchase the industry, ordered for sale of the same to respondent No. 3.

2. The case of the petitioner, inter alia, is that the petitioner is a proprietorship firm and carries on its business in Adityapur Industrial Area and is engaged in manufacturing emergency lights Inverters, battery chargers, voltage stabilizers and transformers etc. For establishing the industry the petitioner was sanctioned a term loan of Rs. 1,19,000/- on 24-4-79. However, respondent No. 1-Corporation disbursed only Rs. 95,710.77 paise during the period from February, 1980 to November, 1981 and the remaining portion of the loan amount was released over a period of two years. On account of delayed disbursement of loan by the Corporation the petitioner-unit could not go into full production and became a sick unit. Petitioner's further case is that the petitioner was shocked

and surprised to find that without any prior information some unauthorised persons broke the lock of the petitioner's unit and entered into the premises on account of the illegal action taken by the respondents-Corporation. It is alleged that the petitioner immediately contacted respondent No. 2, the Branch Manager of the State Financial Corporation who informed the petitioner that the unit has been taken over by the Corporation. The petitioner made a protest by letter dated 11-12-97 but the respondent-Corporation refused to give any information and behind the back of the petitioner the Corporation decided to sell the unit by issuing sale order dated 16-9-97 in favour of respondent No. 3. A copy of the sale order has been filed and annexed as Annexure 2 to the writ application. Petitioner's further case is that on receipt of the copy of the sale order, the petitioner by a letter informed the Corporation that she is interested to retain the unit on the same terms and conditions fixed in the sale letter. It is stated by the petitioner that all the procedures adopted by the Corporation for the sale of the unit was behind the back of the petitioner and the petitioner was never informed or served with a copy of sale order.

3. It appears that this writ application was filed on 12-1-98 and for the first time it was listed on 9-11 -98 and this Court passed the following order :--

The petitioner has filed the application for quashing the order contained in Annexure 2 by which the respondent-Financial Corporation has sold the unit to respondent No. 3.

In such cases, the Court is very slow to interfere but in view of the stand taken by the petitioner that it would deposit the entire consideration money (3,75 lakhs), I am inclined to grant an interim stay restraining the Corporation to execute the sale deed in favour of respondent No. 3. The petitioner is hereby directed to deposit Rupees two lakhs before respondent No. 2 on or before 20th November, 1998. During the pendency of the writ application the sale document will not be executed by the Corporation in favour of respondent No. 3, nor possession shall be given to it.

Put up this case on 23rd November, 1998 under the same heading. In the meantime, the counsel for the Corporation will seek instruction in the matter.

It is made clear that in case of non-deposit of the aforesaid amount or non-compliance of the undertaking given by the petitioner, this Court will take appropriate action against the petitioner for violation of the order undertaking given by the petitioner".

4. Mr. A. K. Sinha, learned Sr. counsel appearing on behalf of the petitioner put heavy reliance on a decision of the Apex Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and submitted, that the action of the respondent-Corporation is absolutely illegal and arbitrary inasmuch as when the Corporation has decided to sell the unit, it should have given first offer to the petitioner to deposit the dues and retain the unit and it was only after refusal by the petitioner the respondent-Corporation could have

issued sale order in favour of respondent No. 3. Learned counsel submitted that the respondent-Corporation suppressed the entire things in connivance with respondent No. 3 and the copy of the sale order was never forwarded to the petitioner. Learned counsel submitted that still the petitioner is read to deposit at a time the entire loan amount together with interest in order to retain the unit and, therefore, the respondent-Corporation should not have any objection to set aside the sale order.

5. I will first proceed to deal with the main question as to whether before accepting the tender of respondent No. 3 the petitioner was given opportunity by the Corporation to say as to why the offer made by respondent No. 3 be not accepted. It is the specific case of the petitioner that it was only after some unauthorised persons entered in the premises and claimed to have purchased the unit, the petitioner came to know about the auction sale of the unit by the Corporation. The petitioner alleged to have immediately made a complaint on 11-12-97 about the action taken by the respondents. It is further stated that neither the unit nor its proprietor has received any information whatsoever, from the respondent-Corporation with regard to any attempt being made by the Corporation to sell the petitioner's unit.

6. In the counter-affidavit filed by the respondents it is simply stated that several letters were issued to the petitioner-unit to clear the dues but in spite of that no action was taken by the petitioner to make the payment. In support of that copies of the letters dated 22-9-87, 23-9-88 and 21-11-94 have been filed and annexed as Annexures A and A/2. Besides the above, statement, there is nothing in the counter-affidavit to show that before the advertisement was published in the newspaper on 5-6-97 or even prior to that In the year, 1995 or 1996 any letter was written by the Corporation intimating the petitioner or its proprietor that the petitioner's unit would be sold in the event the outstanding dues are not paid. In paragraph 29 of the counter-affidavit it is stated that the letter dated 16-9-97 was sent to the petitioner by post which is the sale notice. Although in the affidavit sworn by the Branch Manager it is stated that the statement made in para 25 of the counter-affidavit is true to his knowledge based on records, but no document has been filed in proof of the fact that actually the sale notice dated 16-9-97 was issued to the petitioner. Even the date on which the said sale notice was despatched to the petitioner, has not been mentioned in the counter-affidavit. In fact, the averment made by the writ petitioner regarding want of knowledge of the auction sale of the unit, has not been controverted by the respondent-Corporation, There is nothing on record to show that the petitioner had the notice and knowledge about the steps taken by the Corporation for the sale of the unit. As noticed above, the petitioner-unit was auction sold in September, 1997 and before the auction sale, according to the own case of the Corporation, the petitioner was given notice in 1994 for payment of the dues. In that view of the matter I am of the opinion that the auction sale is vitiated in law for the reason that the respondent-Corporation has completely failed to follow the guidelines framed by the Supreme Court in the Mahesh Chandra Vs. Regional

Manager, U.P. Financial Corporation and others, . In Mahesh Chandra's case the Apex Court held that before accepting the tender of the prospective purchaser an opportunity should be given to the owner of the unit as to why such an offer of the prospective purchaser be not accepted. Their Lordships held :--

"In the light of the above guidelines it becomes clear that though tenders were invited respondent No. 3 alone had given the tender for a sum of Rs. 2 lakhs. On negotiation it was said to have been raised to Rs. 2.55.000/-. But deferred payments, on initial deposit of 25 per cent and balance. payment within four years of half yearly instalments, were given. This solicitous attitude, at the expense of the appellant, appears to be unjust and unfair and no reasonable prudent owner would accept such an offer. The appellant himself, long prior to sale, offered to pay Rs. 5 lakhs and odd in full quids. Section 29 does not exclude the application of the principles of natural justice. It is not a strait-jacket formula. It depends on facts in each case. Nothing prevented the Corporation to have given the appellant a chance for payment thereof at reasonable instalments with interest thereon. Nothing prevented them to release the open site, the subject of mortgage on condition that the entire sale price of the plots should be paid to discharge the liability and it be a condition in the sale deed itself. Before accepting the tender of respondent No. 3, an opportunity should have been given to the appellant as to why such an offer of respondent No. 3 be not accepted. The appellant would have come forward to give his own offer or brought third parties with higher offers. No such bona fide actions have been taken or attempted by the Corporation. Thus the acts smack of (sic lack of) bona fides or responsibility or real sonableness as an ordinary prudent businessman/trustee/owner acting in or dealing with such trust. Thus the sale of the property is vitiated by unjust and unreasonable act on the part of the Corporation or its officers or employees and is liable to be set aside".

7. Mr. Section Srivastava, learned counsel appearing on behalf of respondent No. 3 has drawn my attention to the counter-affidavit and submitted that pursuant to the advertisement offer of respondent No. 3 being the highest bidder was accepted and the sale order was issued on 16-9-97 and pursuant to that the Corporation executed an agreement for sale-cum-payment of balance loan on 18-12-97. Learned counsel submitted that possession of the petitioner-unit was handed over to respondent No. 3 on 10-12-97. Respondent No. 3, thereafter, deposited the necessary amount to the Electricity Board for new connection and also paid necessary fees for registration of the unit as a small scale industry. It is further stated in the counter-affidavit that a huge amount has been invested by respondent No. 3 who started paying instalment from 3-11-98. Mr. Srivastava, therefore, submitted that when respondent No. 3 after having purchased the unit invested sufficient amount, then respondent No. 3 shall be seriously prejudiced if the auction sale is set aside on the ground of absence of any offer made by the Corporation to the petitioner for purchase of the unit. I do not find much force in the submission of the learned counsel. From perusal of the records it appears that the writ application was filed on 12-1-98 after serving two copies of the writ

application to the retained counsel for the Corporation and before the lease deed was executed in favour of respondent No. 3, this Court by an order dated 9-11-98 passed interim order staying the execution of the sale deed by the Corporation in favour of respondent No. 3. Even assuming that pursuant to the auction sale, sale letter was issued and possession of the petitioner-unit was handed over to respondent No. 3, that cannot be a ground for rejecting the case of the petitioner. Evidently such improvements have been made by respondent No. 3 during the pendency of the writ petition. In the judgment referred above, the Apex Court has also dealt with similar question raised by the Corporation and held as under :--

"The possession given to respondent Nos. 3 to 5 or LRs of the respondent is illegal and immediately be resumed by the Corporation. Respondent 3 claimed to have improved the mil or entered into an agreement of sale of open plot No. 220/2 with third parties. But this is subject to litigation attracting the doctrine of lis pendens u/s 52 of the Transfer, of Property Act. The appellant, therefore, is not bound by the sale or the subsequent acts of the purchasers/persons claiming through them. One of the objections raised by the purchasers is that the appellant is one of five partners and the others did not object to the sale. This is no ground to deny the relief to the appellant when injustice stares in the face. The sale is accordingly set aside. The Corporation should immediately resume possession of the hypotheca sold. It is open to the appellant to pay the entire liability and have the hypotheca redeemed as per contract. If it is not possible the respondent shall release plot No. 220 to enable the appellant to do plotting along with plot Nos. 219 and 221, The release shall be made within four weeks from the date of receipt of the copy of this order or is produced before the respondent. The release shall be subject to payment of the entire sale price to the loan account. The respondent shall grant six months" time from the date of release to the appellant to pay the entire arrears outstanding towards the loan. If he fails to do so, the Corporation is directed to sell the same in open auction after giving wide publicity in the press and by beat of drum/microphone in the town and neighbouring area. The transferee would be entitled, if available at law, to proceed against the Corporation for such relief as is open to them in law for damages."

8. Learned counsel appearing on behalf of the Corporation very vehemently tried to support the case of respondent No. 3 and tried to justify trie action of the Corporation but I fall to understand as to why the Corporation is Interested in getting back its dues in Instalments within a period of five years from respondent No. 3 instead of getting the entire outstanding dues from the petitioner which the petitioner is ready and willing to pay in one lump sum. This attitude of the Corporation also appears to be mala fide and against the normal conduct of the Instrumentality of the State.

9. Having regard to the entire facts and circumstances of the case, this writ application is allowed and the impugned sale order as contained In annexure 2 is

set aside. The respondent-Corporation is directed to resume possession of the unit to the proprietor of die petitioner. At the same time the petitioner who has already deposited Rs. 2 lakhs pursuant to the order dated 9-11-98 passed by this Court, is directed to deposit the balance amount of Rs. 1.75 lakhs together with pendente lite interest and cost within one month from today.