

(2019) 11 PAT CK 0155

In the Patna High Court

Case No : Letters Patent Appeal No. 344 Of 2017 In Civil Writ Jurisdiction Case
No. 2930 Of 2015

Awadhesh Prasad Sinha

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

State Finance Corporation Act, 1951 — Section 29, 30

Citation : (2019) 11 PAT CK 0155

Hon'ble Judges : Ashwani Kumar Singh, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Siddhartha Prasad, Rakesh Ambastha, Kumar Abhimanyu Pratap,
Sunil Kumar Sharma

Final Decision : Dismissed

Judgement

1. Heard Mr. Siddharth Prasad, learned Counsel for the appellant, Mr. Kumar Abhimanyu Pratap, learned Counsel for the Bihar State Credit and Investment Corporation Limited (for short, 'the BICICO') and Mr. Sunil Kumar Sharma, learned Counsel for respondent no. 5.

2. The present Letters Patent Appeal has been filed by the appellant challenging the order, dated 10.01.2017, passed in CWJC No.2930 of 2015.

3. The undisputed facts of the case are that the appellant was the Managing Director of M/s Kiran Re-rollers Private Limited, Nalanda (in short, 'the Company'), which was duly incorporated under the Indian Companies Act, 1956. The Company had taken financial assistance from the BICICO to the tune of Rs. 90,00,000/- during the period 1989-90. The Company failed to refund the loan taken from the BICICO in terms of the agreement entered into between the parties. On 17.05.2011, the BICICO issued demand notice to the Company and its Directors, including the appellant, under the provisions of Sections 29 and 30 of the State Finance Corporation Act, 1951, highlighting the outstanding against

the Company on 31.03.2011 and called upon the Company and its Directors to clear the dues of the BICICO within a period of 21 days, failing which the assets of the Company will be auction sold. Since the Company and its Directors failed to clear all the dues of the BICICO within the aforesaid period, the BICICO issued letter, dated 03.06.2011, for taking over the possession of the assets of the Company. Thereafter, it published the auction sale notice on 10.06.2011 for sale of the assets of the Company. The Company, through its Managing Director (appellant), moved before this Court and filed CWJC No. 9994 of 2011 against the aforesaid letter and auction sale notice and also for a direction to the BICICO to accept One- Time Settlement proposal submitted by the Company for discharge of its liabilities. The said writ application was dismissed vide order, dated 30.06.2011, by this Court. Being aggrieved by the order, dated 30.06.2011, passed in CWJC No. 9994 of 2011, the Company, through its Managing Director (appellant), filed Letters Patent Appeal, vide L.P.A. No. 1244 of 2011 before this Court. On 06.03.2012, a Division Bench of this Court dismissed L.P.A. No. 1244 of 2011. After dismissal of the Letters Patent Appeal, since the BICICO had failed to execute and register sale deed of the assets of the Company bought by respondent no. 5, the respondent no. 5 filed a writ petition before this Court, vide CWJC No. 2930 of 2015, wherein a prayer was made to direct the BICICO to execute and register the sale deed of the property bought by him in the auction sale. In the said writ petition, the appellant filed an interlocutory application, vide I. A. No. 5341 of 2015, praying therein that he is the original promoter of the property in question and, hence, he may be impleaded as one of the respondents in the writ petition. His interlocutory application was allowed by the learned Single Judge. He contested the writ petition and, upon contest, the writ petition was disposed of with a direction to the BICICO to execute and register the deed of sale for the premises in question within three weeks from the date of receipt/production of a copy of the order, vide impugned judgment, dated 10.01.2017.

4. Mr. Siddharth Prasad, learned Counsel for the appellant, submitted that the learned Single Judge, while passing the impugned judgment, dated 10.01.2017, failed to appreciate that the auction sale undertaken by the BICICO with respondent no. 5 is collusive in nature. He also failed to appreciate that the then officials of the BICICO were hand-in-gloves with respondent no. 5. According to him, the assets of the Company had been auctioned sold arbitrarily and in complete violation of the legal provisions by the BICICO. The auction sale was done in favour of respondent no. 5 on the basis of incorrect valuation report without affording any opportunity to the Company to rehabilitate. He has further contended that no benefits of One-Time Settlement (for short, 'OTS') Scheme was not extended to the Company and forceful possession of the assets of the Company was taken by the BICICO in the most arbitrary manner.

5. Per contra, learned Counsel appearing on behalf of the respondent nos. 2, 3 and 4 (the BICICO) submitted that the Company, a juristic person, being represented through the appellant, has already contested the issues involved in

the instant case in CWJC No. 9994 of 2011 and in L.P.A. No. 1244 of 2011 and all the grounds taken by the appellant herein have been rejected and the writ petition as well as the Letters Patent Appeal, both, got dismissed, against which no further appeal has been made. The orders passed by the Court have, thus, become final and binding upon the appellant also. He, being the Managing Director of the Company, had actively participated in all the previous proceedings before this Court and once again raising the same issues, which have already been decided by the Court, is nothing, but an abuse of the process of Court. He has contended that there is no legal ground on the basis of which the instant appeal could be sustained. He has further contended that pursuant to the impugned judgment, dated 10.01.2017, passed by this Court, the deed of sale of the premises of the Company has already been executed in favour of the respondent no. 5 and possession of the said premises has already been handed over to the respondent no. 5 long back.

6. Mr. Sunil Kumar Sharma, learned Counsel for the respondent no. 5, while adopting the submissions made by learned Counsel for the BICICO, has submitted that there is no patent illegality in the judgment passed by the learned Single Judge and, hence, no interference in appeal is warranted.

7. We have heard learned Counsel for the parties and carefully perused the records.

8. As noted above, the appellant was the Managing Director of the Company, which took financial assistance to the tune of Rs. 90,00,000/- during the period 1989-90 from the BICICO in order to set up an industry. The Company created equitable mortgage of its assets in favour of the BICICO, as per the requirement of the loan. Since the Company failed to refund the loan amount, a demand notice was issued under Sections 29 and 30 of the State Finance Corporation Act, 1951, to recover the loan amount from the Company by calling upon the Company and its Directors to clear the outstanding dues. As the Company and its Directors failed in clearing off the outstanding dues against the demand notice, the BICICO took over possession of the properties of the Company and published auction sale notice for sale of the properties of the Company. The challenge made by the Company in the writ petition filed before this Court, vide CWJC No. 9994 of 2011 failed as the writ petition was dismissed vide order, dated 30.06.2011. While dismissing the writ petition, all the submissions made by the appellant in the present application were duly considered, which would be evident from the findings recorded in paragraphs 13 to 15 of the judgment, which read as under:-

"13. Considering the entire facts and circumstances of the case as well as the respective arguments of the parties and the materials on record, it is quite apparent that the authorities of the State as well as this Court considered the case of the petitioner very sympathetically and finally on the direction of this Court vide order dated 07.12.2007 (Annexure 8), the petitioner approached the authorities, which again considered the claim of the petitioner sympathetically

and, thereafter, vide order dated 13.08.2008 (Annexure 10) they directed the petitioner to give its clear rehabilitation proposal so that proper steps could be taken in that regard after inspection etc. No mention has been made nor any document has been annexed to show that the said direction of the authorities concerned was complied by the petitioner.

14. Furthermore the petitioner applied in the year 2004 for One Time Settlement as per the scheme of the respondents and the BICICO considered the said application and vide order dated 30.12.2004 calculated the total amount payable under O.T.S. and directed the petitioner to send the supporting paper and affidavit as required under the O.T.S. Policy, 2004 along with Demand Draft/Cheques for further action. There is neither any statement nor any document to show that any step in that regard was taken by the petitioner in compliance of the said directions.

15. Apart from the aforesaid facts, it is quite apparent from the entire circumstances and documents that the authorities of the BICICO have taken all steps and adopted all procedures as required in law and have not violated any provisions of the Act. Hence this Court does not find any reason to interfere with the impugned orders/notices under the provision of Article 226 of the Constitution of India."

(Emphasis added)

9. It would be manifest from the judgment in CWJC No. 9994 of 2011, that the plea of not providing the benefits of OTS Scheme and non-acceptance of rehabilitation proposal etc. were all raised by the Company. However, the Writ Court has categorically given its finding that it was the Company which failed to send the supporting paper and document, as required under the OTS Scheme of 2004. The Company also failed to give its clear rehabilitation proposal, so that the BICICO could have taken proper steps in this regard. Being aggrieved by the aforesaid judgment passed by the Writ Court, when the Company filed appeal, vide L.P.A. No. 1244 of 2011, the same was also dismissed by the Division Bench upholding the order passed by the learned Single Judge. While dismissing the intra Court appeal, the Division Bench held thus:-

"Admittedly, the assets of the Company were mortgaged to the BICICO; the Company failed to discharge its duties to the BICICO. Pursuant to the public notice dated 10th June 2011 the auction was held on 30th June 2011. The assets of the Company taken over by the BICICO have been sold in auction sale. The purchaser has been given the possession of the assets of the Company. It is also not in dispute that whatever One Time Settlement was once contemplated did not materialize. Unless the Company offered payment under the One Time Settlement, the Company cannot insist that the BICICO should accept the proposal of One Time Settlement made once upon a time.

In our opinion, none of the reliefs prayed for in the writ petition could have been granted to the Company. The learned single Judge has rightly dismissed the writ

petition. Appeal is dismissed in limine."

10. Once, the Division Bench passed its order in L.P.A. No. 1244 of 2011, which was not challenged by either the Company or the appellant herein, the same attained finality. The challenge to the auction sale notice had failed. The assets of the Company were taken over by the BICICO. The property of the Company has been auction sold and the possession over the same was given long back to the respondent no. 5. Thus, the only step which was required to be taken by the BICICO was to execute and register the deed of sale of the properties of the Company bought by the respondent no. 5 in auction sale.

11. When the BICICO failed to discharge its duties, the respondent no. 5 was compelled to file a writ petition before this Court, vide CWJC No. 2930 of 2015 in which the appellant herein intervened and was allowed to be impleaded as one of the respondents.

12. On the facts and circumstances of the case, we are of the opinion that the learned Single Judge has rightly allowed the prayer of the respondent no. 5, vide judgment dated 10.01.2017, and directed the BICICO to execute and register deed of sale of the premises in question in favour of the respondent no. 5. All the points, being raised by the appellant in the instant appeal, were considered by this Court in the previous round of litigation. Once, the Company has failed to get any favourable order, the appellant, in his individual capacity, is trying to take up the same issues once again. In our opinion, the reliefs prayed for in the writ petition could not have been granted to the appellant. The learned Single Judge has rightly dismissed the writ petition.

13. The appeal, being devoid of any merit, is dismissed.

14. The parties shall bear their own costs.