

(2002) 08 JH CK 0062
In the Jharkhand High Court
Case No : LPA No. 286 of 2000 (R)

Bihar State Financial Corporation and Others	APPELLANT
Vs	
Santu Lal Gupta and Another	RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2003 Jhar 44

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : A. Sahay, Ritu Kumar and Navin Kumar, for the Appellant; Rajesh Kumar, D.K. Bharti and V. Shivnath, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This appeal has been preferred by the appellant Bihar State Financial Corporation, Patna ("BSFC" for short) against the judgment and order dated 5th July, 2000, passed by the learned single Judge in CWJC No. 2170 of 1998 (R).

Learned single Judge by the impugned judgment has set aside the order dated 20th February, 1998, subject to the condition that the petitioner respondent No. 1 Santu Lal Gupta deposits a sum of Rs. 50,000/- (Rupees fifty thousand) within four weeks from the date of judgment, with a further direction to the appellant BSFC to serve a detailed calculation of the amount after such deposit. Regarding the rest amount, if ultimately found due, the petitioner/respondent No. 1 was directed to pay the same within six months from the date of service of calculation.

2. Counsel for the appellant has assailed the judgment and order mainly on the ground that it was based on erroneous ground, without taking into consideration the sale notice, published in the newspaper "Hindustan Times, Patna" on December 14, 1995.

Mr. A. Sahay, counsel for the appellant, submitted that in the tender notice for sale it was specifically mentioned that if no tender or no acceptable tender is received by the BSFC on the stipulated date for any particular unit, the BSFC shall continue to receive tenders against the same advertisement in the concerned Branch Officer or Head Office of BSFC until an offer is accepted by the BSFC or dues of the BSFC is liquidated by the promoter.

3. It will be evident that the petitioner, a physically handicapped person, was sanctioned a sum of Rs. 50,000/- (rupees fifty thousand) by the BSFC in the year, 1980, but out of that, a sum of Rs. 9,800/- (rupees nine thousand and eight hundred) was disbursed in the year, 1981 and further a sum of Rs. 6,000/- (rupees six thousand), out of such amount, was disbursed in the year 1982. Accordingly a total amount of Rs. 15,800/- (rupees fifteen thousand and eight hundred) was disbursed to the petitioner against the total sanctioned amount of Rs. 50,000/-. Subsequently, the petitioner having failed to pay the amount received, interests were added and within stipulated period, the same having not been paid, the sale notice in question was issued.

4. Before the writ Court, the stand of the petitioner was that the BSFC did not disburse the total sanctioned loan but the amount of about Rs. 15,000/- (rupees fifteen thousand), whereon they added interest year together, reached to Rs. 1,41,000/- (rupees one lakh and forty one thousand), though certain amount were paid by the petitioner in the meantime.

5. It appears that earlier an advertisement for auction sale in newspaper "Hindustan Times, Patna" was published on 14th December, 1995 and the unit of the petitioner was auction sold to Rudra Narain Mahto (respondent No. 2 herein) on 20th February, 1998. At that stage, the petitioner moved before this Court in CWJC No. 2170 of 1998 (R), wherein, by order dated 5th October, 1999, learned single Judge allowed the writ application, quashed the sale order dated 20th February, 1998, on the condition that the petitioner shall deposit a sum of Rs. 50,000/- (fifty thousand) within four weeks from the date of the order and the rest of the amount the petitioner shall pay as per the calculation. In the said case certain typographical error incurred relating to the year of auction sale, ie. instead of the year 1995, the year was typed as 1985. In this background in LPA No. 475 of 1999 (R) a Division Bench of this Court, taking into consideration the fact that the auction notice was issued in the year, 1995 and not in the year, 1985, set aside the order of the learned single Judge and remitted the matter for fresh consideration.

6. The learned single Judge on reconsideration noticed that the advertisement for auction sale of the petitioner's unit was issued on 31st December, 1995 but no one submitted the tender or participated in the auction and consequently the unit could not be sold. Thereafter, without any fresh advertisement and without any notice for auction sale, after three years, the unit of the petitioner was sold to the private respondent on a negotiation and sale order was issued in the year, 1998.

Further the learned single Judge taking into consideration the fact that the petitioner was a handicapped person and was merely disbursed a sum of about Rs. 15,000/- (rupees fifteen thousand) as against the sanctioned amount of Rs. 50,000/- (rupees fifty thousand), passed the impugned judgment.

7. One or other party placed reliance of the decisions of the Supreme Court to suggest whether interest on interest can be demanded or not. That not being the issue, raised by the petitioner-respondent No. 1 herein, it is not necessary to discuss the same. The case is, in fact, based on facts, as noticed by the learned single Judge and discussed above.

8. It may be that in the tender notice certain stipulation was made in case of non-receipt of tender or in case the tender is not accepted but that will not absolve the BSFC from acting reasonably nor on that ground, the BSFC can act arbitrarily. If a date and time was fixed for submission of tender in the notice, published in newspaper "Hindustan Times, Patna" dated 14th December, 1995, on no other date any such offer could have been received or could have been opened to sell the unit in question. It is the right of the BSFC to take harsh step to sell any unit u/s 29 of the State Finance Corporation Act, 1951, but the owner of the unit, such as, the petitioner, has also the right to know the cost on which it is being sold as the BSFC is supposed to sell it at the best maximum price, which has a direct nexus with the due against the owner of the unit petitioner.

The stipulation, as made in the notice, published in "Hindustan Times, Patna" dated December 14, 1995, to the effect that no tender or no acceptable tender is received by the BSFC on the date and time fixed, the BSFC has a right to continue to receive tender against the same advertisement and has a right to sell it at any time, without any intimation to public in large and the owner petitioner in particular, cannot be upheld, being arbitrary unreasonable, colourable exercise of power and having no nexus with the object to recover maximum amount of the dues by taking action u/s 29 of the State Financial Act, 1951.

9. In this background, if the learned single Judge has deprecated the sale, made in the year, 1998 ie. after about three years of advertisement dated 14th December, 1995. I am not inclined to differ with such finding. However, if the petitioner-respondent No. 1 fails to pay the amount as per the order of the learned single Judge, it will always be open to the appellant-BSFC to take steps in accordance with law. Further, in view of pendency of the appeal, the period allowed by the learned single Judge is extended to the extent that the period to be counted from the date of decision of this appeal.

10. The LPA is, accordingly, dismissed. However in the facts and circumstances, there shall be no order as to costs.

Lakshman Uraon, J.

I agree.