

(2009) 05 JH CK 0163
In the Jharkhand High Court

Bihar State Financial Corporation

APPELLANT

Vs

Ashok Kumar Sinha and Sushila Automobile Pvt. Ltd.

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0163

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant-Bihar State Financial Corporation only against a portion of the judgment and order dated 28.11.2008 passed in W.P.(C) No. 505 of 2002 along with W.P.(C) No. 561 of 2002, by which the order dated 10.1.2002 issued by the Managing Director of the appellant-Corporation forfeiting an amount of Rs. 5 lakhs which had been paid by the petitioner-respondent by way of earnest money for purchasing a unit of a defaulter, which had been put to sale by way of auction was quashed and set aside. The petitioner/appellant-Corporation was directed to refund the amount with interest at the rate of 8%. The appellant-Corporation has assailed this fact of the order by which interest at the rate of 8% has been ordered to be paid.

2. It is an admitted position that the petitioner, respondent herein, did not succeed in paying the entire amount towards auction sale in spite of the fact that the time to make the payment had already expired and thereafter the time was also extended on several occasions by the Corporation to enable the respondent to make the payment. Finally when the respondent-auction purchaser could not discharge the liability of making the payment for purchasing the unit as a successful bidder, his tender was cancelled on 10.1.2002 and the offer was made to another successful bidder on 11.1.2002. However, the learned Single Judge although had been pleased to dismiss the Writ petitions, he was further pleased to hold that the forfeiture of the earnest money by the respondent-Corporation was illegal and hence, ordered for refund of the amount of Rs. 5 lakhs which had

been deposited as a part payment towards the bid (which has erroneously been described as earnest money in the impugned order which position has been accepted by both the sides) was ordered to be refunded.

3. Since the learned Single Judge was pleased to hold that the Corporation having accepted the amount from the subsequent bidder on 27.12.2001 and had earlier also accepted the amount of Rs. 19.95 lakhs from the respondent No. 4, the appellant could not have accepted a draft of Rs. 5 lakhs on 7.1.2002 from the respondent by extending the period to make the balance payment. The learned Single Judge therefore, was pleased to hold that the action of the respondent-corporation was clearly unjustified and the forfeiture of the amount of Rs. 5 lakhs, which was deposited by the petitioner, was arbitrary and illegal and hence, it was ordered that the said amount be refunded to the petitioner-respondent. However, it was also ordered to be refunded along with interest at the rate of 8% within a period of one month from the date of receipt of the order. The learned Single Judge, however, did not pass any order in regard to the refund of the amount of earnest money to the tune of Rs. 50,000/-, which had been deposited.

4. It may be relevant to clarify that although the learned Single Judge has ordered for refund of Rs. 5 lakhs deposited by the petitioner as earnest money, the same appears to be factually incorrect as it is admitted by the Counsel for both the sides that the same was not the earnest money but was only an amount towards a part payment by the petitioner-respondent as a successful bidder for purchasing the unit. In fact, the earnest money which had been deposited by the petitioner-respondent was only Rs. 50,000/-. However, the fact remains that the learned Single Judge has ordered that the Corporation should refund the amount of Rs. 5 lakhs which had been accepted from the respondent along with interest @ 8%.

5. Learned Counsel for the appellant-corporation has however conceded to the extent and rightly so that the amount of Rs. 5 lakhs which had been deposited by the respondent as a part payment for the purchase of the unit, is fit to be refunded as his bid was finally cancelled and the said amount has already been refunded to the petitioner.

6. The question at this stage therefore is confined only in regard to the forfeiture of the amount paid towards earnest money which is Rs. 50,000/- as also the question as to whether 8% of interest should be paid on the amount of Rs. 5 lakhs which had been ordered to be refunded and was accepted by the Corporation at the relevant time since the payment was towards the bid which was subsequently cancelled.

7. Learned Counsel for the appellant-corporation has further drawn the attention of the Court to certain relevant facts and submitted that the bid of the respondent although has been accepted on 6.10.2001 and he was directed to make the final payment within 30 days thereof, the petitioner-respondent failed

to abide by this condition and in spite of this, the Corporation was indulgent and granted further opportunity to the respondent to deposit the amount finally by 24.12.2001. The respondent failed to make the payment even thereafter and his bid was finally cancelled on 10.1.2002 and the bid of the subsequent purchaser was accepted on 11.1.2002. Thus, it has been submitted that when the respondent himself did not make the entire payment within the time granted and also sought extension in spite of which he failed to make the payment even within the (sic) time, then his claim for grant of interest is undoubtedly and clearly not justified.

8. Learned Counsel for the respondent, on the other hand, vehemently argued that the payment from the subsequent bidder had been accepted by the appellant-Corporation even before the rejection of his bid and a part payment from the subsequent purchaser has already been accepted.

9. Learned Counsel for the appellant-Corporation has again explained this position and submitted that the appellant-Corporation had accepted the money from the subsequent bidder after expiry of the period which was extended in favour of the petitioner-respondent and the same was 24.12.2001. The respondent had failed to make the payment even by this date due to which the Corporation accepted the amount as part payment from the subsequent bidder on 27.12.2001 but had also extended the date in favour of the respondent granting him further period to make the payment by 7th of January 2002. The petitioner still failed to make the payment even by 7th of January 2002, as a result of which his bid was cancelled on 10.1.2002 and the sale was finally cancelled. Subsequently, the subsequent bidder's offer was accepted on 11.1.2002.

10. Hence, the question is still lurking that when the bid of the petitioner-respondent was cancelled on 10.1.2002, it was surely expected of the Corporation to refund the amount towards the earnest money as also the part payment of Rs. 5 lakhs but the appellant-corporation has still further explained and submitted that when the time was extended in favour of the respondent up to 7.1.2002, the same was made with a clear stipulation that if the respondent failed to make the payment even by this date, then the entire amount deposited by the petitioner-respondent shall be forfeited and that is why the Corporation had forfeited the amount of the petitioner-respondent to the extent of Rs. 5 lakhs as also Rs. 50,000/-. However, the learned Single judge has already held in favour of the respondent that he is entitled to refund of a sum of Rs. 5 lakhs which had been paid as a part payment as successful bidder and the appellant-Corporation has acquiesced with that fact of the order and also refunded the same but is aggrieved of the order for payment of interest.

11. Consequently, we do not propose to entertain this appeal, as the amount of Rs. 5 lakhs has already been refunded to the petitioner-respondent, but in so far as the forfeiture of the amount of Rs. 50,000/- paid by way of earnest money as also interest at the rate of 8% on the amount of forfeiture to concerned, the

same is fit to be considered, in view of the sequence of events related hereinbefore which indicate that the petitioner-respondent defaulted in making the payment in spite of more than one opportunity. If the petitioner-respondent, as a successful bidder, himself created a condition and dragged the matter for confirmation of sale, as he had failed to make the payment within the time in spite of repeated opportunities and although he had made only part payment to the extent of Rs. 5 lakhs, the claim of interest at the rate of 8% cannot be held to be justified. Interest no doubt can be claimed by a party on delayed payment but if the delay has been caused at the instance of any party giving rise to a situation which had put the matter on hold, then interest at the instance of the party causing delay cannot be held to be justified by any logic or yardstick. Hence, we do not accept the contention of the Counsel for the respondent that he was entitled to interest at the rate of 8%. The direction, therefore, of the learned Single Judge to the extent that the payment of 8% interest on the amount refunded is fit to be paid do not appear to be justified and hence, the same is quashed and set aside. Learned Counsel for the appellant submitted that he has also filed an appeal against the forfeiture of the earnest money and hence, we refrain from deciding the question in regard to the forfeiture of the earnest money of 50,000/- in this appeal since the same is open to be considered before the appropriate forum. This appeal, however, in so far as the claim of payment of interest at the rate of 8% is concerned, stands quashed and set aside and the appeal is allowed to this extent.