

(1993) 07 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 244 of 1993

Bijay Kumar

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0022

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this application the petitioner has inter alia prayed for quashing of the notice dated 13-12-1992 as contained in Annexure-1 to the writ application in terms whereof Bihar State Financial Corporation caused a Sale notice to be published inviting tender for putting the unit of the-petitioner on auction known as M/s. Allied paper and Chemical Industries (P.) Ltd.

2. The facts of the matter shortly stated are as follows:

The aforementioned unit belonged to M/s. Allied Paper and Chemical Industries (P.) Ltd. which is a company registered under the India Companies Act having a certificate of incorporation No. 121 of J 975-76 issued by the Registrar of the companies, Bihar dated 22-9-1975. The said Company is not the petitioner. It has been admitted in the writ application that a term loan of Rs. 3 lakhs was sanctioned in favour of the aforementioned Company by the respondent Corporation on 30th September, 1975 for setting up a unit for manufacture of mill Board at Shah Sarai District Nalanda for which a register-1 ed deed of mortgage dated 12-1-1976 was executed mortgaging the propertied belonging to the Company. ;

The respondent Corporation also sanctioned a sum of Rs. 25, 000 on 15-7-1975, for meeting the over head cost, wherefor the company created an equitable mortgage by deposit of title deeds and executed a loan agreement on 21-7-1976.

3. The petitioner on his own showing has become the Managing Director of the said Company. By reason of the impugned auction notice the assets mortgaged

by the Company which is a juristic persons were directed to be put on auction. In fact, as is evident from the averments made in the counter affidavit, it appears that the unit had been sold on auction on 28-12-1992 and possession of the said unit had been delivered to Shri Abhay Kumar who was the highest bidder on 8-1-1993. Although this writ application was filed on 11-1-1993 i.e. after the assets of the Company were handed over to the purchaser pursuant to the said auction, Shri Abhay Kumar was not impleaded as a party.

He has filed an application for intervention on 26-1-1993 wherein he has contended that his offer for a sum of Rs. 4,50,000 being the highest sum was accepted and the sale letter dated 5-1-1993 was handed over to him. It was further contended that the company was thereafter served with a notice dated 7-1-1993 for taking over possession on 8-1-1993 when the possession had been taken over by the intervenor. It has further been stated that a sum of Rs 5, 00, 000 has been invested by him in purchasing a generator and several motors and towards construction and repairs of buildings, purchase of furniture etc.

4. It has further been contended that the Company owed a sum of Rs. 3, 95,000 as on 13-12-1992. However, according to the petitioner only a sum of Rs. 2, 98, 000 was due.

5. Mr. Nirmal Kumar Sinha No. 3 the learned Counsel appearing on behalf of the petitioner has submitted that the petitioner had all along been ready and willing to clear of the entire dues off the Corporation and in fact pursuant to the order of this Court dated 24-3-1993 he has deposited sum of Rs. 1,75,000.

6. He. therefore, submitted that the respondent Corporation should allow the petitioner to clear of all the dues by formulating a scheme in this regard in the light of the decision of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, .

7. Mr. P.K. Sahi, the learned Government Pleader No. 7 and Rajendra Prasad, the learned Counsel appearing on behalf of the intervenor, on the other hand, submitted that in view of the aforementioned conduct on the part of the petitioner and as he is an chronic defaulter he is not entitled to any equitable relief nor in the facts and circumstances of this case, this could should interfere in the matter.

The learned Counsel in support of this contention has relied upon a decision of the Supreme Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, and a Division Bench decision of this Court in M/s. Menospak Engineering Pvt. Ltd. and Anr. v. Bihar State Financial Corporation and Ors. reported in 1988 BLJR 1140.

8. It is true that in Mahesh Chandra's case (supra) the Supreme Court has laid down various principles which are normally required to be followed by the Financial Corporation in taking recourse to Section 29 of the State Financial Corporation for the purpose of realisation of its dues.

9. The Supreme Court however, in Gem Cap's case (supra) has clearly held that that decision in Mahesh Chandra's case should be held to be applicable in a case where the loanee intends to clear off his dues and not in a case where he only wants to stall the matter in the following words:

On behalf of the appellant reliance has been placed upon the decision of this Court in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation. We have perused the decision. That was a case where the debtor "was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular case it was found that the Corporation was acting reasonably (sic)(unreasonably). In that context certain observations were made. The decision also deals with the procedure to be adopted by the Corporation while selling the units taken over u/s 29. That aspect is not relevant in this case. We are, therefore, of the opinion that the said decision is of no help to the appellant herein.

This aspect of the matter has also been considered by a Division Bench of this Court (of which I was a member) in Bihar Cotton Mills Ltd. v. B.S.F.C. reported in 1993 BLJR 150 : (1993) BLJR 571

10. In this case in our opinion, the petitioner is not entitled to any relief from this Court for more than one reasons which are as follows:

(i) The company although is a juristic personal, its mortgaged assets had been put on auction, it has not filed the writ application. The petitioner, although is the Managing Director of the Company, could not have filed the application in his individual capacity.

(ii) The petitioner has obtained an interim order by suppression of facts inasmuch as although the unit had been sold in auction and possession thereof had been taken prior to filing of the writ application, it had merely questioned the notice of sale dated 13-12-1992 as contained in Annexure-I to the writ application.

(iii) The interim order dated 24-3-1993 reads thus:

Until further orders the unit in question, notified for sale vide Annexure-1, shall not be disposed of, if not already disposed of. But the aforesaid order shall be subject to deposit of Rs. 1, 75, 000 before the Managing Director by the petitioner within ten days from today.

Evidently prior to passing of the said order the properties had already been sold in auction and thus the interim order of stay became meaningless.

(iv) The respondents have also clearly stated that prior to putting the unit on auction, the respondent No. 2 had issued two letters of demand dated 18-8-1992 and 17-11-1982 as contained in Annexure-A and B to the counter affidavit filed on behalf of the respondent Nos. 1 and 2, but despite the same he did not make any offer to pay off the entire dues of any part thereof nor any scheme was

submitted in liquidation of the entire dues.

11. For the reasons aforementioned, the writ application is dismissed but without any order as to costs.

R.N. Prasad, J.

11. I agree.