(2007) 04 JH CK 0057

In the Jharkhand High Court

Bokaro Roller Flour Mill APPELLANT

Vs

Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Citation : (2007) 3 JCR 369

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

Ramesh Kumar Merathia, J.—Heard counsel for the parties.

2. These two connected writ petitions are being disposed of by this common order.

3. Petitioner filed one of the writ petitions being W.P. (C) No. 4386 of 2002 against the demand of the dues raised by the respondent Bihar State Financial Corporation (hereinafter to be referred to as "the B.S.F.C") and the auction sale of the unit to respondent No. 5 therein. By order dated 9.8.2002, notice was issued to the said respondent No. 5 at the admission stage and following interim order was passed:

In the meantime, if the petitioner deposits a sum of Rs. 15, 00,000/- (Rupees Fifteen Lakhs) by 6th September, 2002, respondents Bihar State Financial Corporation will not enter into any agreement with respondent No. 5.

4. The said auction purchaser (respondent No. 5) backed out from the auction purchase. The B.S.F.C. refused to refund the earnest money till a final decision is taken in W.P. (C) No. 4386 of 2002. The auction purchaser filed a writ petition being W.P. (C) No. 6923 of 2002, which was disposed of by order dated 24.2.2003. The relevant portion reads as under:

...It appears that the mortgaged properties of M/S. Bokaro Roller Flour Mill was put on auction by the B.S.F.C. The petitioner took part in auction sale of the mortgaged/hypothecated assets of M/S. Bokaro Roller Flour Mill.

The petitioner deposited the auction money wherein after the sale order was issued on 19th July, 2002. However, in pursuance of order passed by this Court in the writ petition as was preferred by the original promoter, the sale was not materialised with petitioner, the petitioner declined to purchase the unit and requested to refund the earnest money.

The petitioner while prayed for direction on the respondents to refund the earnest money has also prayed for direction to pay him interest @ 16% on such amount.

The counsel for the B.S.F.C. fairly conceded that the petitioner is entitled to get back the earnest money. However, he referred Clause (6) of the sale order dated 19th July, 2002 wherein it is stipulated that if payment from original promoter (s) is received and accepted by the Corporation in terms of the said sale order, payment made by the petitioner, if any, will be refunded without any interest thereon.

Having heard counsel for the parties, which I direct the respondents to refund the petitioner the earnest money within fifteen days from the date of receipt/ production of a copy of this order, no order is passed for payment of interest in view of Clause (6) of the sale order dated 19th July, 2002....

5. Admittedly, the petitioner applied under One Time Settlement Scheme (for short "O.T.S. Scheme") when it was introduced in 2004 and paid Rs. 2.5 lacs, but with certain conditions. Accordingly, such offer was rejected. Again on 1.11.2006, it applied under O.T.S. Scheme and paid 50% of the principal amount which was accepted by the B.S.F.C, but the petitioner was directed that he shall have to comply with the condition No. 3 (f) (i) of Circular No. 07/06-07 dated 4.11.2006 by paying retention money.

6. In the other writ petition-W.P. (C) No. 885 of 2007, the petitioner has challenged the said condition on the ground that the same having been declared ultra vires by the Patna High Court, the B.S.F.C. was not justified in insisting on such condition. The petitioner also relied on the order dated 8.3.2007 passed in W.P. (C) No. 7049 of 2006 (M/s. Chandwa Ceramics v. Bihar State Financial Corporation).

So far as this aspect is concerned, following the said order passed in the case of M/s. Chandwa Ceramics (Supra), the respondents are directed not to insist for compliance of Clause 3 (f) (i) as a condition for consideration of O.T.S. application of the petitioners.

7. The other dispute in W.P. (C) No. 885 of 2007 is with regard to refund/ adjustment of Rs. 15,00,000/- deposited by the petitioner with the B.S.F.C, under the aforesaid interim order of this Court dated 9.8.2002 passed in W.P. (C) No. 4386 of 2002.

According to the B.S.F.C, they were entitled to adjust the said amount against the dues of the petitioner, whereas, according to the petitioner, B.S.F.C. could not do that, as B.S.F.C. was custodian of the said amount and this Court never allowed B.S.F.C. to adjust the said amount. Petitioner also relied on the order dated 16.3.2007 passed in C.M.P. No. 413 of 2005.

8. In my opinion, B.S.F.C. should have kept the said amount in a separate head. It could not adjust it against the dues of the petitioner in absence of any order. Ultimately W.P. (C) No. 4386 of 2002 became infructuous when B.S.F.C. allowed the auction purchaser to back out and accepted petitioner''s offer under O.T.S. Scheme.

9. In the facts and circumstances noticed above, B.S.F.C is directed to refund/ adjust Rupees Fifteen Lacs deposited by petitioner as condition of stay, against further payment to be made under the O.T.S. Scheme.

Though petitioner has not raised any claim based on Rs. 2.5 lacs which was deposited by it in 2004 with O.T.S. application, at present, but in order to avoid future claim, it is made clear that petitioner will not be entitled to raise any claim in future on this account.

10. With these observations and directions, both the writ petitions are disposed of. No costs.