
(2011) 04 JH CK 0003
In the Jharkhand High Court
Case No : L.P.A. No. 137 of 2011

Dreams Consultant Private Limited

APPELLANT

Vs

Housing and Urban Development Corporation Limited
(HUDCO) and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 04 JH CK 0003

Hon'ble Judges : Bhagwati Prasad, C.J;Prakash Tatia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant.
2. This is the admitted fact that in April, 2009 the Respondents stopped paying undisbursed loan amount to the Appellant. Since the Appellant admits that in April, 2009, they were not released their instalments, they did not come to this Court and in November, 2009 the cheque of the Appellant bounced, which was to the tune of Rupees 1.53 Crores. This shows that both the parties are erring according to the Petitioner Appellant.
3. In such circumstance, the petition before this Court was for enforcement of a contract under Article 226 of the Constitution of India where there is default on the part of both the parties to the contract. In that view of the matter, in such cases 226 jurisdiction cannot be invoked, notwithstanding the fact that the Appellant relies on a Supreme Court case wherein doctrine of promisory estoppel was required to be invoked. This could be done in a given case where one party was in default. Here admittedly the Appellant also defaulted before coming to this Court. Thus, his conduct becomes relevant, which goes a long way in equitable jurisdiction. When the Appellant himself defaulted in making payment, it cannot be said that it is the Respondent alone has defaulted. Thus, learned Single Judge rightly declined to exercise jurisdiction under Article 226. We also

feel that when D.R.T proceedings have already been initiated and 138 N.I. Act notice has already been issued by the Respondents to the Appellant, it would not be appropriate for this Court to exercise jurisdiction under Article 226. Therefore, the appeal, being meritless, is dismissed.