
(2001) 09 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1434 of 1990

Durga Bhawani Cold Storage

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0055

Judgement

S.N. Jha, J.—The dispute in this writ petition relates to distress sale of a Cold Storage, Durga Bhawani Cold Storage (P) Ltd. re-christened M/s Maa Mamta Cold Storage (P) Ltd., under the Bihar State Financial Corporation Act, 1951 (in short the Act").

2. The petitioner originally prayed for quashing of the sale notice, dated 12-1-1990, u/s 29 of the Act, enclosed as annexure-1 to the writ petition, and sought consequential and incidental reliefs. By amendment further prayer for quashing of the order dated 20-2-1990 and the transfer deed dated 14-5-1990 was made. By the said order dated 20-2-1990 contained in Annexure-17, acceptance of offer of respondent No.5 Nagendra Singh for purchase of the Cold Storage was communicated and the Branch Manager, Chapra Branch of the Corporation was authorised to enter into the premises and take over the mortgaged assets on behalf of the Corporation and hand over the same to the said purchaser. By the transfer deed dated 14-5-1990 the transfer of the Cold Storage was effected in favour of respondent Nagendra Singh.

3. The case of the petitioner so far as relevant is as follows. The petitioner, a private limited Company after obtaining registration from the Industry Department of the Government of Bihar applied to the Bihar State Financial Corporation (In short "the Corporation") for a term loan of Rs.15 lacs for setting up a Cold Storage in the year 1978-79, in 1979 loan of Rs.14 lacs was sanctioned for construction of the First Chamber of the Cold Storage, repayable by the year 1990 with Interest @ 9% per annum. Out of the said amount Rs.13,98,977/- was released between May 1979 and 1981. By 9-11-1981 the

petitioner paid Rupees 1,47,022.39/- in Instalments. Meanwhile, it applied for another term loan of Rs. 14 lacs for construction of the Second Chamber. On 9-1-1982 second loan of Rs.14 lacs was sanctioned repayable in 9 annual Instalments from 1-7-1984 to 1-7-1992. The repayment of the first loan was also re-scheduled in instalments of Rs. 1.14 lacs each from 1-1-1984 to 1-7-1993 with interest @14.25 percent payable on half yearly rest. On 1-3-1983 subsidy of Rs.2,66,865/- was sanctioned on the request of the petitioner which was adjusted against its loan account. By 20-11-1983 the petitioner paid Rs.3.68.878.27/-. The Corporation however, on 13-6-1984 recalled the loan on the ground of insufficient payment. Between 19-7-1984 and 15-10-1985 further payment of Rs.3.35 lacs was made in instalments. However on 18-9-1985 the corporation decided to take possession of the mortgaged assets in exercise of power u/s 29 of the Act and on 23-12-1985 "advertised the Cold Storage for sale hut no offer was received. Between 31-1-1986 and 24-3-1986 the petitioner made further payments to the tune of Rs.1,66,976.64/- on 13-10-1986, however, the Corporation took over the possession of the Cold Storage and initiated certificate proceeding for realisation of the dues. On 5-1 -1999 it re-advertised the Unit for sale but again no offer was received. On 31-3-1989 further sum of Rs. 1 lac was paid by the petitioner. On 11-8-1989 the Advisory Committee of the Corporation decided that petitioner must pay Rs. 14 lacs against the existing dues in the financial year 1989-90. The petitioner paid Rs.5.44 lacs between 6-9-1989 and 13-12-1989. Oh 13-12-1989 he made request for re-schedulement of the loan under the Rehaail nation Scheme. On 10/12-1-1990 the Corporation asked the petitioner to clear the interest over the dues so that its case may be considered for re-schedulement and grant of admissible rebate. On 12-1-1990 itself however, it again advertised the unit for sale. Pursuant to the notice respondent No. 5 offered to buy the Unit for the amount against the petitioner, Along with the offer he submitted a Bank Draft of Rs.5 thousand as earnest money, The Tender Committee in its meeting on 23-1-1990 resolved to reject the tender on the ground that there was no specific offer and respondent No.5 had merely offered to buy the Unit on payment of 20% of the total outstanding dues as on the date of handing over the possession. However, on 5-2-1990, on the recommendation of the Assistant General Manager (AGM), the Managing director of the Corporation accepted the offer of the respondent No.5 on certain terms and conditions including payment of 20% of the outstanding dues within 10 days of the order. On 7-2-1990, the A.G.M. communicated the said order dated 5-2-1990 to respondent No.5 advising him to submit letter of unconditional acceptance of the sale offer and make cash down payment of 25% of the amount within 10 days to enable the Corporation to hand over possession of the Cold Storage. The case of the petitioner is that neither in the notice u/s 29 nor in the offer of respondent No.5 the amount of outstanding dues was mentioned. The amount comprising 25 per cent of the outstanding dues thus remained undefined. Meanwhile on 12-2-1990 the Executive Committee of the Corporation approved the aforesaid decision of the Managing Director dated 5-2-1990. Curiously on 14-2-1990 the authorities of the

Corporation in the meeting held under the aegis of the Commissioner, Saran Division, agreed that if the petitioner deposits further sum of Rs.3.44 lacs, no coercive action will be taken against it. The Corporation however, went to effectuate the sale in favour of respondent No.5 and on 16-2-1990 the draft comprising the earnest money of Rs.5 thousand deposited by him was sent to the Bank for encashment mentioning that decision had been taken to accept his offer. On 19-2-1990 respondent No.5 submitted letter of acceptance pursuant to the AGM's letter dated 7-2-1990 (supra) but it did not make cash payment of 20% of the outstanding dues. Instead, he claimed to have paid Rs.5 lacs under Bank draft dated 15-2-1990 drawn on Bank of India, Giridih Branch. On 20-2-1990 on receipt of the said draft for Rs.5 lacs, besides Rs.5 thousand as earnest money, order was issued to hand over the possession to respondent No.5 without executing any registered document. The draft was deposited in the Bank on 28-2-1990 and encashed. At this stage, on 1-3-1990 this writ petition was filed for quashing of the sale notice issued under S. 29 of the Act dated 12-1-1990 and for consequential and incidental reliefs as mentioned at the outset.

4. It may be mentioned that on 7-3-1990 when this case came up for preliminary hearing, it was stated on behalf of the Corporation that pursuant to the notice u/s 29, the Cold Storage had already been sold to respondent No.5. Adjourning the case for Instructions, order of status quo was passed restraining the Corporation from executing any registered document. Notice was also issued to respondent No. 5 who was permitted to be added as a party to the case. On 20-3-1990 the case was admitted for regular hearing. The interim order dated 7-3-1990 restraining the respondents from executing the document was modified. It was left to the Corporation to execute registered document in favour of respondent No. 5 subject to the result of the case. It was clarified however that at the stage of final hearing the respondent shall not take any plea that since registered document has been executed, its validity can be challenged only in a suit. In the meantime, respondent No. 5 who had purchased the Cold Storage in his own name, got a firm registered in the name of M/s. Nagendra singh and Bros. On 31-3-1990 and later got the company in the name of M/s. Maa Mamta Cold Storage (P) Ltd. registered on 2-5-1990. On 3-5-1990 he requested the Corporation to change the name of the purchaser as M/s. Maa Mamta Cold Storage (P) Ltd. So that the documents may be executed in its name. On 7-5-1990 the Corporation allowed the request and on 11/14-5-1990 registered sale deed was executed in which, for the first time, balance outstanding was shown to be Rs.58,13,456.46/- as on 28-2-1990. In the deed it was also mentioned that as against the said outstanding balance, the petitioner had so far paid Rs. 10.85 lacs till that date. The petitioner challenged these actions by amendment as mentioned above.

5. The case of the corporation, briefly stated, is as follows. The petitioner was given ample opportunity to pay the dues which he did not avail. Instead he committed acts of cheating leaving no option to the Corporation but to go in for

sale. The sale in favour of respondent No. 5 was bona fide as his was the single offer pursuant to the tender notice issued three times. Though he was the single offerer, he agreed to liquidate the entire dues and the Corporation therefore decided to sell the Unit to him. In paragraph 20 of the counter affidavit, the Corporation has stated as to how the petitioner committed defaults and tried to cheat the Corporation. After it sent notice to the petitioner on 4/8-2-1984 for liquidating the dues failing which action would be taken under Ss. 29 and 30 of the Act, the petitioner paid Rs.50,000/- on 15-10-1984 and handed over two cheques of Rs.50,000/-each and three cheques of Rs.50,000/-each on 13-3-1985 and 31-3-1985 respectively all of which were dishonoured. As payment was not forthcoming and, instead, the petitioner had tried to cheat the Corporation, the Unit was advertised for sale but no tender was received. At this stage, the petitioner came forward with payment of Rs.1.50 lacs but as the amount was meagre, the Advisory Committee (Legal & Default Cases) on 30-12-1985 decided to institute certificate case. Notice was issued to the petitioner on 4-2-1986 as to why certificate proceeding should not be instituted. On 24-3-1986 the petitioner sent a draft of Rs.20,000/-. Another notice was sent to the petitioner on 13/15-10-1986 informing that if the dues are not paid, the Corporation would be constrained to take possession of the mortgaged assets and put them on auction sale for recovery of the dues. As against the dues which had mounted to Rs.40 lacs by then, the petitioner came forward with a meagre amount of Rs.1 lac. On 21-1-1987 another notice was sent. After the petitioner failed to respond, the Unit was advertised for sale for the second time in March, 1987. At this stage on 31-3-1987 the petitioner deposited 2 cheques of Rs.50 thousand each, one on 31-3-1987 and the other on 17-7-1987, both were dishonoured. This time an FIR was lodged at the Garkha Police Station for offences under Ss. 420, 467 and 468, IPC on 22-8-1987. On 16-10-1987 the petitioner deposited another cheque for Rs.50,000/-which too was dishonoured. While steps were being taken to take over the possession of the Unit, the petitioner came forward with an offer of Rs.4 lacs, Rs. 1.70 lacs by draft and Rs. 2.30 lacs by 4 cheques, the cheques however, were again dishonoured. The petitioner was informed that the cheques stood dishonoured on 11-5-1988. It sought time till 15-6-1988 to deposit the said amount Rs.2.30 lacs but failed to do. Another notice was sent on 15-9-1988. In response to that notice the petitioner submitted seven cheques for Rs. 3 lacs, all of which however, were again dishonoured. In the circumstances, another FIR was lodged at Garkha Police Station on 19-12-1988. The Unit was re-advertised for sale for the third time in 1989, Once again the petitioner came forward with small payments and promised to clear the entire dues but without any substantial result. It deposited Rs.30,000/- in the account of the Corporation, when this fact was discovered a letter was sent on 20-10-1989 and 21-11-1989. The affairs of the Unit was reviewed by the Corporation on 17-12-1989 and notice was sent to clear the entire dues. After the petitioner failed to respond the Unit was advertised for sale, for the fourth time in January 1990 (12-1-1990). According to the Corporation, thus the petitioner being a chronic defaulter, having committed series of acts of fraud and cheating it does not deserve any

relief, more so when the Corporation is in the process of retrieving its dues from the purchaser i.e. respondent No.5.

6. The case of respondent No.5 is that he is a bona fide purchaser and has nothing to do with the allegations or counter allegations between the petitioner and the Corporation. He has denied the allegation of any collusion. After the sale he came in possession of the Cold Storage. He was served with electricity bill for Rs.4,28,947.52/- by the Bihar State Electricity Board and the electricity supply was disconnected on 6-3-1990. The respondent had to file CWJC No. 3147 of 1990 for resumption of the electricity supply. (CWJC No.3147/90 is also being disposed of today by separate judgment). Though he got a reprieve so far as the electricity dues are concerned, he had to clear several other liabilities and invest over Rs. 10 lacs to make the Cold Storage operational, over and above the amounts paid to the Corporation. The value of the fixed assets of the Cold Storage as per the balance sheet of M/s. Durga Bhawani Cold Storage Limited prepared by a Chartered Accountant M/s, Anand Rugta and Company as on 31-1-1986 was Rs. 37,77,903.94/- and Us net value was Rs.25,63,618.00/-. The sale of the Cold Storage for the amount outstanding, viz. Rs.58,13,456.46/- thus conforms to the prevailing market price. The respondent being bona fide purchaser, having acquired valid title, any interference by this Court would cause serious loss and prejudice for which it will have to be compensated.

It is relevant to mention here itself that in course of time, during pendency of the case the respondent had so far paid-over Rs. 1 crore to the Corporation.

7. Shri Mihir Kumar Jha appearing for the petitioner submitted that the decision to sell and hand over possession of the Cold Storage to respondent No.5 was taken in haste for extraneous considerations. As per the understanding respondent No.5 was required to pay 20 per cent of the balance outstanding to the Corporation at the time of sale but not only the sale was effected but possession was also delivered when respondent has paid a paltry amount of Rs.5,000/-. The total balance outstanding being Rs. 58,13,456/-, the respondent was required to pay Rs. 11.35 lacs (approx.). The auction sale cannot be treated as valid unless the purchaser deposits the sale price. Reliance was placed on Balram Vs. Ilam Singh and others, Gangabai Gopaldas Mohata Vs. Fulchand and others, and Baldeo Singh and Others Vs. Dwarika Singh and Others, .

8. Shri Jha further submitted that law is settled on the point that before putting the unit on sale u/s 29 of the State Financial Corporations Act, opportunity has to be given to the Unit-holder to pay the outstanding not only before taking steps for the sale but also after the sale is finalised, to purchase the Unit on the same terms and conditions on which it is proposed to be sold to the prospective purchaser. In the instant case the petitioner paid substantial amount after the publication of sale notice u/s 29 which was accepted by the Corporation. Having accepted those payments. It could not proceed with the sale of the Cold Storage. It was stated that the Advisory committee had decided to give reprieve by permitting the petitioner to deposit Rs. 14 lacs out of the balance outstanding by

31 -3-1990 but meanwhile the Unit was put on sale. Similarly Defaulters" Committee had also permitted the petitioner to deposit Rs. 10 lacs out of the balance outstanding. The respondent too committed default. The purchase was also not bona fide as the Cold Storage was purchased by Nagendra Singh whose firm M/s. Nagendra Singh & Brothers was supposed to guarantee payment as per the permission granted by the Corporation on 7-5-1990 but later a new Company in the name of Maa Mamta Cold Storage (P) Ltd. In place of M/s. Nagendra Singh and Brothers came into existence.

9. In support of the contentions counsel placed reliance on Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, : U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, , Swastic Automobiles and Others Vs. Bihar State Financial Corporation and Others, , Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ; Sri Arun Kumar Agrawal v. The Bihar State Financial Corporation, Patna, 1986 PLJR 858 , Shabiha Khatoon v. The State of Bihar, 1992 (1) PLJR 719, Amrit Varsha Hindi Dainik v. Bihar State Agriculture Marketing Board, 2000(2) PLJR 729, M/s. Hyderabad Asbestos Cement Products and Another Vs. Union of India and Others, Durgesh Cold Storage and Ice Factory, Gorakhpur Vs. U.P. Financial Corporation, Kanpur and Others, . Bhabagrahi Panigrahi and Another Vs. Union of India (UOI) and Others, .

10. Shri Shrawan Kumar learned counsel for the Corporation referred to the averments in paragraph 20 of the counter affidavit and submitted that the conduct of the petitioner as detailed therein would show that the petitioner was an Incurable defaulter. Opportunities were given to clear the dues, even substantial part of it, which he failed to do. In fact, cheques issued by him in token of payment at different times bounced which Indicated the mind of the petitioner not to clear the dues. Counsel submitted that the petitioner has blissfully suppressed those facts and stated his case after August 1989. In the facts and circumstances the Corporation had no option but to put the Unit on sale. Counsel submitted that the grievance that the petitioner was not given any opportunity to purchase the Unit on the same terms and conditions as offered by respondent is only academic as no such offer was made by him at the relevant time or in the writ petition or even at this stage. The sale was in the nature of commercial sale and provisions of CPC are not applicable. Even If it be assumed that it was a wrong decision on the part of the Corporation, the High Court cannot sit in appeal over the decision which was taken to retrieve its money. The Corporation has no fund of its own. Loans are advanced from the money made available to it by financial institutions on Interest. As such, the Corporation had no option but to take steps to sell the Unit. Counsel placed reliance on U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, and Orissa State Financial Corporation and Another Vs. Hotel Jogendra, .

11. Shri Manu Shankar Mishra, counsel for the respondent No. 5 submitted that

the respondent is a bona fide purchaser. The plea of mala fide was not raised in the main writ petition and therefore should be rejected as an after thought. In the main petition the only ground of challenge was violation of Section 29. After the respondent came in possession, it had to spent a substantial amount to put the Unit on track. Apart from the investments it has by now paid more than Rs. 1 crore to the Corporation. He referred to the order of the Court in Misc. Appeal No.222 of 1997 by which the payment was re-scheduled. In the event of any interference by this Court with the sale of the Unit, thus the respondent will be entitled to be adequately compensated. Two criminal cases for dishonoring of the cheques have been instituted by the Corporation. Besides, a suit has also been filed by the Central Bank from the plaint of which it appears that the same property which was mortgaged with the Corporation was also mortgaged with the Bank. In the facts and circumstances, the equity lies in favour of the respondent. This Court having refused to stay the sale, the cycle of events cannot be turned back and the Unit therefore cannot be taken back from the respondent. It is not a case of the petitioner's business falling sick because of the action of the Corporation. If the petitioner did not pay the dues it was because of its own acts of omissions and commissions for which it cannot claim any benefit. The petitioner having created liability for itself it could not be allowed to retain the Unit sine die. In support of these contentions reliance was placed on M/s. Menospack Engg. Private Ltd. v. Bihar State Financial Corporation 1989 (1) BLJ 585 , Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, and Bihar State Financial Corporation v. M/s Swad Pharmaceutical Pvt. Ltd., 2000(4) LJR 595.

12. After hearing counsel for the parties, I am of the view that there is no merit in the claim of the petitioner which must be dismissed. It is true that the State Financial Corporation is not supposed to behave like ordinary money lender for realisation of the dues, it is required to give adequate opportunity to the Unit-holder to repay the loan and at the same time revive the Unit, but in the facts and circumstances, I do not think the Corporation did not give such opportunity to the petitioner. From the facts stated above it is evident that out of over Rs. 30 lacs advanced to the petitioner, as loan and subsidy, not to mention about the interest accruing thereon, the petitioner had repaid Rs. 10.85 lacs. In the pleadings it has stated about paying Rs. 15.11 lacs, which perhaps, includes the amount with respect to which the cheques bounced. By the time the Unit was put on sale, the dues had accumulated to over Rs. 58 lacs. At least on five occasions cheques issued by it in token of part payment were dishonoured. Even fresh cheque issued with respect to the amount for which cheque had been issued earlier was dishonoured which indicates not only the intention of the petitioner but also its liquidity. In finding out the bona fide of the Unit-holder the Court has to see whether there was willingness and readiness to repay the loan. Willingness depends on the desire whereas the readiness depends on the liquidity. There may be desire but unless the person is in a position to repay the loan, it cannot be said that there was also readiness. The position may be worse

where there are materials to show recalcitrance rather than willingness or readiness on the part of the Unit-holder. The manner in which the petitioner deposited the amounts, the cheques bounced at different times, shows that the petitioner was either not in a position to repay the loan or was reluctant. Indeed they may be taken to be attempts to play fraud on the Corporation. In the facts and circumstances, if the Corporation took steps to put the Unit on sale the action cannot be said to be arbitrary or mala fide.

13. The decision relied upon in support of the case of the petitioner are of no avail. In *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, , the Supreme Court laid down certain guidelines in the matter of sale u/s 29 of the Financial Corporations Act. In *Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others*, , the Court observed that where those guidelines, are followed substantially, the action of the Corporation should not be interfered with. Where the Corporation neither acts in violation of the Statute nor acts unreasonably, the Court's Interference is not called for. The Court relied on *U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others*, . The relevant observations from the said decision may be noticed as under : (at Page 1438-1439 of AIR)

"The Corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one..... Indeed, in a matter between the Corporation and its debtor, a writ Court has no say except in two situations; (1) there is a statutory violation on the part of the Corporation or (2) where the Corporation acts unfairly i.e., unreasonably."

Similar views were expressed in *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, as under : (at Page 262 of AIR SCW)

"The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by and functions and obligations to discharge. As such. In the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute Its

decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable. In matters commercial, the Courts should not risk their judgments for the judgments of the bodies to whom that task is assigned."

14. In the case of Swastic Automobiles and Others Vs. Bihar State Financial Corporation and Others, the Court interfered with the sale on the ground that the Unit had been sold away for small amount. The security was found to be worth Rs. 20 lacs whereas the Unit had been sold for the amount which was actually due to the Corporation. The auction purchaser was none other than the tenant.

Reliance on Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., is totally misplaced. The decision was on the point of promissory estoppel. It was not a case of sale u/s 29 of the Act. The Court held that once loan is sanctioned to the entrepreneur, the sanctioned amount cannot be refused except on a valid ground and where the entrepreneur acts on the assurance or promise by the Corporation, he is entitled to a mandamus upon the Corporation to provide the loan and thus perform its statutory duty.

In Shabiha Khatoon v. The State of Bihar, 1992 (1) PLJR 719, this Court interfered with the sale on the ground that the amount offered by the purchaser was shockingly low and the sale had been held after the High Court had passed order of stay therefore hit by the principle of lis pendens. The Court also noticed that the Unit-holder had offered Rs. 8 lacs under Bank Draft which showed its bona fide.

In Durgesh Cold Storage and Ice Factory, Gorakhpur Vs. U.P. Financial Corporation, Kanpur and Others, the Court interfered with the sale on the grounds that there was no proper publicity of the auction to the public, that there had been haste in holding the auction, that only one tender was received and the property was sold at a very low price. Instalments were allowed to the purchaser but such opportunity was not given to the Unit-holder.

In Bhabagrahi Panigrahi and Another Vs. Union of India (UOI) and Others, again the Court interfered with the sale in the facts of the case. The sale had been effected on the basis of private negotiation and not public auction. The Corporation after accepting some payment advanced another loan of Rs. 50,000/- and further sanctioned Rs. 2 lacs. Also, the Corporation had taken over possession of the Unit without serving any notice or giving opportunity of hearing.

15. The submission that valid sale does not take place unless sale price is deposited on the analogy of the provisions of Rules 84 and 85 of Order 21 of the CPC is not tenable. The sale u/s 29 of the Act is in the nature of commercial sale, and considerations governing such sales are not the same as in the case of auction sale in execution of decree under the CPC. In M/s. Menospak Engineering, Private Limited v. Bihar State Financial Corporation 1989 (1) BLJ 585 this Court held, that the rights of the Financial Corporation under Sections

29 and 30 of the Act are in addition to its right under the CPC and Transfer of Property Act. The Corporation is conferred with wide powers for realisation of the loan, it may take over the management of the Unit or transfer it by way of lease or sale. Order 21, Rules 84 and 85, CPC which require the auction purchaser to deposit 25 percent of the money immediately and to pay the balance within 15 days of the sale are therefore not applicable.

The decisions in *Balram Vs. Ilam Singh and others*, and *Gangabai Gopaldas Mohata Vs. Fulchand and others*, were rendered in the context of sale in execution of decree under the Civil Procedure Code. Apart from the fact that provisions of the Civil Procedure strictly are not applicable, it appears that in *Balram son of Bhasram v. Ilam Singh* the Court found that the sale was for a low amount with respect to execution of land and decree-holder had himself purchased the property. Besides he did not deposit the amount, he claimed adjustment against his dues. The Court held that it was not a case of irregularity in sale but illegality and thus interfered. In the case of *Gangabai Gopaldas Mohata v. Fulchand* the amount was deposited after six years of the sale. The Court held that there was non-compliance of Rules 84 and 85.

16. The case of *Baldeo Singh and Others Vs. Dwarika Singh and Others*, was cited in support of the contention that the Unit cannot be transferred much less the agreement executed without payment of the price. The case arose from a suit which the plaintiff had filed for declaration that he had acquired title on the land by virtue of sale deed. This Court found that as per the recitals of the deed, the title was to pass only after payment of the full consideration money. As the plaintiff did not pay the consideration money, until the purchaser repudiated the contract of sale, a question arose as to whether the purchaser had acquired title. The Court held that in view of the recitals of the deed, title did not pass to the plaintiff and accordingly dismissed the suit.

17. It would thus appear that the Court interfered with the sale in the facts and circumstances of the particular case. Each case is decided on its own facts and therefore, unless the facts are similar, the decisions relied upon can be of no help to any party. In the Instant case, enough opportunity was given to the petitioner to liquidate the loan. Four times the Unit was advertised for sale u/s 29. On three occasions earlier the advertisement did not elicit any response. The offer of respondent No. 5 was pursuant to fourth advertisement to buy the Unit for the balance outstanding against the petitioner. As the petitioner despite series of opportunities had failed to pay substantial amount, and the cheques issued by it in the meantime had successively bounced, the action of the Corporation in putting the Unit on sale cannot be said to be arbitrary. The fact that payments were made in between is of little avail to the petitioner. It is not possible to ignore its past conduct, considering also the amount outstanding, in *Orissa State Financial Corporation and Another Vs. Hotel Jogendra*, the Supreme Court held that where the loanee is only interested in delaying repayment of the dues by resorting to dilatory tactics no indulgence can be shown to such a recalcitrant

defaulter. The Court observed.

"Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tactics defeat the public policy and the Court process becomes an instrument of abuse. The Court would protect only honest and sincere litigants."

Considering the scope of judicial review in the context of sale u/s 29 of the Financial Corporations Act, as laid down in U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. (supra) and U. P. Financial Corporation v. Naini Oxygen and Acetylene Gas Ltd. (supra), as the impugned action of the Corporation is not found to be violative of the provisions of the Financial Corporations Act or otherwise unreasonable, this Court would not like to interfere.

18. In coming to the above conclusion, I have also kept in mind the fact that after this Court vacated the interim order dated 7-3-90 on 20-3-99 respondent No. 5 came in possession of the Cold Storage and over the years has paid over Rs. 1 crores to the Corporation. Besides it also cleared different liabilities left behind by the petitioner, valuable rights thus accrued to the respondent which cannot be taken away without considering its case. Equities in my opinion, clearly lie on the side of the respondent. Indeed, equity is not in favour of the petitioner at all considering his past conduct. In any case, it would not be proper exercise of discretion to interfere after 11 years of the sale.

19. Thus, there being no illegality or arbitrariness in the action of the Corporation and meanwhile valuable rights having accrued to respondent No. 5. I have no hesitation in dismissing the writ petition.

20. In the result the writ petition is dismissed but, in the facts and circumstances, without any order as to costs.

Prabhat Kumar Sinha, J.

21. I agree.