
(2016) 09 PAT CK 0102

In the Patna High Court

Case No : Letters Patent Appeal No. 861 of 2015.(Arising out of Civil Writ Jurisdiction Case No. 2667 of 2009).

Hotel J.K. Situated at Narirgir P.S.Ramgarhwa District East Champaran, through the Managing Partner, namely, Md. Zikuralla son of Late Md. Mubarak Hussain - Petitioners-Appellant @HASH The Bihar State Financial Corporation, through its Board of Directors,

Date of Decision : 22-09-2016

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2016) 167 AIC 618

Hon'ble Judges : Hemant Gupta and Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Amit Srivastava and Mr. Girish Pandey, Advocates, for the Appellant; Mr. Raju Giri, Advocate, for the Respondent Nos. 1 to 4; Mr. Nishi Nath Ojha, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. (Oral)—The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 3rd of February, 2015 whereby the writ application filed by the appellant to seek quashing the sale notice dated 9th January, 2009 remained unsuccessful.

2. The sequence of facts leading to the present appeal are delineated hereinafter. The appellant has taken loan of Rs.10.06 lacs for the purpose of constructing a Hotel on execution of the documents on 9th November, 1985 and 20th September, 1988. The appellant defaulted in making repayment of the loan amount as per the agreement; therefore, a notice under Section 29 of the State Financial Corporation Act, 1951 (for short, "the Act") was issued on 7th of December, 1989. It is thereafter, on 17th November, 1992, the Corporation decided to put the unit to sale. The appellant was given an opportunity to clear the dues of the Corporation on 18th October, 1994 and on 26th June, 2001.

3. Later on, on 15th October, 2003, the appellant was informed that the

mortgaged assets are being put to sale on 24th August, 2007, but still, the appellant did not settle its loan account.

4. Ultimately, on 24th August, 2008, an advertisement was issued for the sale of the property on the value of the assets assessed by Central Valuation Team of the Corporation. The offer of the auction purchaser to purchase the unit at Rs.34 lacs was accepted. The appellant was informed that if the offer of the auction purchaser is matched within 21 days, then it can retain the property.

5. It was on 15th of May, 2009, the Corporation requested the District Magistrate to depute a Magistrate with necessary Police Force for taking possession of the mortgaged assets and in pursuance thereof, the possession was taken by the Corporation on 24.05.2012.

6. In the meantime, the Corporation floated One Time Settlement Scheme (for short, "Scheme"). The appellant filed an application on 9th of November, 2010 with Bank drafts dated 6th November, 2010 of Rs. 2,76,000/- as application money to enter into one time settlement. The Scheme contemplates that 25 per cent of the entire settlement amount should be paid with the application and the rest 75 per cent within one month from the date of filing of the application. The Scheme further contemplates that if the remaining amount is not paid within the time granted, the Scheme shall be deemed to have been withdrawn without any further communication and the original loan amount shall continue. The relevant clause from the Scheme reads as under :-

"Clause 5.3 Modalities for payment under the scheme:

The entire settlement amount to be paid with the application form 25 per cent of the amount can be paid with the application form and rest 75 per cent within one month from the date of filing of the application.

All payments are to be made by demand draft for the requisite amount drawn on any Scheduled Bank in favour of "BIHAR STATE FINANCIAL CORPORATION" payable at PATNA.

Clause 5.8 : Withdrawal from the scheme:

If the concern fails to make full payment of entire settlement amount, after application with 25 per cent amount, settlement under the scheme shall be deemed to have been withdrawn without any further communication and original loan amount shall continue."

7. In terms of the aforesaid Scheme, the appellant filed an application with 25 per cent amount within the stipulated period, i.e. on 15th November, 2010, but it deposited the balance amount through demand drafts dated 30th April, 2011 and 23rd September, 2011. It has also come on record that the possession of the property has since been handed over to the auction purchaser and as stated by learned counsel for the Corporation, the sale certificate stands issued in his favour.

8. Learned counsel for the appellant has vehemently argued that after permitting the appellant to enter into the Scheme, which is evident from receipt of 25% of the application money, the original loan agreement will not revive as the terms of Scheme will be applicable. It is contended that balance 75% of the amount could not be deposited for the reason beyond its control, and therefore, the Scheme cannot be said to be not applicable. It is contended that at best, the Corporation can charge interest on the delayed amount of 75% for the delayed period.

9. Learned counsel for the appellant relies upon the decisions of the Hon'ble Supreme Court in *M/s. L.K. Trust v. EDC Ltd. and Ors.*, AIR 2011 SC 2060; *Vasu P. Shetty v. M/s. Hotel Vandana Palace and others*, AIR 2014 SC 1947; and also the order passed in Special Leave Petition (CC) 17305 of 2009 (*Bihar State Credit and Invest. Corpn Ltd. v. Jagdish Prasad and Anr*) on 18.12.2009.

10. On the other hand, learned counsel for the respondents, argued that the Scheme was floated to settle the loan account, but the appellant has failed to comply with the terms and conditions of the Scheme. The Scheme itself contemplated that on failure to deposit 75% of the amount, the Scheme shall be deemed to have been withdrawn and "original loan amount shall continue". It is, thus, contended that the demand drafts dated 30th of April, 2011 and 23rd of September, 2011 were adjusted by the Corporation towards the loan amount and were not adjusted towards the One Time Settlement Scheme.

11. Admittedly, the forwarding letter of deposit of demand drafts dated 30th April, 2011 and 23rd of September, 2011 are not on record. In the absence of any mandate on the part of the appellant being made out that the drafts were being sent only towards the Scheme and not to be adjusted against any other account, the Corporation is at liberty to adjust the amount deposited by the appellant towards the loan account in terms of the specific condition of the Scheme.

12. The reliance of the appellant in *M/s. L.K. Trust's* case (supra) is for the proposition that as a mortgagor, the appellant has a right to redeem the property which right the borrower retains till the conveyance is executed by the mortgagee in favour of the purchaser. There is no dispute about the proposition laid down in the aforesaid judgment, but the question is that right of redemption would be available to the mortgagor on deposit of the payment of the entire mortgaged amount due and payable. Since the mortgaged amount due, includes the interest for the entire period, which according to learned counsel for the Corporation, is over Rs.2 Crores, therefore, the appellant can exercise right of redemption in terms of such judgment on deposit of the entire mortgaged amount. Such is not the argument of learned counsel for the appellant.

13. The argument of learned counsel for the appellant is that on deposit of One Time Settlement amount, the appellant is entitled to redeem his property. We are afraid; such an argument cannot be accepted. As a mortgagor, the appellant can seek redemption of the property on deposit of the entire mortgaged amount due

or seek settlement in terms of the scheme notified. The appellant does not satisfy any of the parameters.

14. In Vasu P. Shetty's case (supra), the Supreme Court was considering the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Rules framed thereunder, particularly Rule 9 of the Security Interest (Enforcement) Rules, 2002. The Court held that the provisions of the Rule 9 can be waived both by the borrower and the secured creditor, which contemplates the process of sale to be conducted in a particular manner. Such is not the situation in the present case. There is no question of waiver on the part of the Corporation when they treated the Scheme as withdrawn in terms of the Scheme notified by it.

15. The order in Jagdish Prasad's case (supra) is an order passed in the facts of the case to settle the equities in the aforesaid case. The said order is binding to inter-parties alone.

16. Learned counsel for the appellant then argued that the auction purchaser had deposited only 25% of the amount at the time of auction, but the remaining amount was made payable in instalments and that the purchaser has not deposited the instalments in terms of the concession granted to it. Therefore, such auction purchaser cannot claim any right in the property purchased in the auction.

17. We do not find any merit in the said argument. The auction in favour of the auction purchaser is an independent transaction. On auction being conducted, the account of the appellant is entitled to be credited of the entire auction amount. It is thereafter, the Corporation can deal with the auction purchaser on such terms and conditions as it may consider appropriate, but violation of the terms of auction is bilateral transaction between the Corporation and the auction purchaser in which the appellant, the original mortgagor, has no right to intervene. Since the right of the appellant in the property ceases on auction of the property, therefore, the appellant cannot claim any right on the basis of violation of any condition of auction, if any, conducted by the auction purchaser. It is a transaction between the Corporation and the auction purchaser alone.

18. In view thereof, we do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.