(2001) 04 OHC CK 0042

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7253 of 2000

Jagannath Minichem Private Ltd. APPELLANT

Vs

Orissa State Financial Corporation and Another RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

State Financial Corporations Act, 1951 — Section 29(4)

Citation : (2001) 2 OLR 68 : (2001) 2 OLR 67

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.N. Sharma and B.K. Biswal, for the Appellant; Satyajit Patnaik and Biswajit Das, for the Respondent

Judgement

P.K. Misra, J.—Prayer in this writ application is for a direction to the opposite parties to refund the excess amount of Rs. 2,50,000/- along with interest.

2. It is not disputed that the present petitioner had obtained loan from the Orissa State Financial Corporation and established an industry. The industrial concern was seized u/s 29 of the State Financial Corporation Act and subsequently it has been sold to a third party. The petitioner has stated that the amount due from the petitioner was Rs. 9,65,00/- and as such the Corporation should pay the balance amount to the petitioner in accordance with Section 29(4) of the State Financial Corporation Act. The learned counsel appearing for the Corporation has submitted that though the unit in question has been sold, the purchaser has not yet paid the entire amount and as soon as the entire amount is recovered from the purchaser and adjustments are made in accordance with Section 29(4), the balance amount shall be refunded to the petitioner.

3. Section 29(4) of the State Financial Corporation Act, 1951, is extracted hereunder :

"29. (4) Where any action has been taken against an industrial concern under to the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation and the residue of the money so received shall be paid to the person entitled thereto."

From the aforesaid provision, it is clear that only after adjustment of all other dues indicated therein, the surplus amount is to be paid to the person concerned.

The learned counsel for the petitioner has submitted that the auction had taken place in the year 1998 and the Corporation is not taking any effective steps to realise the amount from the subsequent purchaser. It goes without saying that if the subsequent purchaser has defaulted in making any payment, prompt steps in accordance with law should be taken by the Corporation so that the amount can be realised. It is not to be forgotten that u/s 29(4), the Corporation has to act as a trustee. Therefore, it goes without saying that the "Corporation should be vigilant about the present position and take prompt steps for realisation of the amount so that after adjustment of all dues, the balance amount can be paid to the petitioner. With the aforesaid observation, the writ application is disposed of. There will be no order as to costs.