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(2007) 08 AHC CK 0110

In the Allahabad High Court

Case No : Writ Petition No. 231 of 2007

Jagannath Patra — APPELLANT

Vs

U.P.Financial Corporation, kanpur and another — RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:
State Financial Corporations Act, 1951 — Section 21, 29

Citation : (2007) 08 AHC CK 0110

Hon'ble Judges : Rajeev Gupta, CJ and J.C.S.Rawat, J

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri Rakesh Thapaliyal and Sri Lalit Sharma, Advocates for the petitioner.

Sri Naresh Pant, Advocate fore respondent No. 1.

Sri Bhupendra Singh, Advocate for respondent No. 2

They are heard on admission.

2. Petitioner Jagannath Patra has filed this writ petition for the following reliefs :

"I. Issue a writ, order or direction in the nature of certiorari quashing the notice issued under section 29 of the U.P. State Financial Corporation Act, 1951 dated 25th April, 2000 (Annexure No. 9) as well as the notice ''dated 23rd October, 2000 (Annexure No. 12) issued for taking over the physical possession over the house/khasra plot No. 141 min. and 142 min. private plot No. 3 measuring 3 biswa (1047 sq. ft.) situated at Village Manpur Uttar Pradesh, Rampur, Haldwani, District Nainital.

II. Issue a writ, order or direction declaring the entire proceedings initiated pursuant to the notice issued under section 29 of the U.P. State Financial Corporation Act, 1951 as null and void.

III. Issue a writ, order or direction in the nature of mandamus directing to the

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respondent No. 1 to restore the possession of the unit/factory premises to the petitioner or the present valuation of the factory may be determined by a valuer appointed by this Hon''ble Court and thereafter the outstanding of U.P.F.C. as on 25th August, 2000 the date of possession of the unit be deducted and rest of the amount be paid to the petitioner along with the title deed of the residential house of the petitioner.

IV. Issue any suitable writ, order or direction which this Hon''ble Court may deem fit and proper on the basis of the facts and circumstances of the case.

V. Award the cost of the petition to the petitioner."

3. The petitioner, in substance, is seeking quashing of the proceedings initiated by respondent No. 1U.P. Financial Corporation against the petitioner under section 29 of the State Financial Corporations Act, 1951.

4. The partnership firm of the petitioner in the name and styled of Star Minerals was sanctioned a loan of Rs. 17,00,000/ (Rupees seventeen lacs only) by respondent No. 1Uttar Pradesh Financial Corporation on 18th January, 1999. The loan amount of Rs. 17,00,000/ was to be released in favour of the petitioner in instalments. During the pendency of the loan, the partnership firmStar mineralswas dissolved on 14th October, 1999 and it was reconstituted on 20th October, 1999.

5. Petitioner Jagannath Patra before filing this writ petition had filed another writ petition [which came to be registered as Writ Petition No. 677 of 2001] for the following reliefs :

"(a) To issue a writ, order or direction in the nature of certiorari for quashing the order/tender/public notice dated 29th June, 2001 passed by the respondent which is Annexure1 to the writ petition.

(b) To issue a writ, order or direction in the nature of mandamus directing respondent to first sell the property of Star Minerals and if necessary after disposing off the property of the said Star Minerals to dispose the security land and building after demanding the remaining amount if any due on the petitioner;

(c) To issue a writ, order or direction in the nature of mandamus directing the respondent not to give effect to the impugned order/tender/public notice dated 19th June, 2001 issued by the aforesaid respondent;

(d) To issue any other writ, order or direction which this Hon''ble Court deems fit and proper in the circumstances of the case.

(e) To award cost of this writ petition to the petitioner."

6. Writ Petition No. 677 of 2001 (M/B) came to be disposed of finally with the following order on 1st December, 2006 :

"In view of the fact that the sale deed has already been executed which is a registered document, the same cannot be quashed in a writ petition moved

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under Article 226 of the Constitution of India, as the remedy lies in Civil Court for seeking a relief to declare the sale deed null and void. The petitioner may avail the remedy by way of filing a suit on the pleadings which have been raised in the writ petition and in the amendment application. However, on account of pendency of the writ petition, if some delay is occurred, that shall be taken into account for condonation of delay.

With the aforesaid observation, the petition is disposed of finally."

7. On the recall application filed by the petitioner (Recall Application No. 15277 of 2006), the petitioner was granted liberty to file a fresh writ petition vide order dated 21st December, 2006, which reads as follows :

"The application is dismissed as withdrawn with the liberty to the petitioner to file a fresh writ petition challenging the entire proceedings initiated by the U.P.F.C. under section 29 of the State Financial Corporations Act. Learned Counsel for the U.P.F.C. Sri Naresh Pant assured this Court that the petitioner shall not be thrown out from the residential accommodation till the filing of the writ petition. However, it is provided that if the petitioner does not file the writ petition within a period of one and half month from today, the U.P.F.C. will be free to proceed in accordance with law."

8. Sri Rakesh Thapaliyal, the learned Counsel for the petitioner, vehemently argued that on the date of issuance of notice under section 29 of the Act, the petitioner was not a ''defaulter'' as no instalment of principal amount was due under the loan agreement and as such the first respondent U.P.F.C. could not have initiated steps against the petitioner under section 29 of the Act. The learned Counsel, therefore, submitted that the entire proceedings initiated by the first respondent U.P.F.C. against the petitioner are illegal and liable to be quashed.

9. Sri Naresh Pant, the learned Counsel for the respondent No. U.P.F.C., on the other hand, supported the invoking of section 29 of the Act by the U.P.F.C. and submitted that as the petitioner committed breach of condition Nos. ''21'' and ''25'' of the loan agreement by changing the constitution of the partnership firm without prior permission of the U.P.F.C., the entire amount of the loan with interest became due on the date of breach of above conditions and as such the petitioner became ''defaulter'' and the U.P.F.C. was fully justified in invoking section 29 of the Act.

9. The petitioner''s pleadings in Para 8 of his writ petition are as under :

"8. The petitioner as not having sufficient financial resources, as such, in order to implement/complete the project and make the payment of outgoing partner, the petitioner entered into a partnership with Sri Mohammed Yunus and Sri Surendra Kumar (both resident of Delhi) by virtue of partnership deed dated 1st November, 1999.

10. As per the terms and conditions of agreement executed by the petitioner with the respondent No. 1, the change of management shall become valid only

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after consent of respondent No. 1, as such, the petitioner made an application with respondent No. 1 to accord their approval for change of management of the firm. The newly entered partners were technically and financially sound as compared to the outgoing partner and were capable of working with joint hands with the petitioner. They started making investments towards erecting plant and machinery and completing the remaining civil construction work but they did not make any payment to outgoing partner and assured to make the same as soon their entity as partner of the firm is accepted by the respondent No. 1. The respondent No. 1 did not allow change of management of the firm even after lapse of a considerable time of more than two and half months and even upto 18th January, 2000 for the reasons best known to them. The respondent No. 1 never intimated any reason to the petitioner for not allowing change of management. In fact, the officers of respondent No. 1 had friendly relations with the husband of the outgoing partner (who had been a suspended bank manager that time) and to settle the score of dispute between the petitioner and outgoing partner, they deliberately and intentionally to destroy the future of the petitioner did not allow change of management of the firm.

11. A copy of the application submitted by the petitioner before the U.P.F.C. for approval of the change of the management of the firm is being filed herewith and marked as Annexure No. 6 to this writ petition.

12. Ultimately, being hopeless from respondent No. 1 both the new coming partners quit the petitioner''s firm by way of dissolution deed dated 18th January, 2000. The petitioner had to make a payment of Rs. 95,000/ to Mohd. Yunus (new coming partner) being the amount spent by him towards creation of assets of the factory. Thus investment in the firm rose to Rs. 29.81 lacs + Rs. 0.95 lacs = Rs. 30.76 lacs."

13. Respondent No. 1 U.P.F.C. has filed its counteraffidavit. The averments in paras 5, 6, 7 and 28 of the said counteraffidavit read as under :

"5. That before the production of the suit some dispute arose between the partners and the partnership of the firm Star Minerals was dissolved on 4th October, 1999, without obtaining prior permission of the answering respondent and a new partnership deed was executed which is in contravention to the loan agreement executed by the petitioner and Smt. Updesh Garg. A paper publication in this regard was also made describing therein that Smt. Updesh Garg has withdrawn herself from the partnership of Star Minerals. The dissolution of the firm was also confirmed by Smt. Updesh Garg vide her letter dated 2nd November, 1999 by mentioning therein that the partnership of the firm had been dissolved and she may not be considered as partner of the firm.

6. That the petitioner had also informed to the answering respondent. On 11th December, 1999, that a new partnership has been constituted on 20th October, 1999 having the following three partners :

I. Sri Jagannath Patra 33.33%

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II. Sri Mohd. Yunus 33.33%

III. Sri Surendra Kumar Bhutyani 33.33%

7. That the conduct of the petitioner from the beginning has not been fair and has no intention to repay the dues and liability. It is evident from the letter of Smt. Updesh Garg that the cheque of Rs. 4.40 lacs given to her by Mr. Patra against her investment in the firm has been dishonoured. In the said letter Smt. Updesh Garg also mentioned that since she is no more the partner of the firm, therefore she is not liable for any dues against the firm State Minerals.

28. That the contents of para Nos. 7, 8 and 9 of the writ petition as stated are not admitted. However it is admitted that the dispute amongst the partners arose just after last disbursement of the loan amount. It is submitted that the petitioner has violated para 21 and para 25 of the loan agreementcumhypothecation deed dated 16th March, 1999 and dissolved the firm without written consent of the answering respondent. The U.P.F.C. has no concern with the terms of dissolution deed submitted by the petitioner and also with the matter of payment of Rs. 4.52 lacs to the outgoing petitioner."

14. The abovequoted paras 5, 6, 7 and 28 of the counteraffidavit have been replied by the petitioner in paras 4, 5, 6, and 24 of the rejoinder affidavit, which are as under :

"4. That in reply to the contents of para No. 5 of C.A., it is submitted that the partnership between Smt. Updesh Garg and the petitioner came to an end due to differences and dispute between both the partners. The petitioner had put his everything on a stake for setting up the industrial unit i.e. the entire money available with him as share capital and mortgage of his residential house with the respondentcorporation as collateral security, which is the only asset of the petitioner. The petitioner was not in a position to escape from the firm, as such, after arbitration of reputed persons of the city, it was decided on 4th October, 1999 that Smt. Updesh Garg will quit the firm and the entire amount spent by her in the firm shall be paid to her. The petitioner contacted the officers of the respondentcorporation and explained complete facts to them, when he was advised either to settle the dispute or to bring some financially sound partner so that he is able to complete the project and run the unit and pay the loan of respondentcorporation and submit proposal in this respect. In view of the same, the petitioner entered into a partnership with Sri Mohd. Yunus and Sri Surender Kumar of Delhi, who were the manufacturers and suppliers of soap stone power plants and were persons of sound financial means and as suggested by the officers of respondentcorporation made an application for change of partners by submitting copy of dissolution deed, new partnership deed and details of technical ability and financial worth of new coming partners. The petitioner was very well aware of the fact that he cannot make any change in the constitution of the firm without the consent of the respondentcorporation. Therefore, stating that the change has been made without prior permission of the

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respondentcorporation is totally wrong. As far as the knowledge of the petitioner is concerned, the respondentcorporation generally permits change of constitution/ partners after submission of aforesaid required documents and after being satisfied with the fact that the new coming partners are more financially and technically sound than the outgoing partner, they allow change of partners and binding agreement is executed by new coming partners. Rest of the contents of para needs no comments. The outgoing partner Smt. Updesh Garg vide her letter dated 2nd November, 1999 also requested her release from the firm and has admitted that the partners added in the firm have more worth than her. A copy of the said letter has been annexed as Annexure6 of writ petition and a copy of dissolution deed is being annexed as Annexure1 to this rejoinder affidavit.

5. That in reply to the contents of para No. 6 of C.A., it is submitted that the name of partner No. (iii) written as Sri Surendra Kumar Bhutiyani is wrong. The name of partner No. (iii) had been Sri Surendra Kumar, who was resident of Delhi.

6. That the contents of para No. 7 are denied in total. In fact the conduct of the officers of respondentcorporation had never been fair rather say was biased with the petitioner because some of the officers of the respondentcorporation had very close relations with Sri K.G. Garg, who was a suspended bank manager that time and had been husband of Smt. Updesh Garg the outgoing partner. The petitioner himself has admitted time and again that the cheque given by the petitioner to outgoing partner Smt. Updesh Garg could not be encashed because the said amount was to be paid by the newly inducted partners namely Sri Mohd. Yunus and Sri Surendra Kumar. They both also knew the fact that the change in partnership will be effective only after the consent of the respondentcorporation in this respect is obtained. The officers of the respondentcorporation deliberately to ruin the future of the petitioner did not allow the change of partnership. Here it is important to mention that the outgoing partner Smt. Updesh Garg was a lady with no assets in her name whereas the new coming partners namely Mohd. Yunus and Sri Surendra Kumar were technically and financially sound persons and were having sufficient assets with them.

As regards payment of dues and liability of respondentcorporation is concerned, it is submitted that there was no dues outstanding against the petitioner and his firm on that date. Further, the para No. 8 of C.A. itself contradicts the assertion of the respondentcorporation, wherein they have themselves admitted that the petitioner had brought in the person namely Sri Surendra Kumar Bhutiyani of Haldwani, who was willing to take entire assets of the factory against entire liabilities of the respondentcorporation on the petitioner and his firm. The said proposal was not accepted by them stating therein that the values of the factory is on very higher side than the value offered by him i.e. entire liabilities of the respondentcorporation. Rest of the contents contained in para under reference needs no comments.

24. That in reply to the contents of para No. 23 of C.A., it is submitted that each and every fact mentioned in para Nos. 7, 8 and 9 of writ petition were in notice

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of the officers of the respondentcorporation. The petitioner has committed no violation of agreement. The change of partners was subject to the approval of the respondentcorporation. Here, it is very much relevant to mention that as per prevailing working practice of the respondent corporation, in case any firm requires to change its partners, fresh partnership deed with dissolution deed and biodata mentioning worth of incoming partners is submitted by the partners of the firm with the respondentcorporation. The officers of the respondentcorporation assess financial and technical ability of incoming partners as compared to outgoing partner and on being satisfied that the incoming partners hold merit allow the change of management and executes binding agreement with incoming partners. As such, as suggested by the officers of the respondentcorporation, the complete required documents i.e. dissolution deed, partnership deed and details of financial worth of incoming partners were submitted with respondentcorporation seeking their approval for the same. Every change was subject to approval of the respondentcorporation that''s why the application for change of partners was made with them. It is further submitted that the outgoing partner had been Smt. Updesh Garg (lady partner) with no personal assets in her name whereas both times the newly inducted partners were person of sound financial means with sufficient assets in their name and were also experienced in the similar trade."

15. It is not in dispute that loan was sanctioned to partnership firm ''Star Minerals'' on 18th January, 1999. It is also not in dispute that on account of quitting of one of the partners, namely, Smt. Updesh Garg, the composition of the partnership firm got changed on 4th October, 1999. It is also admitted by the petitioner that the composition of the partnership firm was further changed by the petitioner by inducting new partners.

16. At this juncture, it is relevant to notice condition No. 21 of the loan agreement, which reads as follows :

"21. That the borrower (in case of partnership firm) shall not without the previous written consent of the corporation effect any change in the constitution of the firm or alter the term of its partnership deed and the firm shall not be dissolved in the event of death, retirement or insolvency of a partner until the loan of the corporation has been repaid in full."

17. From the above quoted condition No. 21 of the loan agreement, it is apparent that the borrower could not have changed the constitution of the partnership firm without previous written consent of the corporation. This condition further stipulates that firm shall not be dissolved even in the event of death, retirement or insolvency of the partner until the loan of the corporation has been repaid in full. Thus, it is apparent that if the petitioner wanted to change the constitution of the firm without obtaining written consent of the corporation then it was incumbent on the petitioner to repay the entire loan, which admittedly the petitioner did not.

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18. The consequences of the breach of any of the terms and conditions of the loan agreement are contemplated in Clause 17 of the agreement, which reads as follows :

"17. That the corporation shall have the right to recall the sanction of loan or stop further advances and cancel further payments of the sanctioned loan and also demand immediate payment of its entire dues from the borrower and proceed to recover the same even without prior notice if corporation is of the opinion that the borrower has committed breach of the terms of the agreementcumhypothecation deed or did any act of insolvency has been committed by the sole proprietor/warranting its winding up for liquidation has been committed by the borrower company or there has occurred any such thing which has diminished the security for the loan or any enquiry relating to economic offence has been started against the borrower."

19. From the above narration of the facts we have no manner of doubt that the petitioner committed breach of the above quoted condition No. 21 by changing the constitution of the partnership firm without obtaining prior written consent of the corporation. As the petitioner committed breach of condition No. 21 of the loan agreement, the entire loan amount, by virtue of the above quoted Clause 17 of the agreement, became due for repayment at once. Admittedly, the petitioner did not pay even a single penny towards either the principal loan or the interest to the corporation. The petitioner, therefore, became a ''defaulter'' and the corporation was fully justified in invoking section 29 of the Act against the petitioner for recovering the loan amount and the interest due thereon.

20. For the foregoing reasons, we do not find any ground for grant of the relief sought by the petitioner in the writ petition.

21. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

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