(2009) 01 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 17768 of 2005

Jagdishkumar R. Patel APPELLANT

Vs

GSFC and Others RESPONDENT

Date of Decision : 27-01-2009

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

Citation : (2009) 1 GLH 651

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : R.S. Sanjanwala, for the Appellant; Devang D Trivedi For Respondent(S) 1 - 3, for the Respondent

Judgement

Jayant Patel, J.—With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today. The short facts of the case appear to be that one M/s. Bita writing Instruments Pvt. Ltd., had taken loan from the respondent No. 1-Corporation, and the said loan was not paid. Therefore, the Corporation in exercise of the power u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the "Act") had taken over the possession of the property. The said property thereafter was put to auction and the Corporation accepted the offer of the petitioner for Rs. 20 lacs being price of the property. Out of which the petitioner had to deposit the amount of Rs. 7 lacs within 30 days and the balance amount of Rs. 13 lacs was to be paid within one year, by four quarterly installments commencing from 1.2.2002. The sale offer dated 22.11.2001 is produced at annexure-A. It appears that the petitioner thereafter, deposited amount of Rs. 7 lacs, pursuant to the sale offer, on 11.1.2002 and also entered into the agreement with the G.S.F.C, pursuant to the aforesaid sale offer. The petitioner made payment of Rs. 3 lacs thereafter, however, it appears that the petitioner thereafter has failed to deposit the requisite amount and therefore, the Corporation took over the possession of the property and posted their security. The petitioner did object to the same and at one point of time, the petitioner was also offered One Time Settlement, whereby he had to pay the

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amount of Rs. 15,71,315/- as full and final settlement. However, it appears that thereafter, the petitioner entered into correspondence with the respondent-Corporation that there is error in calculation of the amount and the matter remained undecided. The Corporation thereafter, informed the petitioner that as the requisite amount is not paid, the Corporation in its meeting had decided to forfeit the payment made and the property be put to auction for realisation of the money of the Corporation once again. Thereafter, the Corporation issued advertisement for sale of the property on 7.8.2005. It is under these circumstances, the petitioner has approached to this Court by the present petition.

2. Heard Mr. Sanjanwala learned Counsel appearing for the petitioner and Mr. Trivedi learned Counsel appearing for the respondent Corporation and its officers.

3. It appears from the sale offer dated 22.11.2001, copy whereof is produced at annexure-A that total consideration is Rs. 20 lacs. It is also an admitted position that the petitioner had paid the amount of Rs. 7 lacs, pursuant to the said sale offer, and further amount of Rs. 3 lacs thereafter. As per condition No. 2 of the said offer, it was provided as under:

"2. Balance amount of Rs. 13,00,000/-shall be paid within a period of one year by four quarterly installments commencing from 1.2.2002 with the interest at the rate of 16 percent per annum (Gross)."

4. The aforesaid condition do not provide for charging of the interest on compounded basis by capitalizing the same at every quarterly rest but it only provides for liability to pay interest at the rate of 16 percent per annum. It further appears that pending the petition pursuant to the interim direction and the undertaking filed before this Court, the petitioner has additionally deposited the amount of Rs. 13 lacs with the respondent Corporation. Therefore, in all total amount deposited by the petitioner with the respondent Corporation is Rs. 23 lacs, as against the sale price of Rs. 20 lacs. It is true that there is delayed on the part of the petitioner in paying the amount and therefore, the petitioner cannot getaway from the liability to pay interest at the rate of 16 percent per annum, but charging of such interest at the rate of 16 percent per annum, as stated above, will be simple rate of interest and not on compounded basis.

5. Mr. Sanjanwala learned Counsel appearing for the petitioner declared before the Court that the petitioner has no objection in paying remaining amount for the delayed period by paying interest at the rate of 16 percent per annum. It was also submitted by Mr. Sanjanwala learned Counsel appearing for the petitioner that in the statement, which has been given at bar by the respondent Corporation, the payment whenever has been made by the petitioner, the same is first adjusted against outstanding interest and the balance, if any, is credited in the principal amount and therefore, charging of interest on that basis by the respondent Corporation, or appropriation of the amount paid by the petitioner towards accrued interest, may not be maintained by this Court.

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6. It appears that whenever any liability is between the creditor and the debtor, unless it is expressly directed by the debtor with the specific instruction, it is open to the creditor to appropriate amount towards any of the lawful liability. As per the terms and conditions of the agreement and the sale offer, there is liability to pay interest at the rate of 16 percent per annum. No material is produced on record to show that the payment was made specifically towards principal amount. Therefore, the Corporation would be justified in appropriating the amount first towards accrued interest and hence, the contention of Mr. Sanjanwala learned Counsel appearing for the petitioner cannot be accepted.

7. It appears that the power of forfeiture can be exercised at the extreme stage, if there is no willingness whatsoever on the part of the offerer party to abide by the terms and conditions of the agreement of the sale offer. The facts and circumstances, as referred to hereinabove, more particularly, making payment by the petitioner of Rs. 10 lacs prior to taking over of the possession, and further amount of Rs. 13 lacs pending the petition, goes to show that the substantial amount of Rs. 23 lacs has been paid by the petitioner, as against the principal offer for sale of the property for Rs. 20 lacs. Therefore, it appears to the Court that the forfeiture, if permitted of such amount of Rs. 23 lacs, as against the offer of Rs. 20 lacs being the sale price, it would result into permitting unreasonable and arbitrary action on the part of the respondent Corporation. Further, there is no express notice issued by the Corporation calling upon the petitioner to deposit the remaining amount, failing which action for forfeiture was to be taken. Therefore, keeping in view such peculiar circumstances that the action is taken without express notice, and that as against the price of Rs. 20 lacs, the amount already deposited by the petitioner by now is Rs. 23 lacs, it would not be a case for maintaining forfeiture of the amount by Corporation. Therefore, it appears that the ground as put forwarded by the Corporation for forfeiture of the amount already deposited by the petitioner, cannot be maintained.

8. It appears that pursuant to the interim order passed in the present proceedings, the second sale of the property has not taken place and the property is still with the Corporation. If the Corporation is to realise the full amount, namely agreed price plus interest at the rate of 16 percent per annum for the delayed period, no prejudice will be caused to the Corporation and if the petitioner pays such amount to the Corporation, the Corporation should not have any objection in returning property to the petitioner, which was purchased by the petitioner and more particularly, when the full price with the interest for the delayed period is paid.

9. Mr. Trivedi learned Counsel appearing for the respondent submitted that because of the deployment of the security by the Corporation, the petitioner may also be required to pay security charges for the expenses already incurred by the Corporation towards security.

10. In my view, such appears to be reasonable, since the property was protected

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during the interregnum period.

11. In view of the aforesaid, action of the Corporation for sale of the property is quashed and set aside with the further direction that if the petitioner pays the amount of Rs. 20 lacs, as per the sale offer with the interest at the rate of 16 percent per annum, for the delayed period minus the amount already deposited by the petitioner with the Corporation prior to the petition and pending the petition, within a period of three months from today, the Corporation shall return the possession of the property to the petitioner, which was recovered from the petitioner, within 15 days from making of such payment. It is also observed that the petitioner in addition to the aforesaid amount shall also be required to pay the expenses already incurred by the Corporation towards security for protection of the property, and such amount shall also be simultaneously paid, in any case within a period of three month from today. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost.

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