(2003) 04 OHC CK 0052

In the Orissa High Court

Case No : C.R.P. No. 132 of 2003

Jayadurga Paper Box APPELLANT

Vs

Orissa State Financial Corporation and Others RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
State Financial Corporations Act, 1951 — Section 29 , 30

Citation : AIR 2003 Ori 173 : (2003) 1 OLR 579

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

Bench : Single Bench

Advocate : S.C. Ghose and P.C. Das, for the Appellant; P.K. Rautray, P.R. Sutar, M.R. Rautray, G.N. Mishra, S. Raut and S.S. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathi, J.—Heard.

2. This civil revision stands disposed of at the stage of admission after hearing arguments from both the parties.

3. Petitioner is the plaintiff in Civil Suit No. 272 of 2002-1 pending in the Court of Civil Judge (Senior Division), First Court. Cuttack. -In that suit he has sought, for a declaration that the opposite parties 1 to 3 (defendants in that suit) are liable to revive the industry. In that suit petitioner filed application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (in short ''the Code'') which was registered as Misc. Case No. 306 of 2002. In that application petitioner sought for the relief of temporary injunction restraining the Orissa State Financial Corporation (in short ''O.S.F.C.'') i.e., defendants 1 and 2 and the defendant No. 3 i.e., the State Bank of India represented by Branch Manager, Kalyani Nagar Branch not to dispose of the seized property, i.e., machineries and the land with the house standing thereon belonging to the plaintiff. Opposite Parties 1 and 2 contested that Misc. case inter alia on the grounds that they being representing a statutory body and have proceeded in accordance with the provision u/s 29 read,

with Section 30 of the State Financial Corporations Act, 1951 (in short ''the Act'') for recovery of the loan amount, the Civil Court has no jurisdiction to grant temporary injunction in the absence of any illegality in their action. They also stated that the outstanding dues against the petitioner being huge, he is not entitled to the aforesaid relief. Defendant No. 3 stated that it has obtained a decree against the plaintiff in Money Suit No. 205 of 1991 and that decree has been put to execution vide Execution Case No. 71 of 2000 and grant of temporary injunction would amount to stay the said execution proceeding.

4. It appears from the impugned orders that petitioner''s effort to get rid of the problem was without any result in spite of filing a writ application, vide O.J.C. No. 4030 of 2002. As stated in the impugned orders, that was dismissed.

5. Learned Civil Judge rejected the application for temporary injunction on the ground that the opposite parties 1 and 2 being the statutory body exercising statutory power to realise the outstanding loan, it should not be prevented in its lawful action. Similarly, grant of temporary injunction against defendant No. 3 would amount to prevent further proceeding of the execution case instituted by it. As against the order passed by the Civil Judge on 18-12-2002 petitioner preferred Misc. Appeal No. 140 of 2002. Learned District Judge, Cuttack disposed of that appeal on 13-2-2003. Reiterating the same principle, learned District Judge found that the petitioner''s application for temporary injunction is devoid of merit. During pendency of Misc. Appeal No. 140 of 2002, petitioner had preferred Civil Revision No. 334 of 2002 for interim protection. After hearing the parties that Civil Revision was disposed of with an observation that the appeal be disposed of expeditiously and that contention of the parties relating to one time settlement be duly considered. In that context, learned District Judge has recorded that parties could not resolve the dispute in that respect nor they could come to a point of understanding relating to one time settlement. Learned District Judge dismissed the appeal by refusing to grant temporary injunction. As against that judgment the present civil revision has been filed.

6. Even, during the pendency of the civil revision a couple of adjournments were taken for making an one-time settlement between the plaintiff and defendant Nos. 1 and 2. However, Mr. Routrary, learned counsel appearing for the opposite parties 1 and 2 today makes a statement before this Court that petitioner''s application for one-time settlement has already been rejected by opposite party No. 1. In the process of giving reply to the contention of the petitioner, he also suggested that the opposite parties 1 and 2 will be willing to not to proceed against the land and the house standing thereon and shall facilitate the petitioner to arrange a buyer for purchase of the seized machineries provided the petitioner shall deposit a sum of rupees four lakhs towards partial discharge of the dues and in that event the opposite parties 1 and 2 undertake not to dispose of the seized land and the house until disposal of the suit if a targeted period should be fixed for disposal of the suit, He states that the aforesaid amount of rupees four lakhs would be including the sale price of the machineries if the petitioner would

be able to arrange a buyer for that. Mr. Ghose, learned counsel for the petitioner on the other hand states that unless financial assistance by any or all the defendants to the tune of around three lakhs would be arranged for him, he shall not be able to deposit a sum of rupees four lakhs. A narration of the aforesaid contention of the parties is to indicate that the petitioner is not in a position to repay the outstanding debt and even for repayment of part of the outstanding loan he wants further loans from the creditors.

In view of the aforesaid contention of the parties, this Court finds that the petitioner being not in a position to deposit a sum of rupees four lakhs, the above noted suggestion given by the opposite parties 1 and 2 is not workable.

7. On the merit of the application for temporary injunction, this Court finds that in course of argument plaintiff has stated nothing from which it can be made out that the defendants have proceeded with alleged action illegally or in violation of any law or procedure. Even nothing has been stated or substantiated by the petitioner alleging mala fide in the act or action taken by any of the defendants. It is not in dispute that defendants are statutory bodies. When there is no illegality in their action or the procedure adopted and when there is no proof of mala fide in the course adopted by them then the equitable relief of temporary injunction cannot be imposed on them to prevent lawful action. In that respect the Courts below have rightly relied on the ratio in the case of Mekap Hosiery v. Janata Machinery Stores 72 (1991) CIT 227 and Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, . In course of argument, learned counsel for the petitioner neither challenges to applicability of the ratio in the above noted citations nor cites any decision with any contrary ratio. Petitioner is also unable to point out any illegality or jurisdictional error in the Impugned orders. Under such circumstance while exercising the power and Jurisdiction u/s 115 of the Code, this Court cannot interfere with a lawful order simply because It does not tend to the convenience of the petitioner. Thus the Civil Revision stands dismissed.

8. At this stage, learned counsel for the petitioner stales that leave may be granted to the petitioner to negotiate with opposite party Nos. 1 and 2 for one time settlement or for same interim arrangement and direction to the opposite party Nos. 1 and 2 be given to entertain the same. In that context it be noted here that this order in this Civil Revision is relating to legality and correctness of the impugned orders by which the Courts below refused to grant temporary injunction in favour of the petitioner. This order neither prohibits the process of negotiation it will be initiated by either of the parties nor to interfere with any settlement between or amongst the parties. Section 24 of the Act. 1951 prescribes that-

"24. General duty of the Board-- The Board in discharging its functions under this Act, shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public."

When Orissa State Financial Corporation as an instrumentality of the State deals with the public money with a public oriented approach for growth of industries, trade and commerce with the object of enhancement of financial stability and it is not to act like an ordinary money lender, yet, it has to find out ways and means with practical oriented approach to get recover of loan amount from defaulting debtors. Therefore, opposite parties 1 and 2 have to make a bridge between the ''business concept'' and ''public good''. Hence if petitioners proposed negotiation shall tread in that path of trade it should be accordingly considered by them and in that respect the impugned orders of the Courts below or dismissal of the Civil Revision by this Court may not be considered as a ground to not to consider such a proposal. However, opposite party Nos. 1 and 2 are free to take a decision in that respect. This Court feels that the above observation shall cater to the contention of the petitioner.

As already noted the Civil Revision is dismissed. Parties arc directed to bear their respective costs of litigation in this forum. Hearing fee is assessed at contested scale. Revision dismissed.

