

(1992) 01 OHC CK 0018

In the Orissa High Court

Case No : Criminal Jurn. Case No. 1312 of 1991

Jeenu Plast India (Private) Ltd. and Another

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

State Financial Corporations Act, 1951 — Section 29, 30

Citation : AIR 1992 Ori 196 : (1993) 76 CompCas 366

Hon'ble Judges : G.B. Patnaik, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : J. Das, for the Appellant; Deepak Misra and Guatam Mukherjee, for the Respondent

Judgement

G.S. Patnaik, J.—The petitioners challenge the seizure of the industrial unit named Jeenu Plast India (Private) Ltd. by the Orissa State Financial Corporation in exercise of their power u/s 29 of the State Financial Corporations Act, 1951 (hereinafter referred to as the "Act") inter alia, on the ground that the said power has been exercised mala fide and not in compliance with the rules of law. It has also been alleged that the action of the opposite parties is for oblique purpose and without authority of law.

2. The brief facts of the case are that the petitioner No. 1 is a small-scale industrial unit registered under the Indian Companies Act. It availed of financial assistance from the Corporation in the year 1986 and machineries were installed in the year 1988. Though the machineries were installed in the year 1988, but on account of lack of availability of working capital, the unit could not go into production until 1990. In 1990, as alleged by the petitioners, on account of acute loadshedding and lack of power, the unit could not manufacture the plastic materials and it could only start production from the month of October, 1990. On 4-2-1991, opposite party No. 3 issued a notice recalling the entire loan amount in exercise of power under Section 30 of the Act and it was indicated in the said

notice that the outstanding amount of default as on 31-12-1990 was Rs. 26,89,982.71. The petitioners were called upon to pay the entire outstanding amount by 15-3-1991. The petitioners assert that notwithstanding enormous difficulties, the petitioners could pay a sum of Rs. 2,91,000/- by the date of issuance of recalling notice. The said notice of recall has been annexed as Annexure-3. The petitioners on receipt of the notice under Annexure-3 were making arrangements to collect some money and pay it to the Corporation, but all of a sudden on 22-2-1991, opposite party No. 3 took forcible possession of the premises in question in exercise of power u/s 29 of the Act. The petitioners aver that though the unit was seized forcibly, but no copy of the seizure-list was served upon the petitioners. The petitioners made a representation to the Corporation to consider the question of rephasing of the loan on the ground that the unit could not produce for reasons beyond the control of the petitioners. But instead of considering the same, the Corporation took action of recalling the loan amount and seizing the premises. It is alleged by the petitioners that the Corporation was trying to sell the industrial unit to some third party and with that mala fide object, the seizure was made. The petitioners, therefore, approached this Court in March, 1991 and this Court by an interim order directed that there should be no auction in respect of the industrial concern in question until further orders from the Court.

3. The Corporation filed a counter-affidavit being sworn to by the Branch Manager. It has been averred in the counter-affidavit that a term loan of Rs. 20.70 lakhs was sanctioned in favour of the petitioners and a soft loan of Rs. 2 lakhs had also been sanctioned on 14-1-1986. The formalities of documentation were over on 16-4-1986. The term loan was to be repaid by 14 half-yearly installments commencing from 16-10-1988 and terminating on 16-4-1995 and the soft loan was to be repaid by 10 half-yearly installments commencing from 16-10-1991 and terminating on 16-4-1996. It has been further averred that by 24-1-1990, Rs. 22.70 lakhs had been disbursed in different phases. Though the petitioners were to start paying the half-yearly installments from 16-10-1988, but they did not pay the installments. Instead, the petitioners submitted a proposal for additional loan of Rs. 10.94 lakhs. The Corporation advised the petitioners that the question of additional loan would be considered only if petitioners would pay up the interest account of Rs. 1,10,000/-, but the petitioners did not pay any heed to the said letter of the Corporation. On 28-8-1990, the Corporation wrote a letter to the petitioners indicating the outstanding amount as against the petitioners by 30th of June, 1990 and called upon the petitioners to pay up the amount by 20th of September, 1990, failing which the Corporation would be free to take over possession u/s 29 of the Act. This letter has been annexed as Annexure-C to the counter-affidavit. But even then the petitioners did not take any action. Therefore, the Corporation issued notice recalling the loan u/s 30 of the Act on 4-2-1991. According to the Corporation, the assertion made by the petitioners that they were to pay up the amount by 15-3-1991 is incorrect and interpolated document has been filed, as

the petitioners had been called upon to pay up the amount by 15-2-1991. A copy of the letter that was served on the petitioners has been annexed as Annexure-9 to the counter-affidavit. The Corporation also denies the allegation that no copy of the seizure-list had been given to the petitioners. On the other hand, it is alleged that the copy of the seizure-list was received by the person who was in management of the unit on 22-2-1991. It was further indicated that after seizure, the unit in question had been handed over on leave and licence basis to one Kailash Chandra Joshi on condition that he would pay Rs. 45,000/- towards licence fee commencing from 31-3-1991. A copy of leave and licence agreement has also been annexed as Annexure-3 to the counter-affidavit. So far as the petitioners' representation is concerned, it was averred that as the Corporation has lost all confidence in the entrepreneur-petitioner, the Corporation did not think it appropriate to consider the representation. It was also indicated that when the unit was to be put to public auction, the entrepreneur-petitioner was intimated to appear before the Default Advisory Committee for negotiation, but yet he failed to appear before the Committee. On these averments, the Corporation has prayed that the writ application is liable to be dismissed.

4. In view of the counter-affidavit, the petitioners filed an application for amendment impleading the person with whom the premises has been given on leave and licence agreement and pursuant to order dated 30-7-1991, the said person has been impleaded as opposite party No. 5. A counter-affidavit has also been filed on behalf of opposite party No. 5.

5. In course of hearing of the writ application, the learned counsel for the petitioners does not dispute the amount of default against petitioners, but mainly contents that non-payment of the installment dues is on account of non-availability of the working capital and non-availability of power and, therefore, it was beyond the control of the petitioners and according to the petitioners, the Corporation should have taken into consideration the aforesaid facts and circumstances. It is no doubt true that the Corporation is a financial institution and having been set up by the State Government to help the entrepreneurs to promote industries is duty bound to take into consideration several obstacles on the path of the entrepreneur in the matter of production and if the stand of an entrepreneur is reasonable and genuine, the Corporation may take that into account for rephrasing the loan. But an entrepreneur cannot as of right refuse to pay the installment dues on the ground that he could not arrange the working capital nor can he resist the action of the Corporation when the Corporation issues notice requiring the entrepreneur to pay the defaulted amount. Inability on the part of the entrepreneur to arrange the working capital or non-production of goods on account of certain supervening factors like lack of power does not debar the Corporation from making demand for the payment of installment dues which an entrepreneur has to pay towards his loan. The Corporation itself gets the money from different financial institutions on payment of interest and, therefore, when the disbursed amount to different entrepreneurs is not repaid in time, it would be difficult for the Corporation to run its own. In that view of the

matter, we do not find any infirmity on the part of the Corporation in issuing the notice under Annexure-3. From Annexure-3 it appears that the outstanding default as on 31-12-1990 against the petitioner was Rs.26,89,982.71.

6. The second plank of petitioners' argument is that the Corporation having served the notice under Annexure-3 calling upon the petitioners to pay up the amount by 15-3-1991 could not have seized the premises in exercise of power u/s 29 of the Act on 22-2-1991 as per Annexure-4 and that indicates the malice on the part of the Corporation and according to the petitioners the said malice is apparent from the fact that immediately on seizing the premises, it was handed over to opposite party No. 5 under leave and licence agreement. The Corporation, however, in its counter-affidavit categorically avers that Annexure-3 is an interpolated document and the petitioners were called upon to pay up the amount by 15-2-1991, but he has filed Annexure-3 by interpolating the figure "2" to "3". The office copy of Annexure-3 was produced before us along with the file by the Corporation and on perusing the said office copy, we find ample force in the submission made by Mr. Misra appearing for the Corporation. In fact, under Annexure-3, the petitioners had been called upon to pay up the dues by 15-2-1991, but by interpolating the figure "2" to "3", the petitioners have filed Annexure-3 for making out a case that the action of seizure on 22-2-1991 is mala fide. Even a close look at Annexure-3 would indicate that the figure "2" has been made "3". Since under Annexure-3, the petitioners were called upon to pay up the dues by 15-2-1991 and the petitioners did not pay up the dues by that date, the action of seizure u/s 20 on 22-2-1991 cannot be held to be a mala fide Act. That apart, the petitioners must be held to have approached this Court with an unclean hand and by interpolating a document and should, therefore, not be entitled to the discretionary remedy under Article 226 of the Constitution.

7. Notwithstanding the aforesaid interpolation with regard to the date in Annexure-3 as held by us earlier, in course of hearing, we had called upon the counsel for the petitioners to find out whether the petitioners would be able to deposit at least a sum of Rs. 5 lakhs as against the outstanding dues of Rupees 26,89,982.71 which by now must have swelled up so that we could think of granting some relief to the petitioners by way of directing the Corporation for replacement, but the petitioners' counsel expressed his inability to pay even the sum of Rs. 5 lakhs as suggested by the Court. In the aforesaid premises, we do not find any justification for our interference with the impugned action of the Corporation.

The writ application accordingly fails and is dismissed. The interim orders stand vacated. There will be no order as to costs.

D.M. Patnaik, J.

8. I agree.