(2003) 01 KAR CK 0069

In the Karnataka High Court

Case No : Writ Appeal No. 7487 of 1999

Karnataka State Financial Corporation	APPELLANT
Vs	
Mahabala Hospitals Private Limited	RESPONDENT

Date of Decision : 21-01-2003

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

Citation : AIR 2003 Kar 208 : (2003) 2 BC 478 : (2003) 116 CompCas 39 : (2003) 2 KarLJ 400

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : A.G. Holla for S.G. Pandit, for the Appellant; Ashok Patil, K. Subramanya and K.A. Ariga, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The Karnataka State Financial Corporation (for short, ''KSFC''), being aggrieved by the order of the learned Single Judge dated 9th September, 1999 in W.P. No. 25038 of 1999 has come up with this writ appeal.

2. The facts leading to the filing of the writ appeal briefly stated are as under.--

The respondent herein is the writ petitioner. The Corporation had sanctioned three loans; a sum of Rs. 50.00 lakhs on 26-9-1990, a sum of Rs. 33.80 lakhs on 31-8-1991 and a sum of Rs. 6.20 lakhs on 26-2-1993, totally Rs. 90.00 lakhs to the writ petitioner for establishing hospitals. The land and building where the hospital is situated, is mortgaged to the Corporation by executing a mortgage deed. The writ petitioner committed defaults in repaying the loan amount in terms of the schedule of repayments. Under those circumstances, the Corporation took steps u/s 29 of the State Financial Corporations Act, 1951 (for short, ''the Act''), for taking over the assets of the petitioner-respondent hospital mortgaged to the Corporation and accordingly it is stated that the said unit was taken-over by the Corporation on 28-7-1997. The writ petitioner filed Writ

Petition No. 29780 of 1995 in this Court calling in question the action of the Corporation taken u/s 29 of the Act. This Court while entertaining the above writ petition granted interim order of stay subject to the condition that the petitioner should deposit a sum of Rs. 42.00 lakhs. Since the petitioner failed to comply with the conditional order, the writ petition was dismissed on 13-1-1997. Thereafter, the Corporation took necessary steps to sell the assets of the unit. To the first sale advertisement, an offer was received for a sum of Rs. 95.00 lakhs and since that offer was below the value of the assets valued by the Corporation, the offer was rejected. To the consequent sale advertisement, one Shri Izzauddin Mohammed gave an offer of Rs. 1.25 crores. The Corporation thinking the said offer as reasonable accepted the same and asked the officer to deposit a sum of Rs. 25.00 lakhs as down payment. However, unfortunately, the offerer backed out. In response to the third sale advertisement published on 14-6-1998, the Corporation received an offer from one Mrs. Monica D''Souza for a sum of Rs. 7.97 crores. In pursuance to the said offer of Mrs. Monica D''Souza, the Corporation sent a letter dated 21-7-1998 to Mrs. Monica D''Souza requesting her to attend the sale negotiation meeting to be held on 10-7-1999. Mrs. Monica D''Souza, on 4-7-1998, authorised one Mr. Valerian Dalmida, Chartered Accountant to negotiate with the Corporation on behalf of her. The Corporation in its letter dated 21-7-1998 specifically directed Mrs. Monica D''Souza to indicate the mode of payment and also the down payment to be made by her. It was also indicated by the Corporation that the Corporation would normally insist 25% of the sale price as down payment. Mrs. Monica D''Souza did not comply with any of the directions of the Corporation. Subsequently, Mrs. Monica D''Souza submitted a letter dated 15-10-1998 withdrawing her offer and requested the Corporation to return the amount. When the matter stood thus in the month of July 1999, Writ Petition No. 25038 of 1999 was filed praying for the reliefs noted above. The writ petition was opposed by the Corporation by filing a detailed statement of objection dated 10-8-1999. The learned Single Judge, having opined that the writ petitioner has suffered substantial loss on account of non-acceptance of the offer made by Mrs. Monica D''Souza disposed of the writ petition with the following direction.--

"Therefore, there will be a direction to the respondents to sell the building as early as possible and whatever loss, if any, sustained by the respondent compared to the amount due (treating the earlier offer of Mrs. Monica D''Souza to be the proper price) on account of present sale, need not be made good by the petitioner. Writ petition disposed of as above".

3. Hence, this writ appeal by the Corporation.

4. We have heard Sri A.G. Holla, learned Senior Counsel appearing for the Corporation and Sri K.A. Ariga, learned Counsel for the writ petitioner-respondent. Although several points were urged before us by the learned Counsels for the parties, there is no necessity for us to deal with all those contentions for the purpose of disposal of this writ appeal. Suffice it to note that

offerer herself i.e., Mrs. Monica D''Souza withdrew the offer vide her letter dated 15-10-1998. We are told, in response to sale notification issued by the Corporation after disposal of the writ petition, the Corporation received one offer on 14-4-2000, from one Sri Manjunatha Mallya on behalf of Dr. Jayaprakash Punja for Rs. 8.5 crores and in response to that offer, the Corporation on 5-5-2000 sent a letter to Sri Manjunatha Mallya, accepting the offer, and giving him one week''s time to deposit 10% amount i.e., Rs. 85.00 lakhs and making it clear to him that the offer would be placed before the Court obviously for the reason that in this appeal the Division Bench on 1-3-2000 had permitted the Corporation to sell the property and deposit the amount within six months'' time. Sri Manjunatha Mallya sought certain clarifications on 21-5-2000 and the clarifications sought by Sri Manjunatha Mallya were given to him by the Corporation on 21-6-2000. Quite curiously, Sri Manjunatha Mallya sent a letter dated 1-7-2000 insisting that the Corporation should settle the dispute with Mrs. Vanajakshi Hegde, and that only thereafter, he would deposit 10% amount. Under the circumstances, the offer made by Sri Manjunatha Mallya was not acceptable to the Corporation and that led to the Corporation issuing fresh sale advertisement. From the materials placed before us, it is seen that, though in response to sale notifications some offers were received, ultimately the sale could not take place for one or the other reason. The property is yet to be sold.

5. Sri A.G. Holla, learned Senior Counsel submitted that since order of the learned Single Judge directed that, in the event of any deficiency of amount by sale of the unit, the Corporation shall not take any step to make good the deficiency against the petitioner-company and that there is hardly any possibility for the Corporation to realise the outstanding dues of Rs. 222.87 lakhs by sale of the unit, the Corporation is handicapped to take any steps in the matter. Sri A.G. Holla, further submitted that the restriction imposed on the Corporation by the learned Single Judge with regard to sale of unit cannot be sustained in law. On the other hand, learned Counsel for the writ petitioner-loanee, Sri K.A. Ariga, submitted that the offer made by Mrs. Monica D''Souza ought to have been accepted by the Corporation in time and if her offer was accepted, the sale price would have covered not only the liability of the writ petitioner-loanee and that the Corporation created a situation where Mrs. Monica D''Souza was left with no option except to withdraw her offer and in the process the petitioner was subjected to injustice.

6. We find force in the submission of Mr. A.G. Holla, Senior Counsel. The facts stated supra make it very clear that despite the efforts made by the Corporation by issuing sale advertisements, one after the other, it did not receive any responsible and serious offer. It needs to be noticed that, it is inappropriate for the Court to direct the Corporation to sell the unit only at a particular rate particularly when the method of public auction is adopted. It is trite that, in the event of the Corporation not realising adequate sum of money to cover the entire liability of the writ petitioner, the Corporation has the power to proceed against the writ petitioner to recover the balance dues. The said right which is available

to the Corporation in law cannot be denied by the Court by issuing a kind of direction now issued by the learned Single Judge.

7. In conclusion, with respect, we cannot sustain the direction of the learned Single Judge issued to the appellant-Corporation. In the result, we allow the writ appeal and set aside the order of the learned Single Judge and dismiss the Writ Petition No. 25038 of 1999 with no order as to costs.

