(2003) 12 PAT CK 0033

In the Patna High Court

Case No : CWJC No. 1976 of 2003

K.M. Plastic Industries Dharampur Industrial Area and Another — APPELLANT

Vs

Bihar State Financial Corporation and Others — RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Citation : (2003) 12 PAT CK 0033

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, grievance of the petitioners is against the respondent-Bihar State Financial Corporation for not exempting them from payment of interest for the period when delay in production was caused on account of non-supply of electricity which was restored to the premises only on 9.12.1999.

2. In short, the relevant facts are that the petitioners purchased mortgaged assets of M/s. S.R. Plastic from the respondent Corporation and an agreement was executed for sale-cum-payment of balance loan on 31st March, 1998, a true copy whereof has been annexed as Annexure-1. The petitioners agreed to pay the balance consideration money of Rs. 2,80,000/- for the period of five years on quarterly basis at the rate of Rs. 14,000/-. According to the petitioners, it was never disclosed that there was outstanding dues of electric charges against the erstwhile owner. The petitioners despite best efforts could not start production in the factory as the electric line in the factory had been disconnected on account of arrears running in the name of the erstwhile owner. The petitioners after great efforts could get the electric connection restored only on 9.12.1999 on the condition of payment of arrears in instalment, and all this led to loss of valuable money and time on account of which the working capital of the petitioners got exhausted and could obtain electric connection only for one machinery and started production. According to the petitioners they came in a position to obtain electric connection for the second machinery in November, 2002. It is contended that the petitioners suffered loss because of no fault of their, which resulted in

unnecessary liability to pay interest even for the delayed period. The petitioners have also contended that they faced financial crisis as the Central Bank of India did not make available the working capital loan.

3. A counter affidavit has been filed on behalf of the Corporation in which facts are not disputed. It is, however, stated that after taking over possession purchaser started production, but, not made payment of dues to the Corporation. It is further alleged that the branch officials visited the unit several times and always found it in running position, as a result of which legal notice was issued to the purchaser on 10.6.2000 followed by 1st PTN on 9.11.2001 and 2nd PTN on 6.9.2002. Accordingly balance outstanding on 31.8.2001 has been shown as 5.40 lacs. In the supplementary counter affidavit filed on behalf of the Corporation and its officials it is stated that the plea of non-supply of electricity has been taken only after pre-takeover notice. According to the said respondents, Corporation has never demanded the dues of electricity of erstwhile promoter from the purchaser. It is rather admitted that as per the law laid down by the Apex Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, the auction purchaser could not be held liable to meet the liability of previous consumer in order to secure reconnection, and, therefore, it is stated that the liability of arrears of dues is exclusive of original promoter and not the purchaser. It is, however, contended that the petitioner having availed financial accommodation provided by the Corporation is liable to pay interest accrued thereon and cannot defeat the payment of public money on the pretext of disconnection of electricity or non-availability of working loan.

4. In the supplementary affidavit filed on behalf of the petitioners, it is stated that the petitioners made a detailed representation on 3.9.2001 and apprised the Branch Manager of various problems faced by the unit and requested for condonation of interest till 9.12.1999 i.e. the date when the unit received first electric connection and also prayed for rescheduling of instalments vide Annexure 3. According to the petitioners, it was also discussed in the single window meeting under the Chairmanship of the District Magistrate, yet no steps were taken to eradicate the problems being faced by them.

5. Learned counsel for the petitioners has, thus, contended that there being no dispute on the question that the electric connection was restored by the Bihar State Electricity Board only on 9.12.1999 the Corporation is not entitled to claim interest at least during the period till the electricity connection was restored to the premises. According to the learned counsel, in fact, it is a case of misrepresentation as in the agreement it was stated that the mortgaged property is free from all charges, liabilities, encumbrances and claims, and suppressed about the disconnection of electricity on account of outstanding arrears against the erstwhile owner.

6. Earlier on the request of Mr. Shahi, learned counsel appearing for the Corporation, this matter was adjourned to enable him to take specific instruction on the above question. Mr. Shahi on instruction has contended that the

Corporation is not in a position to exempt the petitioners from payment of interest even for the period as now claimed by the petitioners. He contended that Clause 38 makes it clear that the mortgaged property was sold subject to payment to the Corporation of the balance sum of Rs. 2,80,000/- together with current rate of interest and cost of land, lease rent to Darbhanga Industrial Area Development Authority and all other statutory dues. According to him, "all other statutory dues" includes the electric dues in question.

7. I failed to appreciate this submission of Mr. Shahi. As I have already noticed above, the Corporation in the supplementary counter affidavit has admitted that they never demanded the dues of electricity of erstwhile promoter from the purchaser; and that according to law laid down by the Apex Court in the case of Isha Marbles v. BSEB and Ors., (supra) the auction purchaser cannot be made liable to meet the liability of previous consumer in order to secure reconnection. In paragraph 6 of the supplementary counter affidavit, the Corporation has specifically admitted that the liability of arrears of dues is exclusive of original promoter and not the purchaser. Under such circumstances, it was the responsibility of the Corporation to ensure reconnection of the electricity to the premises in question before handing over its possession to the petitioners. This admittedly having not been done, in my opinion, the Corporation cannot claim at least interest for the delayed period, which was caused on account of non-supply of electricity to the premises till it was restored on 9.12.1999.

8. In the result, writ application is allowed. The respondent-Corporation is directed to raise fresh claim after exempting the petitioners from payment of interest for the aforementioned delayed period till 9.12.1999. In the facts and circumstances, this Court further directs that the corporation shall also consider the desirability of fixing fresh installment for payment of the remaining dues and the petitioners will abide by it. In the facts and circumstances, there shall be no order as to costs.