(1998) 08 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12502 of 1997

Krishan Kanhaiya Milk Foods Limited and Another — APPELLANT

Vs

Haryana State Industrial Development Corporation and Others — RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 120 PLR 359 : (1999) 1 RCR(Civil) 178

Hon'ble Judges : V.K. Jhanji, J;B. Rai, J

Bench : Division Bench

Advocate : Ashu Punchhi, for the Appellant; B.R. Gupta, for Respondent Nos. 1 and 4, Kamal Sehgal and M.L. Sarin and Harish Ghai, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Haryana State Industrial Development Corporation (for Short HSIDC) and Haryana Financial Corporation (for short HFC) (respondents No. 1 and 2 herein) advanced certain loans to the petitioner Company. The loan was to be repaid in terms of agreements executed between the parties. Petitioner Company made a default in repayment and, therefore, proceedings u/s 29 of State Financial Corporation Act (for short the Act) were taken. In pursuance of the proceedings u/s 29 of the Act, possession of the Industrial Unit was taken over by HFC on its behalf and on behalf of respondent No. 1. Thereafter, the Unit was sold in open auction and respondent No. 3, namely, Sham and Company being the highest bidder for Rs. 3.60 crores was declared to be the successful bidder. Respondent No. 3 deposited Rs. 90 lacs, with respondent No. 1. Petitioner Company and its Managing Director, Mr. Arun Gupta challenged the action of HSIDC in auctioning the Unit in favour of respondent No. 3 on various grounds.

When the writ petition came up for hearing on August 27, 1997, the Managing Director produced two cheques of Rs. 2.50 Crores. Cheques were directed to be kept in sealed cover with the Additional Registrar (judicial) and in the meantime

HSIDC was directed not to part with the possession of the Unit to any one including respondent No. 3. At the motion hearing, a representation was made that on presentation, cheques deposited with this Court would be encashed but that representation was apparently false because there had been no money lying in the bank for encashing the said cheques.

2. On December 11, 1997, Mr. Arun Gupta, Managing Director again made a representation that the petitioner would be in a position to wipe off all outstanding dues to HSIDC and HFC by 15.2.1998. Mr. Arun Gupta stated that respondent No. 3 who had deposited a sum of Rs. 90 lacs with HSIDC may be permitted to withdraw the said amount and he undertook to pay interest on or before the adjourned date of hearing on the said amount at the rate of 18 per cent per annum from the date of deposit till it was withdrawn. Accepting his representation, respondent No. 1 was directed to return Rs. 90 lacs, to respondent No. 3 and Mr. Arun Gupta was directed to bring draft towards the interest amount payable to respondent No. 3 on the adjourned date of hearing as had been undertaken by Mr. Gupta. Order dated December 11, 1997, reads as under :-

"It is contended by the learned counsel for the petitioners, on instructions from Shri Arun Gupta, Managing Director of the petitioners Company, that the petitioners would be in a position to wipe off all outstanding dues to Haryana State Industrial Development Corporation-respondent No. 1 and also to Haryana Financial Corporation-respondent No. 2 by 15.2.1998. Industrial Unit of the Petitioners has already been auctioned and respondent No. 3 being the highest bidder for a sum of Rs. 3.60 Crores, has already deposited a sum of Rs. 90 lacs with Haryana State Industrial Development Corporation-respondent No. 1. In fact, a sum of Rs. 36 lacs, was deposited on the date of the auction i.e. on 24.1.1997 and Rs. 54 lacs on 12.5.1997. Mr. Arun Gupta, Managing Director, has stated that he undertakes to pay interest on Rs. 90 lacs at the rate of 18% per annum on or before the adjourned date of hearing. In view of this undertaking, we permit respondent No. 3 to withdraw Rs. 90 lacs so deposited with respondent No. 1 and this amount shall be returned within a week from today on making a request in this regard by respondent No. 3. Petitioner No. 2 shall bring a draft towards the interest amount payable to respondent No. 3 on the adjourned date of hearing. As has been undertaken, petitioner No. 2 shall also wipe off the liability of respondents No. 1 and 2, on or before the adjourned date of hearing. In case, petitioner No. 2 fails to abide by his undertaking, it has been made clear to him that only the writ petition would be dismissed with exemplary costs but shall also be proceeded against for violating the undertaking given by him today. In the event of dismissal of the writ petition, respondent No. 3 shall have an option to be exercised within 15 days of the dismissal of the writ petition to take industrial unit on payment of Rs. 3.60 Crores. In case option is exercised, Rs. 90 lacs shall be deposited within two weeks thereafter and the remaining amount within the time allowed by respondent No. 1. Respondents No. 1 and 2 shall furnish a statement of account, if a request in this regard is made by the petitioners.

Adjourned to 23.2.1998. Copy of this order be given Dasti."

3. On February 23, 1998 when the writ petition again came up for hearing, learned counsel for the petitioner fairly conceded that the undertaking given by Mr. Arun Gupta had not been complied with. He, in fact, produced photo copy of message dated 16.2.1998 from private financier which read as under:-

"This bears ref. to our above referred correspondence with you vide which we conveyed our intention to disperse subject loan during Feb. 1998 but due to unavoidable circumstances arising out of Political/International financial crisis, we delayed the same.

However, now we are pleased to inform you that now we intend to disperse the above said loan during the IIIrd week of March, 1998 subject to completion of required formalities which shall be conveyed to you by our authorised representative during his visit to India during IInd week of March, 1998."

4. On the strength of fax message, it was pleaded that some more time be given to comply with the undertaking contained in order dated December 11, 1997. Thereafter the writ petition came up for hearing on 17.4.1998 and on finding that the undertaking had not been complied with, we directed that notice be issued to secure presence of the Managing Director through bailable warrants in the sum of Rs. 20,000/-. He was also asked to show cause as to why he be not proceeded against under the contempt of Courts Act. Instead of furnishing explanation as had been asked for, he again submitted on 15.5.1998 that he is negotiating with some foreign Corporation but the said Corporation is not willing to lend loan provided first or second charge of HSIDC or HFC is transferred in favour of the Corporation. Again accepting the submission made by the Managing Director, time was granted to him. Order dated 15.5.1998 reads as under:-

"Mr. Arun Gupta, Managing Director of the petitioner-Company is present in Court. Mr. Ashu Funchhi, Advocate appearing on his behalf states that Mr. Gupta has already negotiated with some foreign Corporation but the said Corporation is not willing to lend loan provided first or second charge of HSIDC or HFC is transferred in favour of the Corporation. Mr. B.R. Gupta and Mr. Kamal Sehgal, counsel appearing on behalf of HSIDC and HFC respectively after obtaining instructions from the officials of these two Corporations have stated that the Corporations shall have no objection in handing over all the papers relating to charge to the petitioner or any other person or the Corporation immediately on receipt of all dues payable to the HSIDC and HFC. Mr. Arun Gupta who is present in Court states that in case the amount is not paid to the Corporation by the end of June, 1998, then action against him in pursuance of orders dated 11.12.1997 and 17.4.1997 be taken. We record this undertaking of Mr. Arun Gupta. Adjourned to 3.7.1998. Mr. Arun Gupta is directed to deposit his passport with the Registrar General of this Court within a week. He is also directed to be present in Court on the adjourned date."

5. Though on 15.5.1998 case was adjourned to 3.7.1998, but the case could not be taken up on that date as the Division Bench did not meet. The matter came up on July 10, 1998, when on request, it was adjourned to July 17, 1998. Division Bench did not meet for same time and the matter came up on July 31, 1998 when Mr. Arun Gupta placed on record affidavit dated 31.7.1998 stating that the Board of Directors of the ICICI Bank has approved and sanctioned loan proposal of Rs. 6.50 Crores to the petitioner Company in its meeting held on 11.7.1998. On this assertion, the following order was passed :-

" Mr. Arun Gupta, Managing Director of the petitioner Company has placed on record affidavit dated 31.7.1998 stating therein that the Board of Directors of the ICICI Bank has approved and sanctioned loan proposal of Rs. 6.50 Crores to the petitioner Company in its meeting held on 11.7.1998. This assertion made on affidavit is being contested by learned counsel appearing on behalf of the Haryana Financial Corporation. Copy of the affidavit has been given to Mr. Kamal Sehgal, Advocate, counsel for Haryana Financial Corporation for seeking instructions through fax or otherwise from the ICICI as to whether the assertion made in the affidavit is correct or not.

To come up on 5.8.1998."

6. Mr. B.R. Gupta, Advocate, counsel for HSIDC and Mr. Kamal Sehgal, Advocate, counsel for HFC respectively contacted ICICI Banking Corporation Limited and in response to their queries, the following fax messages have been received by the Corporations:-

"Fax No. 3347688 Haryana State Industrial Development Corpn. Ltd. Merchant Banking Division, C-8, Baba Kharak Singh Marg, New Delhi-110001.

Dear Sirs:

Kind attention: Mr. Rajesh Devlal, Sr. Manager (MB)

Re: Krishan Kanahiya Milk Foods Ltd.

This refers to your fax of date regarding sanction to the above company. We write to inform you that ICICI has not sanctioned any term loan to the Company.

"Haryana Financial Corporation, 17, 18,19, Sector 17-A, Chandigarh 160017.

Re: Krishan Kanhaiya Milk Foods Limited, Village Saha Distt. Ambala. With reference to your letter HFC/LD/98-99/10208 dated 31.7.98 to ICICI Bank Limited, Bombay for captioned Company, we confirm that we have neither sanctioned any loan to Krishan Kanhaiya Milk Food Limited, Village Saha, Distt. Ambala nor is it under our consideration."

7. From the facts narrated above, it is apparent that more than desired indulgence was shown to the petitioner Company so as to enable it to make payment to respondents No. 1 and 2 but instead of honouring the undertaking given from time to time, petitioner No. 2 made false representations. So much so

that on July 31, 1998, it was pointed out to him that in case the affidavit filed by him is found to be false, then very serious action would be taken against him. The observations of the Bench were conveyed to him by his counsel and in all seriousness, Mr. Arun Gupta stated that what is being stated by him in the affidavit is correct. From the fax messages received from the ICICI Banking Corporation Limited, we however find that the affidavit submitted by him was false.

8. In the circumstances of this case as narrated above, this writ petition deserves to be dismissed with costs. Accordingly, we dismiss this writ petition with costs which are quantified at Rs. 50,000/-. It is further directed that interest payable on Rs. 90 Lacs to respondent No. 3 which petitioner No. 2 had undertaken to pay, would be calculated by HSIDC at the rate of 18 per cent per annum from the date it was deposited till it was withdrawn by respondent No. 3. After the amount of interest is determined, certificate would be sent to the Collector, Ambala for realising the amount of interest as arrears of land revenue from petitioner No. 2. Rs. 50,000/- which have been quantified as costs of this writ petition, shall also be recovered by the Collector, Ambala as arrears of land revenue from petitioner No. 2 and on realisation of the said amount, the same shall be deposited with Secretary, State Service Legal Authority, Chandigarh. On realisation of the interest amount, the same shall be paid to HSIDC for further payment to respondent No. 3. Respondent No. 3 would be at liberty to exercise option within 15 days from today to take the Industrial Unit on payment of Rs. 3.60 Crores in terms of order dated 11.12.1997.

9. As noticed earlier, petitioner No. 2 not only made false representations to this Court but also filed false affidavit in this Court and this has made himself liable for being punished under the Contempt of Courts Act. We hold petitioner No,2 guilty of the same. We also hold him guilty of violating the undertaking given to this Court. We call upon him to show cause as to why he be not sentenced for committing contempt of this Court. Show-cause, if any, be given by him on or before 21.8.1998. He shall also file personal bonds into the sum of Rs. 50,000/- to the satisfaction of the Registrar (General) of this Court.

Registry is directed to send a copy of the order to the Collector, Ambala for compliance and copy to the Secretary, State Service Legal Authority, Chandigarh for information.

Copy of order be given Dasti on payment.

