

(2007) 07 JH CK 0052
In the Jharkhand High Court

Lal Surendra Nath Sahdeo and Others	APPELLANT
Vs	
Singh Refractories Works and Others Refractories Works Vs B.S.F.C. and Others	RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Citation : (2007) 4 JCR 91

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These three appeal arose out of common judgment dated 18.4.2007 passed by learned single Judge in WPC No. 4166 of 2006. The original promoter-writ petitioner is the appellant in one appeal, auction purchaser respondent is the appellant in second appeal and the State Financial Corporation is the appellant in third appeal.

2. The aforementioned writ petition was filed by the petitioner seeking direction upon the Bihar State Financial Corporation (in short the Corporation) for giving benefit under the One Time Settlement Scheme 2004 for which petitioner said to have applied within the prescribed time with-necessary amount. Petitioner also prayed for quashing the resolution taken by the respondents rejecting the application of the petitioner for the benefit under the Scheme 2004.

3. The facts of the case lie in a narrow compass.

Petitioner is an industrial unit started in 1973. The Corporation sanctioned loan of Rs. 3,40,000/- out of which Rs. 2,64,000/- was disbursed. In the year 1983, additional loan of Rs. 2 lacs was sanctioned but the said amount was adjusted against the interest accrued against the first loan. Petitioner's case is that out of their resources constructed another kiln. Petitioner's further case is that a sum of Rs. 12 lacs was already paid against the said loan. Thereafter, respondent-Corporation proceeded for recovery of the amount but before that petitioner said

to have applied for one time settlement under the said scheme. On 16.11.2005 petitioner was served with a notice informing that the Unit has been ordered to be auction sold and if they want to retain the Unit, they can do so by depositing Rs. 40 lacs, the balance outstanding as on 31.8.2005. Petitioners applied for settlement as stated above under One Time Settlement Scheme. The Corporation, thereafter directed the petitioner to deposit application amount of Rs. 46,400/- Which was deposited by the petitioner. In the meantime, the Unit was auction sold in favour of the respondent-auction-purchaser. Thereafter, application for One Time Settlement was considered by the Board of the Corporation and finally it was rejected by passing the impugned resolution. Learned" single Judge discussed the entire matter in detail and finally came to the conclusion that rejection of the petitioner"s application under O.T.S. Scheme by resolution dated 25.8.2006 during the pendency of this writ petition on the ground that same was made after issuance of notice of the sale was arbitrary, unjust and unsustainable and the learned single Judge quashed the resolution. Paragraph 11 of the judgment passed by learned single Judge is worth to be quoted herein below:

In view of the above discussions, it is held that the rejection of the petitioners" application under OTS Scheme, 2004 by resolution dated 25.8.2006 during the pendency of this writ petition, on the ground that the same was made after issuance of notice of the sale decision (Annexure-3) is arbitrary, unjust and unsustainable and the same is, hereby, quashed. It is also held that the revalidation of Annexure-3 on accepting the consideration amount from the intending purchasers much after expiry of the prescribed period for making such deposit, ignoring the petitioners" application for One Time Settlement is also arbitrary and unjust and not binding on the petitioners. Since the petitioner has given an undertaking to clear the dues as mentioned in Annexure-3, this writ petition is disposed of directing the respondents to accept payment of the dues found payable as per the Annexure-3, if the same is deposited by the petitioners in two equal installments within a period of two months from the date of production/receipt of a copy of this order. The first installment of Rs. 22,00000/- must be paid within one month from the date of receipt/production of this order. If the petitioners deposit the entire dues as per Annexure-3 within the said period, the respondent Nos. 1-3 shall reconsider the petitioners" application under OTS Scheme 2004 on merit, within a period of two months thereafter. The amount so deposited by the petitioners shall subject to the final decision of the respondent-Corporation, on merit, under the Scheme i.e., adjustment or refund of the amount in excess. If the petitioner is denied benefit of One Time Settlement Scheme, the said amount deposited by the petitioners shall be adjusted towards the Corporation"s dues outstanding against the petitioners. If the petitioners fail to deposit the said amount within the prescribed period, the respondent Nos. 1 -3 shall be at liberty to reconsider and validate the sale in favour of the respondent Nos. 4-7 and to proceed for giving effect to the same in accordance with law or to deal with the assets otherwise to secure the best price

in the interest of the Corporation.

However, there shall be no order as to costs.

4. We have heard Mr. Anoop Kumar Mehta, learned Counsel for the Corporation, Mr. V.P. Singh, learned Counsel for the original promoter and Mr. Rajesh Kumar, learned Counsel for the auction purchaser.

5. In LPA No. 221 of 2007, the appellant who is writ petitioner is aggrieved by only that part of the order of the learned single Judge, whereby direction has been given to the respondent Bihar State Financial Corporation (in short BSFC) to reconsider the application for one time settlement and to take a fresh decision.

6. The undisputed facts are that the petitioner/appellant was sanctioned loan of Rs. 3,40,000/- and out of the same only 2,64,000/- was released. Again in the year 1983 additional loan of Rs. 2 lacs was sanctioned but the entire amount was adjusted against the interest accrued on the first loan. It has also not been disputed by the respondent BSFC that against the aforesaid loan of Rs. 2,64,000/-, petitioner already paid Rs. 12 lacs before filing of the writ application. Thereafter, respondent BSFC raised further demand and directed the petitioner to deposit a sum of Rs. 40 lacs which was balance outstanding on 31.8.2005. Learned single Judge after considering all those facts held that rejection of application of the petitioner under OTS Scheme, 2004 was arbitrary, unjustified and unsustainable. Petitioner was accordingly directed to deposit entire dues in two installments. In compliance of the direction given in the impugned judgment, petitioner/appellant deposited first installment and again Rs. 20,26,195,92 on the date of hearing of these appeals i.e., 25.6.2007.

7. Considering the facts that out of the first sanctioned loan of Rs. 3,40,000/- only Rs. 2,64,000/- was disbursed and additional loan of Rs. 2 lacs although sanctioned but adjusted against the interest and thereafter, petitioner already paid more than Rs. 50 lacs. In the aforesaid premises, it would be just and proper for the BSFC to give benefit of OTS Scheme to the petitioner.

8. LPA No. 221/07 filed by the petitioner/appellant is, therefore, allowed in part with the modification of the judgment of the learned single Judge by directing respondent-Bihar State Financial Corporation to give benefit of OTS Scheme, 2004 and accordingly, it is held that BSFC is entitled to recover from the petitioner/appellant the amount which is payable under the OTS Scheme, 2004.

9. Having regard to the aforesaid modification made in the impugned judgment parsed by the learned single Judge, we do not find any merit in the appeal filed by BSFC and the auction purchaser, Consequently, LPA No. 229 of 2007 and LPA No. 203 of 2007 are dismissed.

D.K. Sinha, J.

10. I agree.