(2012) 09 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1901 of 2002

Lalit Kumar Mishra APPELLANT

Vs

Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Citation : (2012) 09 JH CK 0027

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A. Sen and A.K. Verma, for the Appellant; Rajiv Ranjan, A.K. Yadav and S. Gadodia, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner is aggrieved by the demand of Rs. 33.77 lacs communicated vide letter dated 11.1.2002 as also the communication dated 1.10.2001 showing split details of the amount as Rs. 21,88,841.49 and Rs. 11,88,385.89 as outstanding dues against the petitioner in respect of the unit M/s. Electrodes India, a partnership firm on account of two loans disbursed to the petitioner by the Corporation on 22.2.1980 and 31.3.1981.

2. The instant writ petition has a chequered history and at least for two rounds the litigations went upto Supreme Court for the action taken by the Corporation for recovery of outstanding dues from the petitioner''s unit.

3. Bereft of unnecessary details, it would be proper to straight way refer the order passed in Civil Review No. 34/96(R) dated 20th August, 1999 by the learned Single Judge as this order was upheld in LPA no. 351/99(R) vide judgment dated 31st July, 2000 as it and the SLP against the same being SLP No. 17310/2000, dismissed on 12.7.2001 decides the bone of the contention between the petitioner and the Corporation relating to the liability of the petitioner''s unit. The said Civil Review was decided on remand over the specific question as to the date till which the petitioner is liable to pay interest to the

Corporation over the outstanding dues, which also involved declaration over the controversy as to when the possession of the petitioner''s unit was handed over to the corporation. The review court in Civil Review No. 34/96(R) vide judgment dated 20th August, 1999, held in the following terms:

In order to give a definite date upto which the interest is to be calculated, I have to find out the date on which possession of the unit was handed over or taken over by the parties on the basis of the evidences produced by them.

Admittedly a writ petition was filed in the year 1986 being CWJC No. 1183/86R by the petitioners against the proposed action of the Corporation to put the unit in auction. In that writ petition interim order was passed on 28.8.86 staying the auction and taking over possession of the condition that the petitioners shall deposit a total amount of Rs. 2,50,000/- by 31st March, 1987. It is also not disputed that the petitioners failed to deposit the said amount and this court, by order dated 13.4.87 held that the interim order stood automatically vacated after 31st December, 1986. The petitioners'' case is that when the petitioners failed to deposit the amount in terms of the interim order by 31st March, 1987, the possession of the unit was handed over to the Corporation in 1987. This fact finds support from the letter dated 27.5.87 issued by the Patna Office of the Corporation to the Branch Manager of the Corporation at Jamshedpur directing him to prepare an inventory of the assets and take over charge of the mortgaged assets of the unit and proceed for auction under Sections 29 and 30 of the said Act. A copy of the said letter is annexure 3 to the affidavit filed by the petitioners. It further appears from the letter dated 11.6.87 which is annexure C to the affidavit that by the said, the petitioners handed over possession of the assets of the unit to the Branch Manager of the Corporation. The Corporation in its affidavit enclosed a copy of the Profit and loss account for the year upto 31st March, 1989 to show that the possession of the factory was not handed over by the petitioners. However, no statement of profit and loss account has been submitted by the petitioners to the Corporation after March, 1989. The Corporation also relied upon the letter dated 8.9.90 (annexure 7) to show that by the said letter the petitioners informed the Branch Manager of the Corporation that the unit was registered as sick unit by the Directorate of Industries, Bihar, Patna. On the basis of this letter the lawyer for the Corporation submitted that at least till 1990 possession was not handed over by the petitioners to the corporation.

8. Admittedly, after 1988 no step was taken by the Corporation for auction sale of the factory. If the factory was in possession of the petitioners even after 1988 then no reason has been assigned by the corporation as to why nothing was done by it for the recovery of the dues when admittedly the interim order passed by this court in CWJC No. 1183/86, stood vacated by 31st December, merely because the Industries Department registered the unit as a sick unit, it cannot be presumed that the factory was in possession of the petitioners. The inaction on the part of the Corporation from 1987 after the interim order stood vacated,

strongly suggests that the factory was not in a running condition and the petitioners lost interest in the factory which was handed over to the Corporation.

9. In any view of the matter there is no evidence that after March, 1989 the petitioners were in possession of the factory and production was going on in the said factory. It would, therefore, be just and proper to hold to hold that the petitioners would not be liable for payment of interest after 31st March, 1999 for the reason that there are sufficient evidence to suggest that possession of the factory was handed over by the petitioners in 1988. The reason for fixing 31st March, 1989 as the date upto which the interest is to be calculated, is that although possession was handed over sometime in 1988 but the petitioners submitted profit and loss account upto 31st March, 1999.

10. Having regard to the facts and circumstances of the case, this review application is allowed and the order dated 16.1.95 passed in CWJC No. 2789/94R is modified to the extent that interest shall be calculated upto 31st March, 1989.

4. The extract of the judgment, which is quoted herein above, would show that the issue was decided by holding that the petitioner would not be liable for payment of interest after 31st March, 1989 for the reason that there are sufficient evidence to suggest that the possession of the factory was handed over by the petitioner in 1988, which is evident from the operative portion of the judgment.

5. The writ petitioner moved this Court in the present writ petition assailing the present demand of Rs. 33.77 lacs on the ground that although the possession of the unit was handed over in 1988 as per the aforesaid judgment, the Corporation has valued it in the year 2003 and sold the unit in the year 2005 to the private respondent, who is impleaded as respondent no. 5 during pendency of the writ petition. According to the petitioner, the Corporation was liable to undertake the valuation of the unit when the possession was handed over in the year 1988 but the Corporation claims that the physical possession of the unit was taken over in the year 2001 and the inventory was prepared thereafter, which cannot be countenanced in view of the settled legal position as held by the Review Court in Civil Review No. 34/96(R). According to the petitioner, it had undertaken the valuation on its own vide Annexure 7 to the writ petition that on 15.3.1987, the valuation of the unit was found to be Rs. 25,07,500/-. It is the contention of the petitioner that on account of the valuation done in the year 2003 by the Corporation, the valuation of the unit has come down and the unit was sold under valued rate than what it could have been properly valued in the year 2007, which definitely has caused the liability upon the petitioner to pay outstanding dues in the manner charged. Learned counsel for the petitioner also submits that in respect of calculation of the outstanding dues the interest has been charged at a compound rate and he was entitled to 2% rebate as per the scheme of Bihar State Financial Corporation. In any case, counsel for the petitioner submits that the outstanding dues demanded against the petitioner ought to be reduced by the correct valuation of the unit ascertained in the year 1987-88, when the

petitioner''s unit was handed over to the Corporation as per the judgment of the Review Court itself.

6. Counsel for the respondent Corporation, on the other hand, submits that the outstanding demand of Rs. 33.77 lacs comprised the demand against two loans amounts, which were calculated up to the date 31st March, 1989 as held by the Review Court in its judgment dated 20th August, 1999 and no interest thereafter has been charged upon the petitioner as would appear from the impugned order itself, although the petitioner has not paid the outstanding amount by drawing the Corporation in the litigation so far. At the same time learned counsel for the Corporation categorically submits that though the valuation was done by the Corporation in the year 2003 but a mere perusal of the valuation statement, Annexure F annexed to the counter affidavit, would show that the unit has been valued at Rs. 24,74,429.85 and thereafter the unit was sold at the price fetched at Rs. 26.00 lacs after negotiation with the intending purchaser i.e. the private respondent.

7. Based upon the aforesaid statements, learned counsel for the respondents submits that even as per the claim of the petitioner regarding valuation of the unit in the year 1987-88 it has been submitted by the Corporation that the unit has fetched the higher price at Rs. 26.00 lacs than what the petitioner even claims the valuation of the said unit in the year 1987-88, which should be subject to further depreciation. However, the learned counsel for the respondent-Corporation again vehemently submits that so far as the outstanding duke of Rs. 33.77 lacs is concerned, the same is calculated at the rate prevailing on 31st March, 1989 against the two loan amounts to which the petitioner was found defaulter in payment of principal as well as interest amount and the said amount has been arrived at in terms of the agreement entered into between the petitioner''s unit and the Corporation at the time of disbursement of the loan itself and as such the petitioner was not entitled to 2% rebate as it was a defaulter. The petitioner, therefore, is liable to pay the rate of interest, which it has agreed at the time of disbursement of loan.

8. From the submission of the parties and after going through the relevant materials brought on record including the judgment of the Review Court dated 20th August, 1999 the issue relating to calculation of interest upto a particular date is no longer in dispute between the parties, as the Corporation has also clearly stated that the outstanding have been calculated at the rate agreed between the parties under the loan agreement upto the date 31st March, 1989 only. The demand, it appears, was raised for the year 2001-02, thereafter the present writ petition was filed and during pendency of the writ petition the unit was valued and sold at the price of Rs. 26.00 lacs to the private respondent. The petitioner admittedly has no where raised any dispute over the sale of the said unit to the private respondent as he is not intending to run the unit any more.

9. In the circumstances, it appears that the contention of the petitioner that the unit was valued in the year 1987 rightly and the Corporation ought to have

raised demand after adjusting the amount against the outstanding principal and interest as on 31st March, 1989 is misconceived, as the unit itself has been sold in the year 2005 at a rate higher than the valuation ascertained by the petitioner himself in the year 1987 at Rs. 26.00 lacs to the private person. In the circumstances, the Corporation is liable to reduce the aforesaid amount of price Rs. 26.00 lacs fetched during sale of the unit to the private respondent from the outstanding demand. It is apparent that the demand of Rs. 33.77 lacs is raised upon calculation of principal and interest from 31st March, 1989, which is in terms of the judgment passed in Civil Review no. 34/1996. Therefore the calculation of outstanding demand cannot be found fault on that count charging interest beyond 31st March, 1989. However, the contention of the petitioner that certain compound rate of interest has been charged has no consequence, as the Corporation can only charge interest as per agreement arrived at between the parties at the time of disbursement of two loans in question in the year 1981.

10. In the totality of circumstances and the facts and reasons hereinabove, the respondent Corporation is directed to recalculate the outstanding amount after reducing the cost of unit fetched after sale at Rs. 26.00 lacs to the private respondent from the total outstanding due of Rs. 33.77 lacs after reworking and calculating the outstanding in terms of the rate of interest, which were chargeable as per terms and conditions of the loan agreement. This exercise should be completed within a period of six weeks from the date of receipt of a copy of this order. The petitioner would be liable to pay the amount, which would be served upon him, thereafter and the Corporation would be entitled to recover the outstanding amount in accordance with law. This writ petition stands disposed of with the aforesaid observation and direction.