(2003) 10 AHC CK 0168

In the Allahabad High Court

Case No : C.M.W.P. No. 7098 of 2000

Maha Laxmi Flour Mills Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2004 All 164 : (2004) 1 AWC 483 : (2004) 3 BC 43 : (2004) 1 UPLBEC 242

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : V.B. Mishra, for the Appellant; A.K. Gaur and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Katju, J.—This writ petition has been filed against the impugned order dated 20.1.2000, Annexure-19 to the writ petition by which the petitioner''s prayer for rehabilitation of its units have been rejected by the competent authority and the petitioner was directed to liquidate the liabilities of the respondent or give the proposal for one time settlement within fifteen days of the issuance of the letter failing which coercive steps will be taken for realisation of the dues of the Corporation.

2. We have heard the learned counsels for the parties.

3. The petitioner had taken a loan from the U.P. Financial Corporation but when it did not repay the same proceedings u/s 29 of the State Financial Corporation Act were initiated against it. The petitioner filed a suit before the Civil Judge, Deoria along with an application for temporary injunction in which the Civil Judge on 29.10.1993, passed an order restraining the respondents from recovering any amount in question from the petitioner for a period of one year on the ground that rehabilitation proceeding is going on. Against that order the Financial

Corporation filed a civil revision in this Court which was dismissed on the ground that the period of one year had expired and. hence it was not necessary to decide the revision on merits. In that decision this Court also considered the plea of the petitioner u/s 22 of the Sick Industrial Company Act, 1985, and observed that the plaintiff can make an application before the civil court in this connection.

4. In paragraph 7 of the writ petition it is alleged that the unit was declared sick in view of the decision taken in the meeting held under the Chairmanship of the Commissioner, Gorakhpur, dated 29.10.1993 vide, Annexure-2 to the writ petition.

5. In paragraph 8 of the writ petition it is alleged that the petitioner moved a proposal for rehabilitation of the unit on 14.3.1992 on which a meeting of the Bank authorities and U.P. Financial Corporation was held on 6.7.1993 and 21.10.1993. A letter dated 6.12.1993 was issued by the respondent No. 3 asking for certain information vide Annexure-3 to the writ petition. It is alleged in paragraph 9 of the writ petition that subsequently the petitioner''s unit was inspected by the competent authorities for the purpose of providing working capital and rehabilitation but no concrete result was intimated to the petitioner. The State Government also framed certain guidelines for providing working capital and rehabilitation to the Sick units vide Annexures-4 and 5 to the writ petition. The Central Bank also filed a suit against the petitioner in which the U.P. Financial Corporation was also arrayed as a party and the Civil Judge, Deoria, passed an order restraining the respondent corporation from selling the petitioner''s unit for one year. Against the order of the Civil Judge a civil revision was filed which was disposed of vide Annexure-1 to the writ petition, reference to which already been made above. The respondent No. 2 the U.P. Financial Corporation took possession of the petitioner unit on 25.9.1995. The petitioner filed Writ Petition No. 28074 of 1995 which was dismissed on 29.9.1995 vide Annexure-6 to the writ petition. In that judgment this Court held that the U.P. Financial Corporation has taken a lenient view of the matter and has accommodated the petitioner to the extent possible and did not in fact take over possession for a long time and had deferred the same as much as possible. However, it ultimately took over possession on 29.9.1995. It was also observed that the amount of loan had increased to practically an insurmountable extent and it is not reasonable to infer that the petitioner had any desire all through this time to make sincere effort either to run the factory or to pay the liability. The U.P. Financial Corporation has tried to accommodate the petitioner from 14.9.1993 to 25.9.1995. The Court held that taking over possession by the U.P. Financial Corporation was valid and no cause of action accrued to the petitioner. In fact the petitioner had made no serious effort to pay the arrears and adopted a leisurely attitude.

6. It appears that thereafter instead of paying the arrears the petitioner filed another suit No. 235 of 1995 before the Civil Judge (Senior Division) and the Court below granted an injunction in favour of the petitioner against which the

U.P. Financial Corporation filed a revision in this Court which is pending.

7. It appears that the U.P. F. C. again took a lenient view and issued notice dated 30.1.1997 copy of which is Annexure-7 to the writ petition. In that letter it was stated that the petitioner''s unit has been registered for rehabilitation and, therefore, the lock of the factory may be opened. The possession may be given to the petitioner whenever he submits the papers showing that they have withdrawn the case filed against the Corporation and performance report should be given about the petitioner''s unit. Consequently the possession was again handed over to the petitioner vide Annexure-7A to the petition. It appears that the petitioner still did not pay his dues and again possession was taken of the unit and hence the petitioner filed a writ petition at Calcutta High Court which was dismissed. Thereafter the petitioner filed another suit No. 59 of 1998 and obtained an injunction order dated 9.3.1998 vide Annexure-8 to the writ petition. The petitioner has referred to the minutes of the meeting between the Bank authorities and Financial Corporation in which it was concluded that the unit may be made viable subject to reliefs and concession provided to the unit as per the R.B.I. guidelines. It was resolved that the Bank may consider to provide 50% of the total eligible component of working capital subject to the U.P.F.C. providing the balance of 50%, and the party has to provide, adequate collateral security against the same. The matter was referred to the head office to get the approval in this regard. True copy of the minutes is Annexure-9 to the writ petition. The petitioner has also referred to the letter dated 16/17.10.1998, sent by the respondent No. 2 to respondent No. 3 vide Annexure-10 to the writ petition. In this letter it was mentioned that the rehabilitation request of the company has been registered by the Managing Director of U.P.F.C. for processing and for providing reliefs and concessions to revive the unit but on the condition that the petitioner withdraws the suit filed in district court, Deoria, and give collateral security against the working capital assistance by the Bank and U.P. Financial Corporation. The other conditions are also mentioned therein. The letter dated 27/28.10.1998 is Annexure-11 to the writ petition. The petitioner submitted detailed report dated 4.12.1998 furnishing the information required by the respondent corporation vide Annexure-12 to the writ petition. In paragraph 25 of the writ petition it is stated that the petitioner is highly interested to run the unit and he furnished all the information required and submitted bank consent and deed for collateral security and agreed to the terms and conditions proposed by the Corporation authorities for rehabilitating the unit. The suit has also been withdrawn vide Annexure-13 to the writ petition. It is alleged that while the petitioner has performed all that was required the respondents have not acted fairly and they have rejected the rehabilitation proposal and have arbitrarily taken possession of the petitioner''s unit and are going to sell it.

8. A counter-affidavit has been filed and we have perused the same. In paragraph 4 it is stated that the unit which is a unit of M/s. Maha Laxmi Cereals Private Limited was sanctioned a term loan of Rs. 57.60 lacs for setting up a unit for manufacture of ''atta'' ''suzi'', ''maida'', etc., in Deoria. In order to secure the

repayment along with interest and other charges M/s. Maha Laxmi Cereals Pvt. Ltd. created an equitable mortgage by depositing original title deed relating to the factory land and executed the agreement and hypothecation deed for the security of the loan and immovable and movable assets in the Regional Office of the U.P. Financial Corporation situate in Gorakhpur. The total sanctioned term loan of Rs. 57.60 lacs were disbursed to the petitioner. The petitioner was further sanctioned an additional term loan of 2.40 lacs vide sanction advice dated 29.3.1989 in order to secure the repayment of the loan with interest and other charges. The Company requested the U.P. Financial Corporation for securing the loan of Rs. 2.40 lacs by extension of the equitable mortgage dated 6.5.1988 and this request was accepted by the U.P. Financial Corporation and the additional term loan was disbursed. Thus, the petitioner company has received a total sum of Rs. 60 lacs and also availed a bridging loan of Rs 4,42,400 against Central Investment Subsidy. The details are given in paragraph 7 of the counter-affidavit which shows that now the total arrears against the petitioner are Rs. 2,93,85,070.83. The petitioner failed to repay the dues of U.P.F.C., despite several letters, reminders and personal talks, etc. and the dues of the U.P. Financial Corporation reached an alarming state. Hence the Corporation had to take proceedings u/s 29 and issued notice under that provision on 14.9.1993. Since the petitioner did not pay the amounts by the date fixed in the notice the Corporation took physical possession of the unit on 11.10.1993 but in the same night the petitioner with the help of antisocial elements took back possession by beating the chaukidars posted there. The U.P. Financial Corporation hence filed an F.I.R. in the Kotwali police station.

9. In paragraph 17 of the counter-affidavit it is stated that as regards the prayer for rehabilitation the Corporation had already earlier granted reschedulement facility to the petitioner and it was communicated to the petitioner by letter dated 1.1.1992. In order to rehabilitate the petitioner''s unit a meeting was convened in the Directorate of Industries, Kanpur, on 6.7.1993 in which it was resolved that the U.P. Financial Corporation will reschedule the dues if the petitioner company will arrange Rs. 15 lacs but the petitioner did not arrange for this fund inspite of several letters. In paragraph 19 it is stated that the petitioner again requested for rehabilitation of its unit vide letter dated 19.3.1996 and it was decided by the respondents that the rehabilitation of the unit will only be considered if the petitioner makes some payment and further the company bringing and induct in a financially sound Director in the company and obtain concurrence of their banker for providing working capital. However, the petitioner failed to do this.

10. On the request of the petitioner dated 5.2.1997, physical possession of the petitioner unit was given back to it on 7.2.1997. But again it appears that the petitioner was not inducting financially sound partners/directors nor did they obtain the concurrence from their banker and hence final notice was sent to the petitioner on 3.7.1997 stating that since the petitioner failed to arrange the working capital and to induct financially sound Directors and also failed to get

concurrence of their banker, therefore, the request for the rehabilitation was rejected vide letter dated 17.9.1997. In paragraph 23 of the counter-affidavit it is stated that the banker of the company. Central Bank of India informed vide letter dated 19.5.1997, that the bank has lost confidence in the petitioner as they have sole hypothecated stocks without the knowledge of the bank in the year 1992 and had not deposited the sale proceeds in that account. The petitioner vide letter dated 8.9.1997 requested two weeks time to get the banker''s consent but they failed to get it and had not approached the banker with a rehabilitation proposal. Hence the Corporation took physical possession of the petitioner unit on 27.10.1997 and advertised the unit for sale. It is stated that the respondent are acting in accordance with the judgment of the High Court in Writ Petition No. 28074 of 1995 decided on 29.9.1995.

11. It appears that again the petitioner approached the U.P. Financial Corporation for rehabilitation of the unit and again the U.P. Financial Corporation took a lenient view and registered the company for rehabilitation on 14.10.1998 on the conditions mentioned in paragraph 25 of the counter-affidavit ; but despite several letters and reminders and personal discussions etc. the petitioner did not fulfil the conditions for the rehabilitation proposal.

12. In our opinion there is no merit in this petition. The facts disclosed have shown that the petitioner was treated very leniently by the respondent which again and again tried to accommodate him for rehabilitation, but he has not fulfilled the conditions therein.

13. No one has a right to get rehabilitation. When a person takes a loan he has to repay the same in accordance with the loan agreement. Rescheduling of the loan is in the sole discretion of the Financial Corporation or Bank which has granted the loan, and no one can compel the financial institution/bank to reschedule a loan. The matter regarding loan from a financial corporation/banks is purely contractual, and a party has to abide by the terms of the contract which he has entered into. This Court cannot compel the U.P. Financial Corporation to rehabilitate a defaulting party. That is in the sole discretion of the U.P. Financial Corporation. As held by the Division Bench of this Court vide Annexure-6 to the writ petition, the petitioner has made no serious efforts to repay its dues and had adopted a leisurely attitude in the matter.

14. A writ of mandamus can only be issued when there is a legal right with a party asking for the writ to compel the performance of some statutory duty. The petitioner has not been able to show that there is any statute or rule having the force of law which casts a duty on the U.P. Financial Corporation to accept the rehabilitation proposal. In fact, the matter is purely contractual. A Division Bench of this Court in M.M. Accessories and Another Vs. U.P. Financial Corporation and Another, has discussed several Supreme Court decisions on the scope of a writ of mandamus, and has dismissed the writ petition praying for one time settlement of the loan, observing that no legal duty is cast on the respondents to grant the prayer. The ratio of the decision applies to this case.

15. Moreover, writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion in such a matter where a party does not pay its dues even though it had repeatedly been given lenient treatment by the respondents.

16. Thus there is no force in this petition. It is dismissed accordingly.

