

(2009) 03 JH CK 0060
In the Jharkhand High Court

Mahendra Pratap Singh

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Citation : AIR 2010 Jhar 61

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Dilip kumar sinha, J

Bench : Division Bench

Judgement

1. This appeal has been preferred against the judgment and order dated 28.11.2008 passed by the learned Single Judge in W.P. (C) No. 561 of 2002, by which the learned Single Judge had been pleased to uphold the auction sale of the unit of the petitioner-appellant as the petitioner was found to be a rank defaulter in repaying the amount of loan which had been advanced to the petitioner-appellant by the respondent-Bihar State Financial Corporation ("B.S.F.C." for short).

2. The facts of the case have already been stated in the impugned order, from which it could be gathered that a sum of Rs. 11.75 lakhs was advanced to the petitioner long back in the year 1974 and that was to be repaid in instalments for which a schedule was appended to the agreement. The petitioner-appellant admittedly has not paid a single penny even by the year 2009 in spite of several demand notices which were sent to him but were blatantly ignored. This gave rise to a cause for the Corporation to put the unit of the petitioner for auction sale and it was informed by the counsel for the B.S.F.C. that even at the time of the auction sale, an offer was made to the petitioner to pay the amount which was payable to the B.S.F.C. so that the proceeding of the auction sale could be dropped. The appellant declined the offer, after which, the unit was put on auction sale and it was auctioned for a sum of Rs. 66.50 lakhs and consequently third party interest has also been created since the respondent No. 7 has already purchased the unit and the sale has also been made absolute. The petitioner, in the meantime, had also assailed the auction sale by filing the writ petition out of

which this appeal arises which was dismissed as already indicated hereinbefore.

3. The petitioner is clearly a blatant defaulter in making the payment to the B.S.F.C. and in spite of the passage of more than 35 years without making any payment, a grievance has been raised by the petitioner that the unit should not have been put to auction sale although the assets of the Company had been mortgaged to the B.S.F.C. The contention, therefore, cannot be held to be sustainable by any yardstick much less any legal yardstick. Thus, we concur with the view taken by the learned Single Judge and hence, we find no merit in this appeal. Consequently, it is dismissed at the admission stage itself.

4. However, the anxiety of the counsel for the appellant is that in spite of the auction sale and realization of the dues from the assets which were mortgaged to the respondent-B.S.F.C, the respondent B.S.F.C. is still pursuing the remedy by way of a fresh proceeding for realizing a sum of rupees four crores over and above which has been realized from the auction sale.

5. Since this question do not appear to have been raised before the learned Single Judge nor there is any finding on this aspect, we refrain from interfering or dealing with the same in any manner. The appellant, therefore, will be at liberty to contest any pending proceeding or a fresh proceeding if initiated for realizing a further sum from the petitioner-appellant, over and above which has been realized from the mortgaged assets and that would be dealt with independently by any Court before whom the same is sub judice or may be challenged and the competent Court or Authority would not be influenced by any observation made by us hereinabove insofar as the question of balance payment of the dispute for further realization of any amount is concerned.