

(2013) 12 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 4687 of 2012

M/s. Delux Plastic Industries

APPELLANT

Vs

Maharashtra State Finance Corporation

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2014) 2 ALLMR 276 : (2014) 1 BomCR 544 : (2014) 3 MhLj 17

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; S.R. Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard learned Advocates for the respective parties. Rule. By consent, Rule is made returnable forthwith and the petition is heard finally.

2. The petitioner, being aggrieved by the rejection of his application for restoration of RCS No. 686 of 2005, which was dismissed in default, has preferred this Writ Petition. The petitioner is thus challenging the impugned order dated 23.1.2012, passed by the learned 20th Joint Civil Judge J.D. Aurangabad in MARJI No. 1061 of 2010.

3. The petitioner had taken a loan from the respondent financial institution to the tune of Rs. 6,80,000/-. An amount of Rs. 3,00,000/- was sanctioned for purchase of plant and machinery on the security of mortgage of land, building, plant, machinery, furniture and fixtures that were acquired/to be acquired on plot No. C-249 at MIDC, Waluj, Aurangabad. The loan was to be repaid in a period of eight years, in thirteen half yearly installments with interest at the rate of 21.5% p.a. with quarterly rests. In default of repayment, the petitioner had agreed to pay the additional penal interest at the rate of 2.5% p.a. on the defaulted amount for the defaulted period.

4. After providing all opportunities to repay the dues, as per the repayment schedule or to settle the loan account by way of One Time Settlement Scheme, the petitioner had failed in repayments. Several demand notices and notices u/s 29 of the State Financial Corporations Act, 1951 were issued. Finally a notice on 28.1.2005, u/s 29 of the said Act was issued calling upon the petitioner to pay the amount of Rs. 37, 94, 450/- inclusive of interest upto 31.10.2004 and future interest with expenses from 1.11.2004. The petitioner was also informed that failure to do so would compel the respondent No. 1 to take possession of the primary securities on 17.2.2005 and collateral securities on 18.2.2005.

5. Since the petitioner could not comply with the said notice, the land and building of Plot No. C-249 was taken into possession by the respondent on 17.2.2005 by drawing a panchanama. The notice dated 28.1.2005 is at Exhibit R/1 and the panchanama is at Exhibit R/2 in the petition paper book.

6. Being aggrieved by the action of the respondent, the petitioner approached the Civil Court by filing RCS No. 686 of 2005 for perpetual injunction. An application for the temporary injunction was also filed.

7. By an auction notice published in Daily Lokmat news paper, the respondent put up the mortgaged property for auction on 9.1.2007. By an order dated 30.3.2007 passed by the learned 9th Joint Civil Judge J.D., the application for temporary injunction was rejected. The petitioner preferred not to challenge the said order.

8. The date for the inspection of the property was scheduled on 2.1.2007 and the auction sale was scheduled on 9.1.2007. M/s. Raj Techno Products (not a party to this petition) submitted a highest bid, which was accepted. The auction purchaser deposited the bid amount and the same was confirmed. Necessary procedure for issuing the deed of assignment was followed and it was executed on 4.4.2008 in the Sub-Registrar's office and legal formalities thereafter were completed. In the meanwhile, RCS No. 686 of 2005 was dismissed in default on 3.4.2008.

9. The petitioner had filed Writ Petition No. 7501 of 2007 before the learned Division Bench of this Court for challenging the auction sale. The said petition was dismissed by a speaking order on 6.1.2009. The conclusions of the learned Division Bench in paragraph Nos. 6, 7 and 8 of the said order are self explanatory and put to rest any question or doubts about the auction sale.

10. The petitioner preferred Civil Appeal No. 6416 of 2009 before the Honourable Apex Court, aggrieved by the judgment of the High Court in Writ Petition No. 7501 of 2007. The same came to be dismissed on 11.5.2009.

11. The petitioners filed MARJI No. 467 of 2009 for restoration of the suit. This came to be dismissed in default on 3.8.2010.

12. The petitioner then filed MARJI No. 1061 of 2010 before the learned Civil Judge S.D. Aurangabad on 26.10.2010, seeking condonation of delay in filing the

restoration petition No. 467 of 2009 (already dismissed in default) for restoration of RCS No. 686 of 2005. By the impugned order dated 23.1.2012, the learned Civil Judge J.D. rejected the said application.

13. The petitioner contends as follows:-

(a) All his rights are extinguished owing to the order of dismissal in default of his suit and justice needs to be done to the petitioner by condoning the delay and by restoring the civil suit.

(b) If delay is condoned, it would seek restoration of MARJI No. 467 of 2009.

(c) If MARJI No. 467 of 2009 is restored, it would seek restoration of RCS No. 686 of 2005.

(d) After restoration it would prefer to amend the suit proceedings, add the auction purchaser as a party and would seek setting aside of the auction sale.

(e) He is entitled to get back his property, despite the auction sale having attained finality by the orders of the Honourable Apex Court and this Court.

14. Per contra, the respondent has contended as follows:-

(a) The temporary injunction application has been rejected, which has not been challenged.

(b) Due procedure laid down in the law has been followed with regard to the auction sale and the challenge of the petitioner to the said auction sale has been rejected right upto the Honourable Apex Court.

(c) The rights to the auction purchaser have been crystallized and the suit property in question is now no longer available for any judicial adjudication.

(d) The delay is of two years, six months and twenty three days, which does not deserve to be condoned.

(e) Too many contingencies inter linked with each other are serious legal hurdles pitted against the petitioner

(f) Delay and laches are attributable to the petitioner.

(g) Therefore, neither are there any justifiable reasons to condone the delay nor would any purpose be achieved by restoration of two MARJI applications and then RCS No. 656 of 2005.

15. I find that the impugned order has considered the rival contentions of the parties. The Civil Court has found the explanation given by the petitioner unacceptable, as regards the circumstances that led to the dismissal of the suit in default and the period of unawareness of such dismissal. The said Court has also considered the fact as regards the litigation initiated by the petitioner before this Court and the Honourable Apex Court.

16. The contents of paragraph No. 5, 7 and 8 of the judgment of the High Court are thus crucial. Paragraph No. 5 of the order, quoted by the trial Court indicates that the request of the petitioner to resort to "one time settlement" has also been negated. As such, I am of the considered view that the rights of the auction purchaser have got crystallized and leave no room for further adjudication in the matter.

17. After dismissal of the Civil Suit, the petitioner has dragged the respondent and the auction purchaser in litigation in this Court as well as in the Apex Court, which falsifies the story of the petitioner that he and his lawyer were not aware of the dismissal of the suit in default.

18. As such, it is clearly seen that the delay caused in filing the application for restoration is unjustified, unreasonable and does not deserve consideration. Moreover, if any substantial right vested in the petitioner by law was subsisting and if the suit property was by any legal mode likely to put the petitioner back into the possession, the condonation of delay application could have been considered. His application for restoration of MARJI No. 467 of 2009 was also dismissed in default.

19. In view of the right of the auction purchaser having been crystallized and the auction purchaser having been put in possession of the suit property by following a legal procedure, leaves nothing to be decided by the trial Court. Therefore, I am in complete agreement with the reasons put forth by the trial Court while passing the impugned order and the submissions of the respondent recorded above. The submissions of the petitioner and grounds for challenge sans merit. The petition, therefore, deserves to be dismissed. In the result, Writ Petition is dismissed. Rule stands discharged. No order as to costs.