(2007) 01 PAT CK 0066

In the Patna High Court

Case No : CWJC No. 10810 of 2006

M/s. Gopal Kattha Industries Pvt. Ltd. APPELLANT

Vs

The Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Citation : (2007) 2 PLJR 839

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the petitioner. Petitioner has taken loan from Bihar State Financial Corporation. The Corporation floated an OTS Scheme of 2006 giving an Hon''ble exit to debtors. The scheme basically functions on the principal outstanding on the loan as computed by the Corporation. The petitioner being desirous of settling the dues, made an application after taking the figures from the concerned Branch of the Corporation with which it had its dealings. When the said form under OTS was submitted to the head office, the head office of the Corporation disputed the accounts as furnished by its Branch. They changed the figures to the detriment of the petitioner. Petitioner did not accept the same and approached this court.

2. A counter affidavit has been filed justifying the changed enhanced figure of principal outstanding as being sought to be projected by the Corporation. In paragraph 8 of the counter affidavit, the Corporation has stated that the Branch had calculated the dues on basis of interest at the rate of 14.25 per cent with 2 per cent rebate after refinance. It is stated that this was wrong as the Board of the Corporation had taken a decision on the 2nd of March, 1981 to enhance the rate of interest to 16.5 per cent with 2 per cent rebate for timely payment before refinance. After refinance the rate of interest would be 15.5. per cent with 2 per cent rebate for timely payment. It is further stated that the loan was sanctioned on 27.3.1981 and the loan agreement was executed by the petitioner and the

Corporation on 24.7.1981.

3. Mr. Raj Kishore Prasad, learned counsel appearing on behalf of the petitioner has drawn my attention to the agreement in question which is Annexure-2 to the writ petition. The loan agreement which is not in dispute, clearly stipulates the interest chargeable would be 14.25 per cent with rebate on refinancing of 2 percent.

4. This stipulation in the agreement would bind the parties. A party to agreement cannot subsequently, merely on basis of a earlier decision of the Board of the Corporation deviate from the agreement. Agreement is a bilateral act binding the two parties. The said agreement was entered into in 1981 and the parties acted pursuant thereto up to 2005 i.e. for 24 long years. The Branch Office which handles the accounts of the petitioner also proceeded on that basis.

5. In that view of the matter, I find that the Corporation cannot justify the imposition or calculation of the dues at the rate of 16.5 per cent or at any rate different than those stipulated in the agreement. Had the Corporation subsequently generally raised the interest rates it would have had some right as it is stated that the agreement would be subject to such rates that may be revised subsequently. This is not a case of revision. Thus, the agreement would bind the parties and not the earlier decision of the Corporation. I may also point out that it is well settled principle that once the parties have entered into an agreement and reduced the terms and conditions thereof in writing and signed the same, they are found by what is written in the agreement and no party can escape from those terms. Only when any term is found to ambiguous or not clear, can resort be taken to other contemporaneous documents. The agreement being clear and unambiguous, all calculations have to be made accordingly. If the calculations as made earlier by the Branch is otherwise in order the same would be the proper calculation and not the calculation as made by the head office on a self assumed rate of interest contrary to agreed rate of interest as stipulated in the agreement. The order of the Corporation refixing the liability at a rate other than the agreed rate is hereby quashed and this writ application is accordingly allowed with the direction that the Corporation must correct its account accordingly. It is expected that the correct accounts would be furnished to the petitioner immediately to enable the petitioner to liquidate his liabilities under the OTS 2006 and/ or settle his account once and for all.