

(2004) 08 PAT CK 0103
In the Patna High Court
Case No : C.W.J.C. No. 4324 of 2000

M/s Sanjay Ice and Cold Storage Private Limited and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30

Citation : (2004) 4 PLJR 164

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ram Balak Mahto, Sanjay Prasad, for the Appellant; Akhilesh Kumar for the State and M/s P.K. Shahi, Sarvadeo Singh and Shola Sandhwar for the Corporation, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer is to set aside the order dated 3.2.1994 for sale of mortgaged assets of M/s Sanjay Ice and Cold Storage Pvt. Ltd., At and P.O. Sugauli, East Champaran, contained in Annexure 12, and also to set aside the order dated 8.7.1994/26.8.1994 by which, according to the petitioners, the said Unit have been sold to respondents no. 5 and 6 at a much lower price of Rs. 6,97,000/- against the actual price of Rs. 75,00,000/- in the year 1994 and, further, to direct the respondents to restore and deliver back the Unit in question to them (the petitioners) in view of the principles/guidelines framed by the Apex Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, . The petitioner no. 1 is a small scale industry incorporated as Private Limited Company, petitioner no. 2 is the Managing Director and petitioner no. 3 is one of the Directors. In short, their case is that they applied for term loan of Rs. 10.25 lacs, which was sanctioned on 30.3.1979 by the Board of Directors of the Bihar State Financial Corporation (hereinafter referred to as "the Corporation"). On 25.9.1979 an agreement was executed between them and the Corporation and they mortgaged free-hold

rights of the lands measuring 11 Kathas 10 Dhurs to the Corporation for the purpose of taking loan. It is alleged that the officials of the respondent-Corporation began to harass the petitioners and against a sum of Rs. 10.25 lacs, they granted a sum of Rs. 10.14 lacs only. The petitioners applied for additional loan of Rs. 8.42 lacs in the year 1981 against which the Corporation accepted/approved a term loan of Rs. 7.35 lacs, including subsidy of 0.43 lac and in that regard also an agreement was executed.

2. According to the petitioners, they started paying instalments regularly in between 1981 to 1989 and paid huge sum towards principal and interest to the tune of around Rs. 21 lacs and odds. It is stated that the petitioners paid a sum of Rs. 24,66,495.90 up to 1992-93. However, since the fire engulfed the Cold Storage, the petitioners had to pay compensation of more than Rs. 2,00,000/- to the farmers and in spite of above huge loss, hardship and mental agony, they continued to pay the amount to the Corporation. The Branch Manager, however, sent a notice under sections 29 and 30 of the State Financial Corporation Act (hereinafter referred to as "the Act") on 7.12.1989 asking the petitioners to pay a sum of Rs. 15,95,036.97 for discharging liabilities as on 31.8.1989 on both the loan amount despite knowledge of massive fire in the Cold Storage as well as payment of compensation by them to the farmers. On the prayer made by them, the A.G.M. of the Corporation recommended to re-schedule their loan amount, against which they paid some amount and requested for extension of time. Suddenly, on 23.9.1993 the Corporation issued notice to petitioner no. 1 for payment of Rs. 14,07,958.35 for first unit (A/c-1) and Rs. 8,42,660.15 for second unit (A/c-II) and thereafter issued notice under sections 29 and 30 of the Act.

3. The petitioners sought for re-scheduling of the account and getting no response filed Title Suit No. 353/93 before the Sub-Judge, Muzaffarpur on 18.10.1993 challenging the notice in which the order of status quo was passed on 1.3.1995. On 2.3.1996 the Sub-Judge V ordered for rejection of the plaint for filing before an appropriate court, against which Misc. Case No. 3/96 was filed by the petitioner for review of the said order. The Corporation filed objection in the said miscellaneous case and, in the meantime, on 11.3.1996 the officials of the Corporation took over the possession of the Unit of the petitioners. Finally, the Sub-Judge VII, Muzaffarpur dismissed the said miscellaneous case on 30th August, 1999, whereafter the petitioners filed the present writ petition on 12.5.2000.

4. A counter affidavit has been filed on behalf of the Respondent-Corporation and its officials in which it is contended that the writ petition is fit to be dismissed as the petitioners have invoked the Writ jurisdiction of this Court after lapse of several years from the date of cause of action. The respondents have denied that the Unit was sold at a very low price and according to them, the Unit was sold after caring all the legal aspects and at the balance outstanding of Rs. 33,24,140.07 paise. As regards natural calamity, it is stated that there was

agreement for insuring the Unit by the promoter. Further it is stated that the promoter never informed regarding such loss. According to the said respondents, legal notice was issued and the promoter had to carry out for liquidation of the mounting dues. According to the Corporation, the promoter was informed about the sale order in favour of respondents no. 5 and 6, vide registered letter no. 2622 dated 2.8.1994 and was asked to deposit 30% of the balance outstanding and the payment plan of the rest amount within 15 days of the issue of the letter, but the promoter failed to respond on such offer and, accordingly, the sale order was issued in favour of the said respondents. It is alleged that after vacation of the status quo in Title Suit No. 353/93 on 25.2.1993, the promoter instituted another suit, which was numbered as Title Suit No. 36/95 against respondents no. 5 and 6 and got ex parte status quo, which was also vacated on 2.3.1996. On 12.3.1996, the possession of the Unit was taken over and the same was handed over to the purchaser at then balance outstanding. The respondents have denied about selling of the Unit at a very low price as the same was sold at the balance outstanding. It is contended that raising the said issue after lapse of several years in the court of equity is itself devoid of merit and on the point of inordinate delay, the writ petition is fit to be dismissed.

5. According to the private respondents no. 5 and 6, possession of the Cold Storage was delivered to them on 18.3.1996. it is stated that the petitioners showed themselves to be defaulters and were not even agreeable to pay the outstanding despite numerous reminders and notices and, as such, according to them, there is no violation of the principle decided by the Apex Court in Mahesh Chandra's case (supra). They have further alleged that respondent no. 5 was dragged in a litigation between the Corporation and the petitioners of which he was not informed at the time of signing of the deed, still respondent no. 5 has taken every effort to make the Unit viable and has incurred huge expenditure in the Cold Storage.

6. A supplementary counter affidavit has been filed on behalf of the Corporation, in which it is stated that the Unit was advertised for sale on 3.2.1994 in the Daily newspaper. In the tender notice itself it was mentioned that the tender received would be opened in presence of the promoters, who were required to submit their valuation of the mortgaged assets as evaluated by the Income Tax Valuer approved by the Ministry of Finance, Government of India as also with audited book value of the same. According to the Corporation, a copy of the tender notice, which has been annexed as annexure A, was also sent to the promoters through post. Further, it is stated that vide registered letter no. 2622 dated 2.8.1994, the promoter was given opportunity to retain the Unit on matching terms and conditions. By the said letter they were informed that the Unit was published for sale on 3.2.1994 and an intimation of the same was also given to the promoter vide letter no. 7131 dated 3.2.1994, but the promoter failed to respond and did not clear the overdue payment of the Corporation. It is further stated that the promoter was informed that an offer for purchase of the Unit on total outstanding alongwith offer to deposit 30% of the outstanding as cash down

payment immediately has been received. According to the said respondents, the promoter was called upon to deposit 30% of the balance outstanding by Bank draft within 15 days from the date of issue of the letter and also to submit payment plan for the rest amount, failing which the sale order will be issued in favour of other purchaser. A true copy of the said letter dated 28.7.1994 registered on 2.8.1994 has been annexed as Annexure B.

7. No reply to the said counter affidavit has been filed. However, Mr. Mahto, learned Senior Counsel appearing for the petitioners has ventured to submit that the petitioners never received the said letter (Annexure B). He further contended that in any view of the matter, the very content of the said letter (Annexure B) would show that offer made to the petitioners was merely an empty formality and not as per the principle laid down by the Apex Court in Mahesh Chandra's case as the promoters were advised to deposit 30% of the balance outstanding by Bank draft within 15 days from the date of issue of the said letter. It is not even stated by the respondents that as to whether the said letter was ever served and on what date. He further contended that the sale of the Unit by the Corporation was at a throw away price without satisfying its entire loan given to the said Unit. He submitted that the Supreme Court in the case of Mahesh Chandra (supra) has deprecated the Corporation resorting to sale of the industrial unit to the sole tenderer at a lower price payable in instalments at the back of the owner-debtor rejecting debtor's prayer. Apex Court also held that the loanee is not bound by the sale or subsequent acts of the purchaser if the action of the Corporation is unjust, unfair and unreasonable. He, thus, contended that it is a fit case where the delay should not come in the way of the petitioners from getting appropriate relief more so when the petitioners' action throughout has been fair and made regular payment so much so that they paid much more than the amount released by the Corporation in their favour as loan.

8. Mr. Shahi, learned counsel appearing for the Corporation, on the other hand, submitted that in view of the principle decided by the Apex Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the scope of judicial review in such matter is very limited and the Court should not interfere unless the course chosen is totally unfair and unreasonable. He submitted that there cannot be any dispute that the dominant consideration in such sale is to secure best possible price for the property, as has been held in Jagdamba Mill's case, also. But in the present case, the Corporation has strictly followed the Statute and the action of the Corporation cannot be said to be unfair or mala fide as is evident from the fact that even uptill now the petitioners have not come out with their offer in response to the notice, contained in Annexure B. He contended that in the case of Jagdamba Oil Mills (supra), the Supreme Court while requiring the Corporation to act fairly also held that the borrowers also have a corresponding duty to repay in time unless prevented by insurmountable difficulties. According to him, in the present case, the approach of the petitioners is not at all fair as their whole attempt has been to delay the matter now for over ten years during which time the petitioners instead of coming with the offer even

on matching terms or obtaining higher offer simply went for various litigations.

9. I find substance in the submission of the learned counsel for the Corporation. The action of the petitioners, in the facts and circumstances, cannot be said to be fair. It is not disputed that as per the tender notice (Annexure A), a copy of which was also sent to the petitioners, the offer was invited for purchase of mortgaged assets of unit in sealed cover and such offers were to be decided in presence of the promoter at the Corporation's Head Office or the Branch office.

10. It is not the case of the petitioners that they have made any endeavour to find out as to whether there was any offer in response to the said notice. Thereafter, the Corporation gave another notice on 23.9.1993 under sections 29 and 30 of the Act for taking possession of the Unit but the petitioners filed Title Suit No. 353/93 challenging the said notice instead of approaching the Corporation to accept their offer on matching terms in terms of the principle enunciated by the Apex Court in Mahesh Chandra's case and kept on delaying by pursuing the matter in subordinate court which did not even have jurisdiction.

11. In the case of Jagdamba Oil Mills, the Supreme Court, while holding that the Corporations are required to act fairly, further held that the borrowers have a corresponding duty to repay in time unless prevented by insurmountable difficulties. The Apex Court has held that the concept of fairness should not be abused to disable the Corporation from making legitimate recoveries. This Court finds that it is now for over ten years that the petitioners have abused the process of law by entering in frivolous litigation before a court which did not even have jurisdiction and have approached this Court after long lapse of time. The writ petition, thus, also suffers from gross delay and laches. This Court, thus, does not find any merit in the writ petition and it is, accordingly, dismissed. However, in the facts and circumstances, there shall be no order as to costs.