(1992) 07 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 25 of 1986 (R)

M/s. Waxpol Industries Limited and another APPELLANT

Vs

Bihar State Electricity Board, Patna and others RESPONDENT

Date of Decision : 28-07-1992

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (1993) 1 PLJR 293

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Satish Bakshi and Anoop K. Mehta, for the Appellant; S.K. Dutta and B. Saran Lal, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the petitioners for issuance of a writ of mandamus commanding upon the Respondent Bihar State Electricity Board and its Officers to provide electric energy to their factory. Petitioner no. 1 is a private Limited Company incorporated under the provisions of the Indian Companies Act, 1956, and petitioner no. 2 is one of its directors. Bihar State Financial Corporation (hereinafter to be referred to as the Corporation only) had granted a loan of Rs. 3,40,000/- to M/s. Neo Chemical and Metal Products (P) Ltd. (hereinafter to be referred to as the mortgagor company), which is also a company registered under the Companies Act in the year 1976 and, as a security for the said loan, the mortgagor company had mortgaged its assets with the said Corporation. Subsequently, since the mortgagor company did not repay the said loan within the time stipulated in the agreement, therefore, the Corporation advertised the assets of the mortgagor company for sale, as per statutory powers conferred u/s 29 of the State Financial Corporation Act, 1951. Pursuant to the said advertisement dated 20.3.1985 as contained in Annexure-1 the petitioners filed a tender and the offer of the petitioners being the highest, the Board of Directors of the Corporation in its meeting held on 29.4.1985 took a decision to sell the same to petitioner no. 1 for a consideration of Rs. 2,96,252/53. On payment of the said consideration money, the petitioners were given possession over the assets of the mortgagor company. The said transaction is evidenced by a registered deed of sale, which has been filed as Annexure-7 to the Supplementary affidavit filed on behalf of the petitioners. In para III of the said document it has been clearly stipulated that the sale of the said mortgaged properties is free from all charges, liabilities, encumbrances and claims. It is, therefore, clear that the petitioner company even under the Sale Deed had not undertaken to discharge any liability, muchless liability of electricity dues payable to the Electricity Board, of the mortgagor company. Both the mortgagor company and the petitioners company are two independent legal entities having their own legal personalities and, in absence of any agreement or statutory provision to the contrary, the liability of one cannot be fastened on the other.

2. It appears that thereafter the petitioners applied to the Respondent Electricity Board for grant of electric connection but the same was refused on the ground that unless the petitioner company clears the dues of the mortgagor company, who was the erstwhile owner of the assets acquired by the petitioners company, electric energy cannot be supplied to them. It is in this factual background that the present writ application has been filed. It may be stated here that by order dated 21.1.86 the Respondents were directed to give electric connection to the factory of the petitioners by way of interim order and pursuant thereto the electric connection was given.

3. So far as the question involved in the present case is concerned, in my opinion, the same is squarely covered by a Bench decision of this Court in the case of Ram Krishna Choudhary v. Bihar State Electricity Board and others (C.W.J.C. No. 204 of 1984 (R) and analogous case) disposed of on the 15th October, 1990, where under the facts and circumstances similar to the present case, the Court has held as under :

In the facts and circumstances of the case, we are of the opinion that when the ownership is transferred by auction as in the cases under consideration, unless there is a clause that the auction purchaser shall not only have the assets but also the liabilities including the liability of the Board, the latter cannot take the stand that unless the dues of the erstwhile owners is cleared, no electric connection will be given to the auction purchasers.

4. Respectfully following the law laid down in the aforesaid Bench decision, the electric connection granted to the petitioners pursuant to the interim order, referred to above, will not be disconnected on the ground that the petitioners have not paid the dues of the mortgagor company.

5. Learned Counsel for the Respondents has sought to place reliance on a Bench decision of this Court in the case of M/s. Isha Marbles v. Bihar State Electricity Board & Ors. (C.W.J.C. No. 1536 of 1991 (R) disposed of on 5.9.91. But in my

opinion that case can not be of any assistance to the Respondents for the reason that the case of Ram Krishna Choudhary (supra) is an earlier Bench decision which was not brought to the notice in the subsequent case of M/s Isha Marbles. Moreover in the case of M/s Isha Marbles it was not brought on the record that the assets have been sold to the purchaser company free from all liabilities of the erstwhile owner. In the result, for the reasons aforesaid, this writ application is allowed. No order as to costs.