

(2004) 07 PAT CK 0075
In the Patna High Court
Case No : C.W.J.C. No. 11220 of 2002

Nand Kishore Pandey

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Partnership Act, 1932 — Section 35

State Financial Corporations Act, 1951 — Section 32G

Citation : (2004) 4 PLJR 459

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Manik Vedsen, for the Appellant; Y.V. Giri with Jyoti Saran for the Corporation and Mr. R.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the sale order dated 5.10.2001 (Annexure 4) of mortgaged/hypothecated assets of M/s Shree Ram Ultra Modern Rice Mills, Konar, Rohtas to son of one of its partners, who, according to the petitioner, by force had taken over the management of the firm at a throw away price in collusion with the managing partner and the officials of the respondent-Bihar State Financial Corporation (hereinafter referred to as "the Corporation" for the sake of brevity) and, further, has sought for direction that the mortgaged assets be advertised for sale so that the same could be sold at a proper price. It seems that initially writ petition was filed by the original partner, namely, Nand Kishore Pandey, who died during the pendency of this writ petition and later on filing of petition for substitution bearing I.A. No. 2002 of 2004, this Court, vide order dated 9.4.2004 allowed his widow to be substituted after deleting the name of the original petitioner.

2. According to the petitioner, the mortgaged assets has been sold at a throw away price to the son of the managing partner of the firm. It is contended that the mortgaged assets is of substantial value and if property is properly

advertised and sold, it may fetch substantial higher amount than even Rs. 35 lacs, which will meet the entire dues of the Corporation. It is alleged that (sic) managing partner purposely put the unit (sic) huge loss which resulted in default in repayment of the loan of the Corporation and then initially purchased the same herself and later in the name of her son (respondent no. 3) at a throw away price, which has not even satisfied the entire dues of the Corporation uptill now in collusion with the authorities of the Corporation and created problem for them by getting the notice issued by the Corporation u/s 32G of the Act. It is contended that for revival of the sick unit, a rehabilitation project was submitted for consideration before respondent-Corporation, but the same was arbitrarily rejected even though the firm was eligible for rehabilitation assistance as per the guidelines of the Industrial Bank of India and the Reserve Bank of India.

3. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondent-Corporation and its Managing Director (respondents no. 1 and 2) and a separate counter affidavit has been filed on behalf of the purchaser (respondent no. 3).

4. According to the case of the respondents, the original petitioner had obtained a loan of Rs. 10.70 lacs from the respondent-Corporation between the period 1980 to 1982. It is alleged that since the promoters completely failed to repay the loan amount, they became defaulter and as such after legal notice was served on them on 6.10.1993, the unit was advertised for sale on 26.6.1995 under continuous sale policy of the Corporation. However, it is admitted that one of the partners Smt. Indira Pandey gave offer to purchase the mortgaged assets on a consideration of Rs. 20 lacs, which was forwarded to the Head Office on 27.11.1999 along with valuation of assets estimated by the Branch Level Valuation Team. However, the Central Valuation Team of the Corporation revised the valuation of the assets from 18.11 lacs assessed by the Branch Office to Rs. 23.38 lacs. Later, the sale was finalised at the cost of Rs. 23.40 lacs with the said Smt. Indira Pandey and sale order was also issued in her favour, but, subsequently after having learnt that Smt. Indira Pandey was, in fact, one of the promoters of the Mill, the sale order dated 2.5.2000 (Annexure 2) was kept in abeyance. Sri Prashant Kishore son of Smt. Indira Pandey submitted a tender in the Branch Office on 22.8.2000 and offered price of Rs. 23.51 lacs, which was forwarded to the Head Office on 22.8.2000. Since the said Prashant Kishore was son of Smt. Indira Pandey, the Corporation after taking legal opinion re-advertised the mortgaged assets on 19.11.2000 in the English daily, "The Hindustan Times", displaying therein the details of the offer already in hand.

5. It was mentioned, inter alia, in the advertisement that in case any party was willing to purchase an assets on better price than the offer in hand may submit offer within a fortnight as per the terms of advertisement (Annexure G). Despite re-advertisement (Annexure G) when no offer was received in the Corporation, the mortgaged assets of the Unit were sold in favour of, Prashant Kishore (respondent no. 3) at a cost of Rs. 23.55 lacs as against his offer of Rs. 23.51

lacs. By the sale order, the purchaser was asked to make payment after 21 days and, in the meanwhile, the original promoters (including the Late husband of the petitioner) were given option to retain the assets on matching terms but none of the partners, including the petitioner, came forward to retain the assets of the unit on matching terms and the Corporation having no other offer in hand except that of Prashant Kishore (respondent no. 3) made the sale in his favour and consequently Prashant Kishore was given the possession of the Unit. It is stated that the partners of the Unit were also given notice u/s 32G of the State Financial Corporation Act, 1951 (hereinafter referred to as "the Act" for the sake of brevity, for recovery of the balance dues, which is pending since the matter is subjudice.

6. In the counter affidavit filed on behalf of respondent no. 3 it is stated that the writ petition is devoid of any merit and is fit to be dismissed since the sale was performed in accordance with law following all the circulars, guidelines and directions. It is stated that respondent no. 3 executed the agreement on 7.11.2001 and after completion of the formalities and physical and legal possession of the Unit was handed over to him and he has also invested huge amount in getting the Unit in working condition and, thus, the writ petitioner has no locus standi at all to challenge the decision of the Executive Committee of the Corporation at this stage when the sale has already been finalised in favour of respondent no. 3. In paragraph 23 it is stated that the petitioner is not entitled for any relief sought for because he is a defaulter and has also failed to turn up pursuant to the sale order dated 5.10.2001. In paragraph 33 it is stated that in order to start litigation, the present writ petition has been filed after lapse of about one year from the date of taking over of the Unit and also after having learnt about the proposed action u/s 32G of the Act.

7. Mr. Vedsen, learned counsel for the petitioner submitted that the impugned sale order is arbitrary and collusive and has adversely affected the interest of the petitioner as well as of the respondent-Corporation as the mortgaged assets has been sold at throw away price to the son of the managing partner of the firm. Learned counsel further submitted that the impugned action of the respondent is violative of petitioner's fundamental rights enshrined in Articles 14 and 19 of the Constitution of India and is violative of the principles of natural justice and fair play. He contended that the mortgaged assets is of substantial value and if property is properly advertised and sold it may fetch substantial higher amount than even Rs. 35 lacs which will meet the entire dues of the Corporation. It is submitted that the respondents have erroneously initiated action for recovery of uncovered dues from the petitioner u/s 32G of the Act. Learned counsel submitted that for revival of the sick Unit, a rehabilitation project was submitted for consideration before the respondent-Corporation, but the same was rejected in an arbitrary manner even though the petitioner's firm was eligible for rehabilitation assistance as per the guidelines of the Industrial Bank of India and the Reserve Bank of India. Learned counsel for the petitioner has placed reliance on a decision of the Jharkhand (sic-Patna?) High Court in the case of Santu Lal

Gupta Vs. Bihar State Financial Corporation and Others, , in which continuous sale policy of the respondent-Corporation and sale by negotiation has been held to be arbitrary, unreasonable and colourable exercise of power having no nexus with the object to recover maximum amount of the dues. Against the said judgment, the respondent-Corporation had preferred L.P.A. No. 286 of 2000(R), which was dismissed by the Jharkhand High Court, which has also been affirmed by the Apex Court in Special Leave to Appeal (Civil) No. 22792 of 2002.

8. On the other hand, Mr. Giri, learned Senior Counsel appearing for the respondent-Corporation submitted that the writ petitioner is devoid of merit, without substance and not tenable in law and is fit to be rejected in view of the fact that the Corporation has acted fully in accordance with law and sold the mortgaged assets within the options available to it and in the best interest of the Corporation. He further submitted that wide publication was made before the sale of the assets in a prominent newspaper showing the offer in hand and in response thereto neither the promoters nor any other person came forward to purchase the assets. He, thus, submitted that the sale made by the Corporation to respondents no. 3 is valid and require no interference by this Court. He contended that the original petitioner did not respond to the sale notice (Annexure 4) and after the sale was made, he has created a bogey that the sale price was meagre without coming forward to purchase the same on matching terms and now that the sale has been effected and the Corporation has managed a recovery of Rs. 23.55 lacs out of the outstanding amount, the petitioner is trying to scuttle the same by raising frivolous issues, which do not merit consideration. Learned counsel has ventured to submit that the whole attempt of the petitioner is to obliterate the sale and his conduct is malicious since it hovers on the principle that neither he would purchase the Unit himself nor he would allow any other person to purchase the same. He further submitted that the writ petition being a gross abuse of the process of the Court is fit to be dismissed with cost. In support of his aforesaid contention, learned counsel has placed reliance on a catena of decisions of this Court as well as of the Apex Court given in the case of Haridwar Choubey Vs. Managing Director B.S.R.T.C. and Others, , in the case of Sunil Chand Jain and Another Vs. Bihar State Financial Corporation and Others , in the case of The Bihar State Financial Corporation and Others Vs. A.K. Films and Another, , and in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, .

9. Learned counsel for respondent no. 3 while reiterating the contention advanced on behalf of the respondent-Corporation has submitted that respondent no. 3 has made huge investment and any interference by this Court may lead to irreparable loss to respondent no. 3.

10. In reply, learned counsel for the petitioner contended that the decisions relied upon by the learned counsel for the respondent-Corporation are of no avail as the entire action of the respondents for sale of the Unit is collusive and mala fide as is evident from the fact that the managing partner purposely put the Unit

into huge loss which resulted in default in repayment of the loan of the Corporation and then initially purchased the same herself and later in the name of her son (respondent no. 3) at a throw away price which has not even satisfied the entire dues of the Corporation uptill now in collusion with the authorities of the Corporation and created problem for this petitioner by getting the notice issued by the Corporation u/s 32G of the Act. Learned counsel also contended that the action of the respondent-Corporation in entertaining offer of respondent no. 3 given prior to the sale notice/advertisement is neither valid nor justified more so because it did not meet the entire dues of the Corporation. Learned counsel submitted that if the managing partner was capable of purchasing this property, what prevented her from repaying the loan amount. Thus, according to him, the mala fide is writ large which vitiates the sale.

11. Learned counsel for the petitioner submitted that the submission on behalf of the respondent no. 3 with regard to irreparable loss is not at all sustainable in the background of the fact that it is because of complete mismanagement and manipulation by the managing partner, who is his mother and none else and operating through him. It is not the case of respondent no. 3 that he is separate from his mother and has got nothing to do with his parent.

12. This Court finds substance in the submission of the learned counsel for the petitioner. In none of the cases, referred to above, the property was sold to the defaulter or the family member of the defaulter. The aforementioned facts of the present case leave no room for doubt about the collusive and mala fide act of the respondents in the matter of sale of the Unit in question to respondent no. 3, who is admittedly the son of the managing partner and none else. Even assuming that none else came forward pursuant to the second advertisement, the action of the respondent-Corporation is selling the Unit to the son of the managing partner at a price which did not even fetch entire dues of the Corporation cannot be said to be justified inasmuch as it amounts to sale of the Unit, in fact, in favour of the defaulter, which cannot be permissible under the scheme of the provision of the Act for realisation of the loan amount. Moreover, by such act, the Corporation has acted mala fide to protect the managing partner and harm this petitioner by issuing notice u/s 32G of the Act for the default of the managing partner. In my opinion, if this is permitted, then it would be against the interest of the Corporation and it will be laying down bad precedent creating dispute among the partners and consequently landing the Corporation into difficulty in recovery of the dues, In all fairness, the Corporation should have proceeded against the managing partner, who obviously was responsible for the mismanagement of the affairs of the Unit leading to going in default. In fact, the sale of the Unit to respondent no. 3 amounts to showing indulgence to a chronic defaulter about which the Supreme Court in the case of Haryana Financial Corporation vs. Jagdamba Oil Mills (supra) has found no justification for it.

13. Moreover, the Unit in question is a partnership firm operating through respondent no. 3 by his mother as managing partner since 1995. u/s 35 of the

Indian Partnership Act, 1932 every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. It is well settled that the liability of the partners being joint and several, it is open to a creditor of the firm to recover the debt from any one or more of the partners. Reference can be made to a decision of the Apex Court in the case of Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and Another, . Thus, the action of the respondent-Corporation, in the facts and circumstances, cannot be said to be fair and reasonable. The Corporation has shown undue favour to the managing partner by initially selling the Unit in her name and later in the name of her son (respondent no. 3) in the garb of so-called open sale instead of realising its debt from them. In my opinion, the sale of the Unit in the hands of the defaulter and that too without ensuring complete recovery of its dues is mala fide act of the Corporation in connivance with the managing partner and has caused serious prejudice to this petitioner, who has been made scapegoat so much so that the action for recovery of uncovered dues has been initiated against the petitioner u/s 32G of the Act for the default of managing partner, who by manipulation and in connivance with the authorities of the Corporation became the sole proprietor even without discharging the entire liability of the Unit towards the Corporation. In the result, the writ application is allowed with cost of Rs. 5,000/- (five thousand). The impugned sale and the action initiated against the petitioner u/s 32G of the Act are, accordingly, held to be bad and thus quashed. The respondent-Corporation is directed to proceed in the matter afresh on the line, as indicated above. Further, the Corporation will be at liberty to adjust the amount deposited for purchase of the Unit against the dues of the Corporation and proceed in the matter afresh for realisation of the remaining amount, in accordance with law. The amount of cost shall be paid half and half by the concerned official of the Corporation to be determined by the Managing Director and respondent no. 3 respectively to the petitioner and a receipt in token thereof must be filed in this Court within two weeks, failing which the petitioner will be at liberty to file two pages affidavit for initiating appropriate action against the erring person(s).