(1996) 04 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 7740 of 1996.

Orissa State Financial Corporation and Another — APPELLANT

Vs

Hotel Jogendra — RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (1996) 5 AD 92 : (1996) 86 CompCas 722 : (1996) 5 JT 322 : (1996) 4 SCALE 407 : (1996) 5 SCC 357 : (1996) 1 SCR 571 Supp : (1996) 2 UJ 285

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : Shambhu Prasad Singh, Sunil K. Jain, J.K. Bhatia and Jain Hansaria, for the Appellant; Janaranjan Das, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. We have heard learned counsel on both sides.

3. This appeal by special leave arises from the order of the Division Bench of the High Court of Orissa dated March 5, 1990 made in OJC No. 500/90. Admittedly, the respondent had taken a loan of a principal sum of Rs. 14.68 lakhs for construction of the hotel which was payable in 18 yearly installments between July 10, 1984 and January 10, 1993. The respondent committed default in payment of the loan as contracted. Pursuant to the request, a replacement was done in November 1989 directing them to pay the amount in 9 half yearly installments starting from January 1993 to January 1997 with interest on arrear defaulted amounting to Rs. 10.64 lakhs which was to be paid according to the schedule mentioned below :

March 1989 Rs. 1.30 lakhs

March 1990 Rs. 2.00 lakhs

March 1991 Rs. 2.84 lakhs

March 1992 Rs. 3.00 lakhs

March 1993 Rs. 1.50 lakhs

4. In addition, current interest was also to be paid with half yearly interests. Since the respondent - Hotel did not comply with the conditions, notice was given to it u/s 30 of the State Financial Corporations Act, 1951 on February 1, 1990. Calling that notice in question, the respondent filed the above writ petition in the High Court. The High Court has directed the respondent to calculate the entire loan amount with interest including the additional loan sanctioned to treat he said amount as principal for the purpose of replacement of the same for repayment with interest.

5. It would appear that subsequently action was taken by the appellant, but the respondent seems to have not complied with the directions. Accordingly, notice was issued u/s 29. The respondent instead of complying with the same, approached the High Court by Misc. Case No. 1677/90 which was disposed of by the High Court on April 9, 1991 directing the respondent to be personally present with the appellants on April 13, 1991 for consideration of the replacement of the proposal as ordered in the impugned judgment. It would appear that the respondent again did not appear before the authorities on April 13, 1991. The first appellant was, therefore, free to exercise its statutory powers u/s 29 in terms of the order passed by High Court as order in the Misc. Case on April 13, 1991 requesting seven days'' time for submitting the proposal he sent a letter on the last date. Even thereafter, the respondent did not submit any proposal to rephase the amount payable as per the provisions contained in Section 29 of the Act.

6. Therefore, the Corporation again issued a letter on May, 8, 1991 stating that since that respondent had not furnished the replacement proposal as per the orders of the High Court, the appellant was free to take action as per law. Calling that order in question again, the respondent had filed OJC No. 2747 of 1991 seeking further directions to rephase the loan. The High Court by interim order dated June, 5, 1991 directed the appellant not to take any coercive action against the respondent, but ultimately the writ petition came to be dismissed on January 25, 1994 with the following holding :

the present dues of the Corporation is around Rs. 32, 24, 753.00. From the facts, it appears that the petitioner has become a persistent defaulter and the Corporation is only taking steps available to it under the act to recover the loan. On facts, we do not consider it to be a fit case for our interference. The writ petition hence is dismissed.

7. Thereafter, the appellants has issued notice on February 17, 1994 calling upon the respondent to pay the entire amount due as on January 31, 1994 amount to Rs. 35, 32, 058.43 by February 28, 1994. Instead of making payment, the

respondent again went to the Civil Court and filed Title Suit No. 88/94 in the Court of Civil Judge, Senior Division, Cuttack and obtained status quo order in Misc. Case No. 115/94 on 28.2.1994.

8. It would, thus, be seen that the respondent is only interested to delay the repayment of the dues and has abused the process of the court taking indulgence of the court''s direction. Under these circumstances, we find that no indulgence would be shown to such recalcitrant defaulter in repayment of the loan. Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. Court would protect only honest and sincere litigants.

9. The appeal is accordingly allowed with exemplary costs of Rs. 10,000. The Corporation is at liberty to take action against the respondent as required u/s 29 of the Act, irrespective of the orders passed by any Court.

