(2007) 02 JH CK 0011

In the Jharkhand High Court

Poly Art Industries (P) Ltd. and Another APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 7, 9

Citation : (2007) 3 JCR 590

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—In this writ application the petitioners have prayed for quashing the order dated 20.11.2006 whereby the distress warrant and the warrant of attachment have been issued against the petitioner No. 2 in Certificate Case No. 01 (B.S.F.C.) of 2006-07 (Annexure 6) and also for quashing the distress warrant issued against the petitioner No. 2 by order dated 26.6.2004 in Certificate Case No. 11/1999-2000 (Annexure 9). The petitioners have also sought declaration that the certificate proceeding being Certificate Case No. 01 (B.S.F.C.) of 2006-07 (Annexure 6) is void ab initio and for issuing notice to Sri Krishnanand Prasad, District Certificate Officer (respondent No. 3) for showing total disregard for the rule of law and the judicial precedents.

2. The petitioner''s case is that the Company set up an industrial unit at Ranchi in 1986-87 for manufacturing plastic household items (buckets etc.) The term loan for land-building, plant and machinery was given by the Bihar State Financial Corporation (B.S.F.C.) and the working capital was financed by the State Bank of India (S.B.I.), Ranchi Branch (now known as Commercial Branch). The unit was successful and was capable to repay the loan amount. The petitioners-Company further took up work of expansion of capacity by 100% in 1991. The S.B.I, had promised to give further need based loan for acquiring additional two molding machines. As assured by the S.B.I., Commercial Branch, Ranchi, the Company placed orders for importing the two additional moulding machines from Hong

Kong. The S.B.I, disbursed the money for payment to supplier, custom clearance etc, out of existing working capital facility. In spite of persuasions by the petitioners to sanction and disburse the needed and promised term loan and working capital, the S.B.I. refused to advance the need based term loan as a result of which the unit became financially sick as it could not operate at a reasonable level of its installed capacity and incurred heavy losses. The matter was thereafter referred to the Board for Industrial and Financial Reconstruction (B.I.F.R.) on 14.12.1994, being Case No. 6/95. An enquiry was, thereafter, initiated. Though the unit was found viable, the B.I.F.R. was forced to recommend for winding up of the unit by its order dated 10.6.1996 as the S.B.I. refused to give any further loan or further need based capital. The petitioners thereafter have not received any notice on the basis of the said recommendation, for winding up of the unit. In the mean while, the Bihar State Financial Corporation (B.S.F.C.) through its specified authority u/s 32 (G) of the B.S.F.C. Act, filed a requisition dated 27.3.2006 before the District Certificate Officer, Ranchi for recovery of its dues of Rs. 4.40 Crores (approximately). The said proceeding was registered as Case No. 01 (B.S.F.C. /2006-07). The grievance of the petitioners is that in the said case, the District Certificate Officer (respondent No. 3), without following the due process of law and without determining the objection of the petitioners, has issued warrant of attachment and distress warrant against the petitioner No. 2. It has been submitted that the said orders are wholly illegal and without jurisdiction, inasmuch as, the entire certificate proceeding itself is illegal in view of the recommendation of the B.I.F.R. for winding up the unit.

3. Mr. Rajiv Ranjan, learned Counsel appearing on behalf of the Bihar State Financial Corporation, on the other hand, contended that the petitioners had taken loan on the agreed terms and conditions, but the same have not been followed. The loan amount has not been paid, as agreed upon. In order to recover its dues, the B.S.F.C. filed a requisition before the District Certificate Officer. The Certificate Officer issued notice to the petitioners u/s 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as ''the said Act''). The said notice was served on the petitioners, but in spite of service of notice, the petitioners did not file any petition or objection under the provision of Section 9 of the said Act. In view thereof, there was nothing to be determined u/s 10 of the said Act by the Certificate Officer. The Certificate Officer thereafter issued the distress warrant and warrant of attachment against the petitioners for realization of the loan amount. There is no arbitrariness and illegality in the said action which has been taken in accordance with the provisions of law. It had been stated that the petitioner No. 2 had made similar prayer in W.P. (C) No. 166/2007 which was withdrawn by him with the permission of this Court by order dated 18.1.2007. The petitioners have raised the same point over again in this writ application. It has been stated that there is no winding up of the Company till date and therefore the provisions of the Companies Act as well as the Sick Industrial Companies (Special Provisions) Act, 1985 are not applicable in the

instant case.

4. I have heard learned Counsel for the parties and also perused the materials brought on record. On perusal of the order dated 20.11.2006 passed in the certificate case, it is evident that notice u/s 7 of the Bihar & Orissa Public Demand Recovery Act was issued to the petitioners. The said notice was received by the petitioner No. 1, but no objection was filed by the said petitioner. According to the petitioner No. 2, he had come to know about the said certificate proceeding in the month of September. Even thereafter no objection u/s 9 of the said Act was filed within the prescribed time. On perusal of the said Order 20.11.2006, it also appears that the petitioners, thereafter, appeared and deposited Rs. 50,000/- against the certificate dues. Therefore, it does not appear from the record that the petitioners have ever disputed the certificate liability before the Certificate Officer. Such being the factual position, the Certificate Officer further proceeded in accordance with law and has issued the process for execution of the certificate as prescribed in law. I, therefore, find no arbitrariness or illegality in the impugned orders (Annexure 6 and 9). I also do not find any illegality in the initiation of the said certificate proceeding.

5. There is, thus, no merit in this writ application which is, accordingly, dismissed.