

(2008) 09 JH CK 0016
In the Jharkhand High Court
Case No : C.W.J.C. No. 2836 of 2000 (R)

Pradip Rubber Industries

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Contract Act, 1872 — Section 62

State Financial Corporations Act, 1951 — Section 29

Citation : (2009) 57 BLJR 440 : (2008) 4 JCR 455

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : Anubha R. Choudhary, for the Appellant; Anoop Kr. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred to quash the order dated 24.04.2000, passed by respondent No. 2, vide which the liability of the petitioner was fixed at Rs. 39.81 lakhs (excluding Rs. 18,97,280/- already paid) under One Time Settlement (hereinafter to be referred as "OTS") Scheme. A further prayer for issuance of mandamus has been made seeking a direction against the respondents to dispose of the OTS application in accordance with the circular dated 21.07.1993 and as per the judgment passed by this Hon'ble Court and the Hon'ble Supreme Court.

2. The case of the petitioner, in brief, is summarized as under:

In the year, 1972 the petitioner had made an application for grant of loan before the Bihar State Financial Corporation (hereinafter to be referred as "the Corporation") for starting Small Scale Rubber Industry for an amount of Rs. 4,00,000/- (rupees four lakhs), which was duly sanctioned. However, the total loan amount disbursed to the petitioner was of Rs. 2,65,000/- (rupees two lakhs and sixty five thousand) only. The installments fixed could not be reimbursed/

paid back by the petitioner and there was a continuous default with effect from 31.03.1976 and, accordingly, a legal notice dated 24.09.1976 was served upon the petitioner. In similar fashion further loan amount of Rs. 12,00,000/- (rupees twelve lakhs) and Rs. 1,26,000/- (rupees one lakh and twenty six thousand) were disbursed against the sanctioned loan amount of Rs. 18,00,000/- (rupees eighteen lakhs) and Rs. 3,35,000/- (rupees three lakhs and thirty five thousand).

On 21.07.1993 a circular was issued by respondent No. 2 for availing relief under OTS Scheme, inter alia, for those units whose outstanding had exceeded the value of their mortgaged assets with the Corporation. Under this scheme, the respondents were to provide relief to the eligible units by reducing the rate of interest in accordance with the circular from the date from which the unit(s) was/were in continuous default of the Corporation's overdues. As per the said circular 10% of the total amount, which was due to the Corporation was to be deposited and thereafter, the concerned unit should apply for relief under the said OTS Scheme.

The petitioner applied for the relief under OTS Scheme within time and deposited Rs. 3,65,000/- (rupees three lakhs and sixty five thousand), which according to the petitioner was more than 10% of the balance amount, calculated by the respondent-Corporation as Rs. 36,27,000/- (rupees thirty six lakhs and twenty seven thousand), as reflected in its ledger in September, 1994.

The petitioner was given an offer to settle its account under OTS vide Memo No. 4496 dated 19.10.1995 at a consideration amount of Rs. 39,81,000/- (rupees thirty nine lakhs and eighty one thousand). The offer under OTS Scheme was given on the basis of the valuation of the assets. The OTS amount as per the Standing Order No. 01/MDC/93-94 dated 22.7.1993 was calculated at Rs. 35,20,000/- (rupees thirty five lakhs and twenty thousand) on 30.06.1995, which was lower than the valuation of the assets. The Executive Committee of the Corporation allowed the petitioner to settle its account on the basis of valuation of the assets as the value of the assets was more than the OTS calculated account. One of the criteria of One Time Settlement Scheme was that the outstanding exceeded the value of the mortgaged assets of the unit. The value of the mortgaged asset was also a prime consideration for arriving at One Time Settlement. It is also provided in the OTS Scheme that Executive Committee shall take case to case decision whether the unit should be offered One Time Settlement and if so what would be the quantum of relief.

3. In the instant case, the OTS amount was less than the value of asset. Keeping in view the above facts, the Executive Committee gave an offer to the petitioner, based on valuation of assets amount to Rs. 39,81,000/- (rupees thirty nine lakhs and eighty one thousand). The petitioner did not make the requisite payment against the OTS offer. In view of non-payment, take-over order was issued vide Memo No. 646 dated 09.01.1997 for taking possession of the mortgaged assets of the unit for realization of the dues of the Corporation.

4. The petitioner being aggrieved, filed a writ petition being C.W.J.C. No. 268 of 1997 before the Hon"ble Patna High Court, Ranchi Bench. The Hon"ble High Court vide its order dated 29.10.1997 directed the petitioner to make payment of Rs. 15,00,000/- (rupees fifteen lakhs) in two phases and also directed that in case the concern does so, the Corporation shall reconsider the matter in accordance with law and shall determine the liabilities of the petitioner afresh.

5. The petitioner could not abide by the judgment/direction of the Hon"ble High Court and in view of non-payment and also in accordance with the direction of the Hon"ble High Court, the Corporation took steps for taking over the physical possession of the petitioner-unit. The Branch Manager, Jamshedpur, along with the designated Executive Magistrate went to the site of the petitioner concerned on 13.06.1998 for taking over physical possession of the unit. At this stage, the petitioner agreed to make payment of Rs. 15,00,000/- (rupees fifteen lakhs) to avoid physical take-over of the unit. The petitioner later on did pay a sum of Rs. 15,00,000/- (rupees fifteen lakhs) on 13.06.1998 and 20.06.1998 in two installments. The payment made by the concern was treated by the respondent as normal payment against the dues.

6. It appears that the OTS Scheme was withdrawn on 30.09.1997 and was not in existence in the year, 1998 and, accordingly, the petitioner concerned was given an opportunity vide letter reference No. 330/98-99 dated 09.09.1998 to make payment of 25% of the balance outstanding immediately in order to get the account regularized/rescheduled under the 25%-75% package. The petitioner thereafter filed L.P.A. No. 559 of 1997(R) before the High Court of Judicature at Patna, Ranchi Bench, in which the Hon"ble High Court held that the L.P.A. was not the proper remedy since the petitioner deposited the amount beyond the time period and, thus, the proper course for the petitioner would be to file a petition for modification/review of the order of the learned Single Judge dated 29.10.1997. Accordingly, the petitioner filed a Review/Modification Petition being Civil Review No. 7 of 1999(R) before the Hon"ble High Court and the respondent-Corporation was directed vide order dated 12.08.1999 to reconsider the matter in accordance with law and to determine the liabilities of the petitioner in terms of the order dated 29.10.1997. The operative portion of the order of the Hon"ble High Court passed in C.W.J.C. No. 268 of 1997 on 20.10.1997 is as follows:

The respondents, thereafter, shall fix the liability on the petitioner according to the statute and the petitioner shall abide by the direction of the respondents.

Under these circumstances, the petitioner is directed to pay 15 lakhs in two phases, 50 percent of 15 lakhs shall be paid by the petitioner by 30th November, 1997. In case it is so done by the petitioner, the respondents shall reconsider the matter in accordance with law and shall determine the liability of the petitioner afresh.

With this direction/observation, this writ application is disposed of. It goes without saying that in case the petitioner fails to comply with the direction of this

Court, the respondents shall be at liberty to enforce orders already passed by them.

7. In the aforesaid background after considering the above facts the respondent-Corporation in its meeting held on 30.03.2000 vide Item No. 5983 in compliance to the direction issued by the Hon''ble High Court extended the offer to the petitioner to make payment of Rs. 39,81,000/- (minus Rs. 18,97,280/- already paid) under One Time Settlement Scheme within six months from the date of issue of the order with a condition to make payment of interest in the following manner:

(a) From 21.11.95 to 27.03.96- 16% P.A. simple interest

(b) From 28.03.96 for another six months- 1% extra simple interest increasing every month (As provided under the OTS Scheme)

(c) After the end of six months i.e. from 28.09.96- 22% P.A.

8. Finally the Managing Director of the respondent-Corporation vide the impugned order dated 24.04.2000 also held that if the petitioner fails to make the payment of this One Time Settlement Scheme amount within the stipulated period, the offer of the Corporation shall be treated as withdrawn and the amount paid by the concern shall be adjusted against the normal dues of the Corporation and the legal action under the provisions of S.F.C. Act will be initiated.

9. The present writ petition has been preferred challenging the impugned order dated 24.04.2000, passed by the Managing Director of the respondent-Corporation.

10. Based on the aforesaid facts, the main contention raised by the petitioner is that the interest should not have been charged after the date of application. It has further been contended that the respondent authorities have not acted as per the circular and/or the law laid down by the Hon''ble High Court in C.W.J.C. No. 2368 of 1996(R), as affirmed by the Division Bench of this Court in L.P.A. No. 163 of 1997(R), against which SLP No. 16803 of 1997, preferred by the Bihar State Financial Corporation was also dismissed by the Hon''ble Supreme Court. It has also been submitted that there is no stipulation that the calculation under the scheme is less than the value of the mortgaged property. The settlement is to be done on the basis of the value of the property. Counsel for the petitioner has further submitted that the impugned order under challenge dated 24.4.2000 is arbitrary and illegal since neither any finding on the point of initial date of continuous default nor any finding with respect to the calculation of interest till the date of application or the reasons thereto has been given. It has further been submitted that the amount under OTS scheme was calculated at Rs. 35,20,000/- (rupees thirty five lakhs and twenty thousand) but the offer was made on the basis of the value of mortgaged assets amounting to Rs. 39,81,000/- (rupees thirty nine lakhs and eighty one thousand), which is in total disregard to the

circular and the scheme. Counsel for the petitioner has also relied upon a case reported in [1985] 1 All England Law Reports page-40 (Khan, exp, R v. Secretary of State for the Home Department) for the proposition that the statutory authority is duty bound to follow the circular and the criteria and/or procedure, led thereto, in a case where a member of the public affected by a decision of a public authority has a legitimate expectation. It has further relied upon a case reported in Ormi Textiles and Another Vs. State of U.P. and Others, wherein, the Hon"ble Supreme Court held that the Financial Corporation is "state" within the meaning of Article 12 of the Constitution of India and has a duty to act reasonably and fairly.

11. The proposition of law, as referred to and relied upon by the petitioner, is well settled and there is neither any dispute nor doubt about it. However, that by itself does not mean that the petitioner, who continues to make default in repayment and even upon given an opportunity under the OTS scheme fails to take the benefit and further disregards the specific mandate of the order, passed by the Hon"ble High Court to make repayment, cannot allege that the authorities have acted unfairly or unreasonable. The petitioner cannot take the benefit of its own default even though several opportunities were given in compliance with the direction, issued by the Hon"ble High Court.

12. The counsel for the respondents submits that the petitioner is a chronic defaulter and the One Time Settlement was a contractual concession by consent, which cannot be enforced by way of a mandamus under Article 226 of the Constitution of India. The respondents have further contended that the petitioner in any event defaulted and failed to maintain the time schedule as directed by this Hon"ble Court. It has also been contended that the circular of 1993 has already lapsed long back.

13. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , a 3 Judges Bench of the Supreme Court set aside the decision of the 2 Judges Bench of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and held as under:

While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled timeframe, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand on the way of a deserving borrower getting financial assistance.

Again at paragraph No. 13 it was held as under:

13. The fairness required of the Corporations cannot be carried to the extent of

disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or business like it may be, for the decision of the Corporation. As was observed by this Court in U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, in the matter of action by the Corporation in exercise of the powers conferred on it u/s 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of the State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action u/s 29 of the Act unless the aforesaid two situations exist.

14. A Division Bench of this Hon"ble Court in the case of Bokaro Roller Flour Mill v. Bihar State Financial Corporation and Ors. as reported in 2008 (2) J.L.J.R. 481, while dealing with the similar issue with regard to financial deadlock, the One Time Settlement and the default in repayment of principal and interest, at paragraph No. 13 held as under:

13. The appellant-Firm was sanctioned loan of Rs. 30,00,000/- in the year 1986 on the condition that the said amount shall be repaid together with interest within stipulated time. Since the beginning, the firm committed default in payment of said loan amount, as a result of which the loan together with interest reached to Rs. 2,10,73,357=00. After all, the amount of loan sanctioned by the Corporation is public money and no one can be allowed to retain the amount on one pretext or other. It is high time the Corporation should proceed in the matter in accordance with law.

15. In the context of the State Financial Corporation Act, it refers to the accounts of the borrower with the creditor-Corporation. In dealing with the Corporation as a creditor or financier, borrower has a term deal over specified number of years equally fixing the periodical returns out of the sum advanced or lent. The amount, in case of default, multiplies because of accumulation of interest thereon which is prevalent at commercial rate for financiers. In the mercantile

world, the term "settlement", stands for the mutual comprehension of the account position till a particular date. The "account settled" is, thus, the final figure representing the liability of the borrower.

16. The legal incidents of such settlement of account are two fold:

(i) it is conclusive evidence of the outstandings against a borrower till date of settlement;

(ii) it is acknowledgement and admission of the liability on part of the borrower and the creditor thereby gets a fresh lease of limitation.

However, in one-time settlement, the borrower undertakes to pay-up all that stands in account not in instalments but as a whole at one-time as be agreed upon between the borrower and the creditor. The vigour of consent of both parties falls and has relevance only to promised one-time payment. The consent sanctifies the promise, which the borrower must suffer the failures thereof himself.

The advantage of one-time settlement generally is waiver or reduction in amount of interest; and to lender it reaps one-time recovery, whereas to borrower it saves interest. What logically follows is that one-time settlement is not a legal right of the borrower. Consent of the Corporation is essential to this one-time settlement. The court will not issue a mandamus for thrusting upon the Corporation the borrower's unilateral decision of one-time settlement.

17. In an identical issue, a Division Bench of Hon''ble Allahabad High Court in the case of M.M. Acessories v. U.P. Financial Corporation as reported in 2002 (46) A L.R. 261, held as under:

There is no right vested with anyone to get a direction from the Court for one time settlement. It is only the Corporation or the financial institution which granted the loan which can grant one time settlement, if it so chooses, but the Court cannot compel it to do so.

18. It is well settled that Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for "any other purpose". However, by judicial interpretation the words "any other purpose" has been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . In the present case, the writ petitioner has really prayed for a mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In my opinion, no such mandamus can be issued in this case. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

19. Again in *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, (vide para-15) the Hon''ble Supreme Court observed:

There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance [See *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, . In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same.

20. A Division Bench of Hon"ble Madras High Court in an identical case "*Tamil Nadu Industrial Investment Corporation Ltd. v. Millennium Business Solutions Pvt. Limited and Anr.*" as reported in (2005) II BC 79), presided over by Hon"ble Mr. Justice Markandey Katju (C.J.), as he then was, while relying upon the aforesaid judgments held that the writ of mandamus under Article 226 of the Constitution of India in absence of any violation of law is not maintainable, since a loan is granted in terms of a contract and grant of one time settlement can only be done by mutual consent of the parties.

21. Thus, unless there is an accrued, vested, legal or statutory right and a violation thereto, a writ of mandamus under Article 226 of the Constitution of India is not maintainable. The same is confined to enforcement of a legal and/or a statutory right and/or a public duty and not otherwise.

22. On consideration of the rival contentions it appears that the dispute is purely contractual and is dependant upon mutual consent of borrower and lender. Apart from it, the same involves disputed question of facts and calculation of principal and interest component from the date of default for repayment of loan.

23. In the aforesaid background and in view of the aforesaid settled law the present writ petition to enforce a purely contractual matter with a prayer to issue a writ of mandamus under Article 226 of the Constitution of India is not at all maintainable. The loan is granted in terms of the contract and grant of relief under OTS Scheme or rescheduling the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties vide Section 62 of the Contract Act, 1872. This Court cannot alter the terms of contract.

24. Accordingly, this writ petition under Article 226 of the Constitution of India is not maintainable and is, accordingly, dismissed but without any order as to costs. However, this judgment and order will not bar the petitioner from invoking any other appropriate remedy available in accordance with law.