

(2015) 10 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20826 of 2010

Ram Udit Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 PLJR 418

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Chakrapani, for the Appellant; Ajay, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J—Heard learned counsel for the parties as with regard to the following relief, prayed in this writ application:--

"for quashing an ex-parte order and arbitrary decision, contained and conveyed in Memo No. 77/7-II-1011 dated 13.5.2010, (A/1) taken under Section 29 of the Bihar State Financial Act by the Board of Directors Bihar State Financial Corporation against these petitioners for making auction sale of the hypothecated property belonging to Durga Oil Mills, Harnaut with regard to repayment of term loan amounting to Rs. 3.45 Lakhs alongwith interest thereon, by accepting offer from the private Respondents 7, 8 and 9 with regard to proposed auction sale and this decision of the Corporation is violative of the principle of natural justice as the writ petitioners were not noticed nor heard prior to taking such harsh and arbitrary decisions, as such this writ petition has been filed. An direction is sought for to consider once again the submission made by these petitioners in letter dated 7.6.2010."

2. Learned counsel for the petitioner in support of the aforementioned prayer has submitted that the impugned action of the Bihar State Financial Corporation

(hereinafter referred to as the Corporation), in putting the mortgage assets of Durga Oil Mills, Harnaut, on sale and the acceptance of the offer from respondent Nos. 7, 8 and 9 for completing the auction sale in their favour is bad both on fact and in law. Mr. Chakrapani, learned counsel for the petitioners, in this regard has submitted that the petitioners were sanctioned a loan of Rs. 3.45 lacs by the Corporation in form of term loan on 07.06.1981, under which the amount was repayable by the petitioner to the Corporation in a period of seven and a half years commencing from 01.16.1986 to 01.12.1993, along with interest @ 16.50 per cent per annum but the petitioners having faced serious financial crunch, particularly on account of its not being given the loan, for working capital by the Central Bank of India, had kept the authorities of the Corporation informed of their inability to pay loan of the Corporation by its different communication and yet the Corporation in an arbitrary and illegal manner took recourse to the provisions of Section 29 of the State Financial Corporation Act (hereinafter referred to as the Act) and had put the property on auction sale by finalizing it in favour of respondent Nos. 7, 8 and 9 for consideration amount of Rs. 16.65 lacs. According to him, such action of the Corporation was contrary to the spirit of not only Section 29 of the Act but also teeth of the law laid down by the Apex Court in the case of Kerala Financial Corporation Vs. Vincent Paul and Another, AIR 2011 SC 1388 : (2011) 2 BC 242 : (2011) 163 CompCas 50 : (2011) 2 CompLJ 531 : (2011) 6 CTC 554 : (2011) 3 JT 421 : (2012) 1 RCR(Civil) 254 : (2011) 3 SCALE 520 : (2011) 4 SCC 171 : (2012) 114 SCL 91 : (2011) 3 SCR 862 : (2011) AIRSCW 4939 : (2011) AIRSCW 2032 .

3. In this case, the Corporation has filed its counter affidavit, wherein, it has been explained that the auction sale was made after a period of 17 years from the date, the petitioners had become defaulter and declared N.P.A. and even at that stage the petitioners were given option of retaining the unit by making payment of the amount of auction sale but the petitioner instead of depositing the amount and availing the offer of retaining the unit by making payment of the auction amount had come out with some wholly frivolous and lame excuse. The Corporation in the counter affidavit also in this regard has controverted the allegation of the auction being in violation of the principles of natural justice by placing reliance on notice dated 04.12.2009, sent to the petitioner under Section 29 and 30 of the Act, wherein, the Corporation having explained the balance outstanding against the petitioner as on the date of notice i.e., 04.12.2009, to the tune of Rs. 64, 29, 851.95, had directed the petitioners to clear the aforesaid amount within a period of 21 days, failing which, the Corporation would be at liberty to advertise for sale of the mortgage assets and to sale the same either by way of auction or by way of negotiations.

4. Learned counsel for the Corporation, in this regard has also relied on an advertisement which was issued in the Times of India for getting the mortgage assets of the petitioner on sale and it has been explained that pursuant thereto, when an offer of respondent Nos. 7, 8 and 9 was received to the tune of Rs. 16.65 lacs and the sale was finalized in their favour by sale order dated

13.05.2010, wherein, the petitioner was given the option to retain the unit by making payment of the aforementioned amount of Rs. 16.65 lacs on matching terms and conditions within a period of 21 days but the petitioner had refused to make such payment. Thus according to learned counsel for the Corporation there was no anomaly in decision of the sale of mortgaged assets of the petitioner.

5. Let it be noted that this writ application was filed on 22.12.2010, and when the matter was ultimately heard after exchange of affidavits on 17.05.2013, a specific plea was taken on behalf of the petitioners that they were ready to clear all the dues of the Corporation and according to them in fact it was on account of the Corporation not furnishing them detailed account that they were not in a position to clear such dues. These aspects were also clearly recorded in the interim order dated 17.05.2013, which reads as follows:--

"Learned counsel for the petitioner No. 1 on instructions submits that he is willing to clear all the dues of the respondent Bihar State Financial Corporation, which was asked for details of the accounts which was not supplied to the petitioners and in the meantime the Corporation went ahead to sell all the assets. It is further submitted that although the assets were sold in the year 2010 by sale order dated 13.5.2010 but the payment has been made in the year 2013 and thus the sale itself is bad and the petitioner may be permitted to retain the assets on payment of the same amount as has been mentioned in the sale order. It is further submitted that the petitioner is prepared to compensate the Corporation and the purchasers for the interest that may have accrued for the same during the intervening period.

In token of his bona fides learned counsel for the petitioner has brought in Court a cheque for Rs. 3.5 lacs in favour of the respondent Corporation at Bihar Sharif.

Learned counsel for the BSFC opposes the stand of learned counsel for the petitioner saying that whatever has been done in the matter has been done in accordance with law and the delay has occurred on account of the reconstitution of the purchaser firm and the payment has been made only after the permission of BSFC for such reconstitution.

Issue notice to respondent Nos. 7 to 9. Requisites both under ordinary process and registered cover with A/D must be filed within one week, failing which the application shall stand rejected without further reference to a Bench.

Put up on 28th June, 2013 in "Admission-1" list.

The cheque is directed to be handed over to learned counsel for the BSFC which shall deposit the said amount in the account of the petitioner without prejudice to the rights of the BSFC or the private respondents in the present matter.

In the meantime, status quo as of today shall be maintained with respect to the assets in question. "

6. In pursuance of the aforesaid order the respondent Nos. 7 and 8 had appeared

and on 29.08.2013 had also filed their exhaustive counter affidavit but in the meantime, the petitioners having been apprised of total outstanding of Rs. 1,05,10,497.50 as on 15.12.2013, have developed cold feet in view of their earlier commitment before this Court for paying the entire dues of the Corporation as recorded in the order dated 17.05.2013. They had then started assailing the sale in favour of respondent No. 7 to 9 by placing reliance on the judgment of Kerala Financial Corporation (*supra*). The main emphasis of the petitioners as against the sale of respondent Nos. 7, 8 and 9, was that it had not complied the terms and conditions of the sale order and as such the order of sale in their favour would not be deemed to have been made in a legal and proper manner.

7. The respondent Nos. 7, 8 and 9, however, in their counter affidavit taken this issue head on by not only justifying taking of action of the Corporation under Section 29 of the Act against the petitioners but also explaining that it had complied the terms and conditions of the sale order initially by depositing sum of Rs. 70,000/- on 23.02.2010, at the time of participating in the auction and had also made down payment of the amount of Rs. 4,99,500/- on 11.06.2010. The respondent Nos. 7, 8 and 9 have also taken specific stand of making payment of Rs. 4,51,400/- on 03.09.2012, Rs. 2,50,000 on 13.03.2012 and Rs. 1,05,014/- on 28.01.2013.

8. In this way, it has also been explained by respondent Nos. 7 and 8 that they have made payment of Rs. 12,59,914/- and only because of the order of the status quo passed by this Court on 17.05.2013, as a result whereof the agreement could not be executed in their favour that the balance amount was not paid by them but then they were fully ready to pay even the balance amount.

9. As with regard to the valuation, the respondent Corporation has also filed supplementary counter affidavit, wherein, it has been explained that after the mortgage assets of the petitioner were put on auction sale, an offer was received from one Pankaj Kr Sinha but that being single offer was not finalized and the valuation of the mortgaged asset was done again on 11.09.2009, by the Central Valuation Team, which has fixed the valuation of mortgaged assets at Rs. 6.17 lacs on the basis of DRS rate and post mortgage rate prevailing in the area. On the basis of such valuation further negotiations was held on 08.12.2009 and the highest price offered was Rs. 7 Lacs only. It is the case of the Corporation in the supplementary counter affidavit that after fresh valuation, notice under Section 29 of the Act was sent to the petitioner but no response was received from them. Thereafter the Corporation again had taken steps for advertising the mortgage assets for sale mentioning the offer in hand of Rs. 7 Lacs in order to get price and in terms of this advertisement was published on 29.01.2010 and when three offers were received, bidding was held in the Corporation on 13.04.2010, and the offer of respondent No. 7 of Rs. 13 lacs was found to be highest but in course of negotiations on 13.04.2010, one Pankaj Kumar Sinha had offered sum of Rs. 14 Lacs whereafter the respondent Nos. 7, 8 and 9, enhanced their offer to Rs.

16.65 Lacs. In this way, the respondent-Corporation has also justified the process of sale for getting the best price which according to them is again in keeping with the guidelines issued by the Apex Court in the case of Kerala Financial Corporation (supra).

10. It was in this background, that this Court had asked the petitioner as to whether it was ready to pay the total dues of the Corporation as also refund, the amount paid by respondent Nos. 7, 8 and 9 with interest for retaining its unit and to that effect an order was passed on 21.07.2014, wherein, it was recorded as follows:--

"After the matter has been heard, for some time the parties have sought adjournment to file their respective affidavits.

Learned counsel for the Bihar State Financial Corporation (hereinafter referred to as "the Corporation") prays that he should be given a week's time to put on record the balance outstanding against the petitioners, which is payable by him in terms of the loan agreement. He may also additionally inform this Court on affidavit as to how much amount respondent Nos. 7, 8 and 9 have paid by way of purchase money in response to the auction held by the Corporation and on what day.

Upon receipt of the affidavit of the Corporation, the petitioner No. 1 in the light of unequivocal submission of his counsel must file his affidavit stating that he is ready to pay the entire balance outstanding of the Corporation as also the amount paid by the auction purchaser with interest @ 18% per annum from the date of such payment made by the auction purchaser.

Put up this case on 4th August 2014 under the same heading as 1st case."

11. Pursuant to the aforementioned order, a supplementary counter affidavit had been filed on 04.08.2014, wherein, it was stated that the balance outstanding of the petitioner as on date was Rs. 1,13,64,884.95/- and that the total amount paid by the respondent Nos. 7, 8 and 9 was Rs. 12,15,914/-, as against the sale amount of Rs. 16,65,999/-.

12. Let it be kept in mind that the petitioners, had remained still evasive and their last supplementary affidavit dated 08.09.2014, it was mentioned that the petitioners were ready to make payment in two installments but without specifying the amount of such installment and also putting a conditional offer that even the first installment could be paid by the petitioners only after this Court would grant leave to the petitioners for disposing of the building materials and scrap materials being the part of mortgaged assets. Yet again in such supplementary affidavit, the petitioners had undertaken to make payment of second installment within three months from the date, this Court would grant leave to the petitioners to sale the mortgaged land as would be more apparent from the averments made in the supplementary affidavit filed by the petitioners on 08.09.2014, which reads as follows:--

"That the deponent is petitioner No. 1 in the instant case and as such well acquainted with facts and circumstances of the case and duly authorized to swear this affidavit on behalf of the petitioners.

That the present affidavit being filed in compliance of order dated 21.07.14 by this Hon''ble Court in the connected writ petition.

That in order dated 21.07.14 in the connected writ petition the petitioners have been asked to give the details of the payment schedule due to the Corporation of the petitioner's firm.

That the deponent undertakes to make payment in two installments.

The petitioners firstly undertake to make payment of the amount for retaining the mortgaged property of the petitioner's firm.

That it is submitted that the deponent undertakes to pay remaining due of the Corporation in the 2nd installment.

That the deponent seeks leave of this Hon''ble Court to dispose the building materials, junk/scraps materials of the deponent's firm. The deponent undertakes to clear the first installment within one month from the date he granted permission to dispose of above referred items.

That the deponent seeks leave of this Hon''ble Court to negotiate for Sale of the mortgaged land to the Corporation for making payments of the 2nd installment. The deponent undertake to payment of the 2nd installment, within 3 months from the date of the mortgaged land is allowed to be negotiated for Sale.

That the contents of this affidavit are read over and explained me in Hindi and fully understood the same. "

13. After filing of the aforementioned supplementary affidavit, when it became clear that the petitioners were never ready to pay the entire dues of the Corporation as fully explained in third supplementary counter affidavit of the Corporation, the matter was heard on merit.

14. The sole issue would be as to whether the action of the Corporation in putting the mortgaged assets of the petitioner on sale was bad and as to whether sale in favour of respondent Nos. 7 and 8 is vitiated?

15. As would be evidenced from the facts already recorded above, the petitioners were given loan way back in the year 1986, and they had to repay the amount of loan along with interest by June-1993. That however, was not done and therefore, the action taken by the Corporation for putting the mortgaged assets of the petitioner on sale after giving notice under Section 29 to the petitioners cannot be faulted either on fact or in law. In coming to this conclusion, this Court would draw support from the law laid down by the Apex Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, AIR 2002 SC 834 : (2002) 1 BC 568 : (2002) 110 CompCas 20 : (2002) 3

CompLJ 8 : (2002) 1 JT 482 : (2002) 1 SCALE 481 : (2002) 3 SCC 496 : (2002) 1 SCR 621 : (2002) AIRSCW 500 : (2002) 1 Supreme 404 , wherein, dealing the scope of Section 29 of the Act it was held as follows:--

"The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public oriented. It can operate effectively if there is regular realization of the instalments. 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 unsurmountable difficulties. Regular payment is the rule and nonpayment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time frame, 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. "

16. As with regard to the aspect of sale in favour of respondent Nos. 7, 8 and 9, this Court would find that the steps taken by the Corporation by putting the mortgage assets of the petitioners on sale by advertising the unit for sale at least on two occasions one in the year 2001 and again in the year 2009 in course of which, it could get the offer of Rs. 7 Lacs enhanced to Rs. 16.65 lacs, will be itself reflective of the bona fide attempt made by the officials of the Corporation. The facts, in detail, as with regard to steps by the Corporation for taking auction sale, have already been noted above and from them it is well established that in course of doing so, the Corporation had got the valuation of the property made as per the prescribed guidelines. In this regard, it would be also useful to quote paragraph No. 5 and 10 of the Supplementary counter affidavit, which reads as follows:--

"That the valuation of the mortgaged asset was done on 09.11.2009 by the Central Valuation Team at Rs. 6.17 Lacs. The basis of valuation for land was DRS Rate and best market rate prevailing in the area. The valuation for building, P&M (Plant & Machineries)s and tools assessed on the latest guideline of Institute of Engineers on CII (Confederation of Indian Industries) method. The valuation by approved Valuer was not needed in the instant case as the value of POS (Principal Outstanding) remains at Rs. 3.44 Lacs i.e. below Rs. 10 Lacs as par the guidelines for the same.

That in auction sale process valuation of the assets was done by Branch Level Valuation Team (BLVT) comprising of one Technical Background Managers. The price of land was mainly decided at the present market rate in the locality while having knowledge of DRS rates. The value assessed by Branch Level Team was re-examined and re-assessed by the Central Valuation Team (CVT) at Head Office which recommended the final valuation arrived at for the approval of Managing Director. In the instant case BLVT accessed the value at Rs. 5.15 Lacs which

finally revised by CVT at Rs. 6.17 Lacs. "

17. Such action of the Corporation of getting the proper valuation and also making the competitive bidding through two newspaper advertisements resulting in sale order for sum of Rs. 16.65 lacs would again be in consonance with law laid down in the case of Jagdamba Oil Mills (supra), wherein, it was held as follows:--

"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 businesslike it may, 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, (1996) 1 BC 1 : (1995) 82 CompCas 671 : (1995) 1 CTC 362 : (1994) 7 JT 551 : (1994) 4 SCALE 1076 : (1995) 2 SCC 754 : (1994) 5 SCR 654 Supp , 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, (1996) 5 AD 206 : (1996) 2 BC 346 : (1997) 88 CompCas 221 : (1996) 6 JT 37 : (1996) 4 SCALE 675 : (1996) 5 SCC 65 : (1996) 3 SCR 40 Supp , in the matter of action by the Corporation in exercise of the powers conferred on it under Section 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 the 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 under Section 29 of the Act unless the aforesaid two situations exist."

18. As a matter of fact, in sale of the mortgage property of the petitioners the guidelines given by the Apex Court in the case of Kerala Financial Corporation (supra) was also followed in letter and spirit, inasmuch as, the Apex Court in that case had given following directions for sale of properties by the Financial Corporation:--

"(i) The decision/intention to bring the property for sale shall be published by way of advertisement in two leading newspapers, one in vernacular language having sufficient circulation in that locality.

(ii) Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

(b) by inviting tenders from the public; or

(c) by holding public auction; or

(d) by private treaty.

Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

(iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.

(vii) Reserve price means the price with which the public auction starts and the auction- bidders are not permitted to give bids below the said price, i.e., the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffer substantial injury by the sale."

19. Learned counsel for the petitioner in fact has failed to point out any fatal infirmity in such sale even as per the aforementioned guidelines of the Apex Court in the case of Kerala Financial Corporation (supra), which again has been reiterated by the Apex court in the case of Micro Hotel P. Ltd. Vs. Hotel Torrento

Limited and Others, AIR 2012 SC 3291 : (2012) 8 JT 608 : (2013) 3 RCR(Civil) 733 : (2012) 8 SCALE 486 : (2012) 10 SCC 290 : (2012) 115 SCL 678 : (2012) AIRSCW 4856 wherein it was held as follows:--

"28. We are of the view that the principles laid down by this Court in the above judgments apply to the case on hand, if the facts are properly appreciated. The Division Bench, in the impugned judgment, took the view that the Corporations had not followed the guidelines laid down by this Court in Kerala Financial Corporation Vs. Vincent Paul and Another, AIR 2011 SC 1388 : (2011) 2 BC 242 : (2011) 163 CompCas 50 : (2011) 2 CompLJ 531 : (2011) 6 CTC 554 : (2011) 3 JT 421 : (2012) 1 RCR(Civil) 254 : (2011) 3 SCALE 520 : (2011) 4 SCC 171 : (2012) 114 SCL 91 : (2011) 3 SCR 862 : (2011) AIRSCW 4939 : (2011) AIRSCW 2032 . In our view, this is factually incorrect. This Court, in the above judgment, indicated that the authority concerned should serve to the borrower a notice of 30 days for sale of immovable assets. In this case, Corporation had issued the recall notice dated 08.07.2010 with a request to pay the entire outstanding dues within 30 days otherwise, failing which, it was stated that action under section 29 of SFC Act would be initiated against the 1st respondent. Seizure order was issued by the Corporation and the entire assets of the unit were taken over under Section 29 of the Act on 15.09.2010 which was after the expiry of 30 days from the date of notice dated 08.07.2010. Therefore the guidelines laid down in the above referred judgment have also been complied with. Even otherwise, the guidelines issued by this Court in Vincent Paul case would operate only prospectively and that too depends upon the facts and circumstances of each case. "

20. As noted above, the Apex Court in the case of Micro Hotel (P) Ltd. (supra), had itself clarified that the direction given in the case of Kerala Financial Corporation (supra) was to operate prospectively. The judgment in the case of Kerala Financial Corporation (supra) was rendered on 14.3.2011 whereas the sale in favour of the private respondent Nos. 7 to 9 had been finalized on 13.5.2010 and, as such, the pedantic observance of the directions in the case of Kerala Financial Corporation (supra) cannot be made strictly applicable in the present case specially when explaining the aforesaid judgment, the Apex Court in the case of Micro Hotel (P) Ltd. (supra) had also made it clear that compliance of the guideline given in the case of Kerala Financial Corporation (supra) will also depend upon the facts and circumstances of each of the case. The very fact that the order of status quo was passed by this Court in this case, as a result whereof the respondent Nos. 7 to 9 could not get the possession despite depositing 25% of amount as per the condition of the sale order by itself will be one of such distinguishing feature and, thus, the sale of mortgaged asset of the petitioners in favour of the respondent Nos. 7 to 9 cannot be interfered by this Court only on the basis of the alleged non compliance of the directions given in the case of Kerala Financial Corporation (supra).

21. As with regard to bona fide of the petitioners and their offer, this Court must

take into account the specific undertaking given by the learned counsel for the petitioner on 17.05.2013, which has been recorded in the order dated 17.05.2013, already quoted above, wherein, it was conveyed to the Court that petitioner No. 1 was willing to clear all the dues of respondent-Corporation. The dues of the Corporation on that date was sum of Rs. 1 Crore and that amount was never paid despite the communication of balance outstanding (BOS), the petitioners in fact had developed cold feet and come out with very vague offer in its last supplementary affidavit, also quoted above, which would only go to show that the petitioners never wanted to pay the loan of the Corporation. Thus, no indulgence could be given to the petitioners as was also explained in the case of Jagdamba Oil Mills (supra) in the following terms:--

"The view in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, AIR 1993 SC 935 : AIR 1992 SC 935 : (1993) 78 CompCas 1 : (1992) 2 CompLJ 89 : (1992) 2 JT 326 : (1992) 1 SCALE 388 : (1993) 2 SCC 279 : (1992) 1 SCR 616 appears to have been too widely expressed without taking note of ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in Gem Cap's case (supra) appears to be more in line with the legislative intent. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight by the courts below. It is one thing to assist the borrower who has intention to repay, but is prevented by unsurmountable difficulties in meeting the commitments. That has to be established by adducing material. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in Mahesh Chandra's cases (supra), the matter has been decided. "

22. As with regard to short payment made by respondent Nos. 7 and 8, judicial notice must be taken of the fact that the interim order of status quo was passed by this Court on 17.05.2013 and therefore, respondent Nos. 7 and 8, who had already paid sum of Rs. 12,15,914/-, against the amount of Rs. 16,65,999/- cannot be said to have defaulted. Had this interim order of status quo not been passed and respondent Nos. 7 to 9 had not paid the amount, something could have been said against them but on account of status quo order, if respondent

No. 7 to 9 had not made any further payment and were/are before this Court with commitment to pay balance amount to the Corporation, their sale order cannot be set aside.

23. This Court, in exercise of its power of financial review under Article 226 of the Constitution of India in the matter relating to auction and sale of the mortgaged property by the Bihar State Financial Corporation cannot act as an appellate authority and its approach has to be only on the limitations of jurisdiction under Article 226 of the Constitution of India as laid down by the Apex Court in the case of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, (2005) 2 BC 443 : (2005) 124 CompCas 797 : (2005) 4 CompLJ 513 : (2005) 3 JT 570 : (2005) 4 SCC 456 : (2005) 60 SCL 387 : (2005) 2 SCR 1183 , wherein, it was held as follows:--

"From the aforesaid, the legal principles that emerge are:

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The doctrine of fairness does not convert the Writ Courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ Court has not say except in two situations:

(a) there is a statutory violation on the part of the Corporation;

(b) where the corporation acts unfairly i.e., unreasonably.

(iii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned

(iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken 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 financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated

or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

20. True, the exercise of the right by a financial corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether the action of the financial corporation is bone fide or not would depend on the facts and circumstances of each case.

22.-----in this regard, the object enacting Section 29 of the Act has to be kept in mind. As was observed in Gem Cap and Jagdamba Oil Mills, the legislative intent in enacting the statute was to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the Corporation is not like an ordinary money lender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of a creditor and debtor. That basic feature cannot be lost sight of. A corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. It has to recover the amounts due so that fresh loans can be given. In that way industrialisation, which is the intended object, can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As observed in Gem Cap promoting industrialisation does not serve public interest if it is at the cost of public fund. It may amount to transferring public money to private account. Further, Financial Corporation cannot wait indefinitely to recover its dues. "

24. Thus on an over all analysis, when this Court would find that while the dues of the petitioner had mounted to Rs. 1.13 Crores in the period of last 28 years and no repayment was made by the petitioners, the effort of Corporation to secure price of Rs. 16.65 lacs by way of sale against the assets value to the tune of Rs. 6.17 lacs cannot be held to be bad either on fact or in law.

25. This Court, therefore, would refuse to interfere with the impugned sale order in favour of respondent Nos. 7, 8 and 9.

26. That being so, it has to be necessarily held that there is no merit in the

application. It is accordingly, dismissed and consequently the interim order of status quo is hereby vacated.

27. This Court would also direct respondent Nos. 7, 8 and 9 to pay the balance amount to the Corporation as undertaken by them in their counter affidavit filed before this Court within three months from today whereafter the Corporation will do the needful by way of completing the sale in favour of respondent Nos. 7, 8 and 9.

28. Let a copy of this judgment be handed over to Mr. Raju Giri, learned Counsel for the Corporation.