(2018) 12 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 31086 Of 2018

Sarwan Kumar Goel APPELLANT

Vs

Haryana Financial Corporation And Others RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Financial Corporation established under State Financial Corporation Act, 1951 — Section 29

Citation : (2018) 12 P&H CK 0146

Hon'ble Judges : Ajay Kumar Mittal, J;Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Soomya Chakarbartoy, Jairaj Singh

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.

1. The petitioner in the present petition filed under Article 226 of the Constitution of India prays for quashing the auction order dated 14.12.2004, Annexure P.1 and declaring consequential sale deed dated 02.03.2007, Annexure P.2 executed by respondent No.1-Haryana Financial Corporation in favour of respondent No.6-M/s Nikita Buildcon Private Limited as null and void.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Respondent No.1 is a Financial Corporation established under State Financial Corporation Act, 1951, (in short, "the Act"). Respondent No.2-M/s ANS Software Private Limited is an industrial concern, who availed the loan facility from respondent No.1. Respondent Nos. 3 to 5 are the facilitators and through them, the sale of the collateral security took place. Respondent No.6 is the buyer of the property in question. It purchased the same from respondent No.1-Corporation. Respondent No.7 is allegedly in the actual physical possession of the property in question. The petitioner purchased a piece of land on 17.02.1987 measuring 2 Bighas, out of Khasra No. 84/8 situated at

Village Ghewra, Delhi vide registered sale deed dated 17.02.1987. The petitioner got mutated the above piece of land in his name in the revenue records. An application dated 07.03.1995 was made by respondent No.2 for grant of loan for setting up an industrial unit at District Gurugram. Respondent No.1-Corporation sanctioned a term loan of Rs. 90.00 lacs. For securing repayment of aforesaid loan, respondent No.2 mortgaged its plants and machineries to respondent No.1. On 13.07.1995, Collateral Security Agreement was also executed by the petitioner wherein the property being a piece of land measuring 2 Bighas as mentioned above was mortgaged as a Collateral Security. The above said land was mortgaged as Collateral Security in favour of respondent No.1 by way of deposit of original title deeds of the land. It was also confirmed that the petitioner had handed over the original title deed to respondent No.2 for onward submission to respondent No.1. The petitioner executed the above said mortgaged deed as financial assistance to respondent No.2. The petitioner intimated respondent No.1 about his change of address on 12.01.2000 as he had shifted from 1061/70, Deva Ram Park, Tri Nagar, Delhi to I-111, Ashok Vihar, Phase-1, Delhi. Respondent No.2-Industrial concern allegedly failed to repay the loan. Respondent No.1-Corporation on 14.12.2004 invoked Section 29 of the Act. In exercise of its power under Section 29 of the Act, Respondent No.1 took over the deemed possession of the property of the guarantor/petitioner and confirmed the auction of the aforesaid property in favour of respondent Nos. 3 & 4 on the basis of their bid dated 21.09.2004 for a sale price of Rs. 17 lacs only, without any prior notice to the petitioner. In terms of the auction order, respondent Nos. 3 & 4 were supposed to deposit 15 per cent of total amount within 30 days from the date of confirmation i.e. 14.12.2004. Respondent No.1 executed an agreement to sell dated 18.03.2005 in respect of the above said land in favour of respondent No.5-Swami Traders, Partnership Firm for a sale consideration of Rs. 17 lacs. In terms of the said agreement, respondent No.5 was supposed to pay the balance amount in 12 quarterly installments starting from 01.05.2005 up to 01.02.2008. Further, respondent No.1 executed a sale deed in favour of M/s Nikita Buildon Private Limited respondent No.6 in respect of above said property vide registered sale dated 02.03.2007. Respondent No.6 sent a notice dated 18.12.2009 to the petitioner apprising him that they had purchased the property from respondent No.5 and further sought clarification about the status of respondent No.7, who is allegedly in actual physical possession of the property, claiming to be tenant of the petitioner. The petitioner sent a reply dated 02.03.2010 to the above said notice of respondent No.6. In the month of February 2010, the petitioner first time came to know about the illegal sale of his property by respondent No.1. The petitioner filed a civil suit before District Courts Delhi on 30.11.2012 seeking a relief of decree of declaration to the effect that sale deed dated 02.03.2007 be declared null and void and further a decree of permanent injunction in his favour. Respondent No.1 filed its written statement on 22.04.2013 contending that it had invoked Section 29 of the Act as respondent No.2 had failed to repay the loan. It was further stated that the Corporation had auctioned the property on 22.12.2004 and executed a sale deed in favour of respondent No.6. On 23.08.2013, respondent No.6 filed its written statement contending that it had purchased the property from M/s Swami Traders Partnership Firm-respondent No.5 and obtained actual physical possession from them on 10.10.2005 and got executed a registered sale deed in its favour from respondent No.1. The petitioner filed his replication to the written statements. According to the petitioner, he, on the advice of his counsel withdrew the aforesaid Civil Suit with liberty to file it at the appropriate forum. Vide order dated 22.10.2018, the District Court, Delhi granted permission to the petitioner to withdraw the suit with liberty to file it before the appropriate Court. The petitioner asserts that respondent No.1 in collusion with respondent Nos. 3 to 6 had wrongly invoked Section 29 of the Act and further auctioned the mortgaged property. Further, respondent No.1 had taken the deemed possession of the mortgaged property of the petitioner and auctioned the same in violation of the law laid down by the Apex Court. Hence the instant petition by the petitioner with the prayer as mentioned above.

3. We have heard learned counsel for the petitioner.

4. Admittedly, in the present case, the auction was confirmed in the year 2004. The petitioner instead of challenging the said action in writ petition had filed civil suit in the year 2012 before District Court, Delhi which was withdrawn vide order dated 22.10.2018 with liberty to file it afresh. The present petition has been filed in December, 2018. Thus, the original impugned order i.e. 14.12.2004 is being challenged in this Court for the first time after a long period of about 14 years for which no valid justifiable explanation has been furnished by the petitioner.

5. In Shankara Cooperative Housing Society Limited v. M. Prabhakar and others, (2011) 5 SCC 607, the Apex Court considered the question whether the High Court should entertain petition filed under Article 226 of the Constitution after long delay and laid down the following principles:

"(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

6. In the present case, the auction had been confirmed vide order dated 14.12.2004, which is now sought to be challenged in this Court in the year 2018 and no valid justifiable explanation has been given by the petitioner for the delay, the petition is liable to be dismissed on the ground of delay and latches.

7. Further, a perusal of the factual matrix narrated in the writ petition shows that disputed questions of fact are required to be established by leading evidence. Accordingly, the writ petition would not be maintainable. It appears, for this reason claiming similar relief, the petitioner had filed Civil Suit in District Courts, Delhi, which was dismissed as withdrawn with liberty to file the same afresh. The order Annexure P.13 reads thus:-

"Sharwan Kumar Vs. Haryana Financial Corp. & Ors. CS No. 576259/16 22.10.2018 Present: Plaintiff in person with Shri Mukesh Kumar Drall,

Advocates for plaintiff.

Shri Ramesh Saini, Advocate for Sh. Naresh Gupta and Sh. V.K. Jain, partners of D-4.

It is submitted by the counsel for the plaintiff that plaintiff wants to withdraw the present suit with liberty to file the same afresh. Statement of plaintiff recorded on a separate sheet.

Submissions heard. Record perused.

In view of the statement of plaintiff recorded today, the suit is disposed of as withdrawn. The plaintiff is at liberty to avail the remedy available to him as per law. File be consigned to record room.

SD/-

(SUNIL CHAUDHARY)

ADJ-03(N/W) ROHINI COURTS,

DELHI: 22.10.2018."

8. In all fairness to learned counsel for the petitioner, reference is made to the judgments relied upon by him in Shiv Charan Singh Vs. Haryana State Industrial & Infrastructure Development Corporation Limited and another, AIR 2012 Punjab and Haryana 50 and Karnataka State Financial Corporation Vs. N. Narasimahaiah and others, (2008) 5 Supreme Court Cases 176. Suffice it to notice that the proposition of law enunciated therein is unexceptionable but the factual matrix as noticed hereinbefore, no advantage can be derived by the petitioner therefrom.

9. In view of the above, the present writ petition is not maintainable and is also hit by delay and latches. Accordingly, the writ petition is dismissed.

