(1992) 04 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No. 10 of 1992

Shabiha Khatoon and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (1992) 1 PLJR 719

Hon'ble Judges : S. Ali Ahmad, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Tarakant Jha, S.A. Khan and Syed Khurshid Alam, for the Appellant; R.B. Mahto and Arshad Alam for Corporation and Basudeo Prasad, Krishna Prasad Singh, Arvind Ujjwal and Bhanu Pratap Singh, for the Respondent

Judgement

1. The Petitioners entered into an agreement with the Bihar State Financial Corporation on 14th June, 1985 for a loan of Rs. 7,00000/- which was to be paid in phases. In all, the Petitioners, admittedly, have so far been paid Rs. 6.16 lacs. According to the agreement the entire amount advanced to the Petitioners by the Corporation had to be repaid along with interest by 30th September, 1994. There was also a stipulation in the agreement that in case of any default in payment of any instalment the Corporation will be free to put the mortgaged property to sale and realise the entire dues deluding the instalments which had to be repaid along with the interest by 30th September, 1994. Admittedly the Petitioners paid about Rs. 2.19 lacs towards repayment of loans but there was default in making payment of some instalments

2. A notice was published u/s 29 of the Act on 22-12-1991 mentioning the names of the concerns which bad to be put on auction for non-payment of Joan. The Petitioners'' hotel also figured in that list. That is challenged in this writ application. The matter came for admission on 3-1-1992 and the Bench hearing the matter directed the case to be put up again on 10-1-1992 to enable learned Counsel for the Corporation to obtain instruction. It also said that till that date

the sale as directed by annexure-1 in relation to the Petitioner, shall remain stayed on the Petitioner''s making payment of a sum of rupees one lac to the Corporation by 9-1-1992. The Petitioners said that the price of the hotel is not less than Rs. 40,00000/- in any manner and that they are prepared to pay the loan. In spite of the aforesaid restrain order passed on 3-1-1992 tenders were opened on 6-1-1992 and the same was accepted on that date. We do not fully appreciate this act when there was an order of restrain. The Corporation should have stayed its hands and should not have proceeded in any manner in the processes of completing the sale. However, it has been stated by the Petitioner in the supplementary affidavit that on 8th January, 1992 the Petitioners went with rupees one lac in cash to deposit the tame with the Corporation but the same was not accepted. This fact has been denied by the Corporation and to give strength to its case it has also been said that the story of the Petitioners that they went with a cash of Rs. one lac to deposit the same is not correct. It is said that they knew it fully that the, corporation does not accept the money in cash. The assertion that the Corporation does not accept money in cash is falsified by annexure 4 in the reply filed by the Petitioner. Annexure 4 shows that in past the Corporation had accepted money in cash. Further we do not understand as to why money in cash should not be accepted by the Corporation. The currency is the velid tender and any Of refusing to accept the same is not justified We may also mention that to give credibility to the stand taken by the Corporation, learned Counsel for the Corporation has said that the High Court had directed the Petitioners to deposit rupees one lac by way of draft. We do not find any such order. Such false assertion on the part of the Corporation leads us to believe the story of the Petitioners that in fact they had gone to deposit rupees one lac as directed by order dated 3.1.1992 but for reasons best known to the Corporation, the Corporation did not accept that amount and passed an order of sale on 15.1.1992 in favour of Respondent No. 4 for Rs. 11,00000/- Respondent No. 4 has also appeared and filed counter affidavit. In the counter affidavit filed on behalf of the Corporation the assertion in paragraph 13 of the petition that the valuation of the hotel was not less than Rs. 40 lacs has not been denied but a vague denial has been made in paragraph 11 of the counter affidavit filed by the auction purchaser Respondent No. 4. In this paragraph he has said that the valuation of the land adjacent to the hotel is about rupees one lac per katha in the year 1991-1992. With regard to the building it has been said that in the memorandum proposal for sanction of financial assistance to the hotel was mentioned as (sic) 5.76 lacs. This statement does not give any indication about the valuation of the hotel. The hotel admittedly, is located on the G.T. Road of Aurangabad the district headquarter. The hotel is located in the business locality of the town. In absence of any positive denial of the statement made in paragraph 13 of the writ petition, we are indicated to hold that the price of the hotel may be (sic) about 40 lacs. We are conscious of the let that the assessment of the valuation. We have made is not based on very scientific ground but nothing has been brought to our notice on behalf of the Corporation or on behalf of the auction purchaser that the hotel was properly valued before the same was put in auction, in the circumstances, we are constrained to observe that the sale of the hotel for Rs. 11, 00000/- was shockingly low. The matter had come earlier on 27.3.1992 when Mr. Shakil Ahmad Khan appearing for the Petitioners said that they had come with a draft of Rs. 8,00000/- drawn in favour of the Bihar State Financial Corporation. He offered the same to Mr. Arshad Alam who refused to accept it. We, in the circumstance, directed Mr. Shakil Ahmad to come with the draft on the next date. Mr. Tarakant Jha who appears today says that the draft is ready it can be taken by any one but Mr. Ram Balak Mahto appearing for the Corporation and Mr. Basudeva Prasad appearing o behalf of the auction purchaser Respondent No. 4 strongly refused to accept the same. They say that the sale has been completed and the auction purchaser has invested some money in it. They, therefore, say that they will not accept the draft and they pray for dismissal of the writ application. It may be relevant to mention that under the agreement to which the Respondent No. 4 has entered with the Corporation he has paid only Rs. 3,00000/- for the present and the remaining amount of about 8 lacs is to be paid by way of instalments. The last one being in 30th September, 1994 whereas the Petitioners apart from paying Rs. 8 lacs right now are also prepared to pay the entire amount within any reasonable time.

3. Mr. Basudeva Prasad appearing on behalf of the auction purchaser says that he had already taken delivery of possession and has made investments. Therefore, he says the sale cannot be annulled. We are afraid it cannot be accepted. As we have indicated above the sale was stayed by this Court by its order dated 3.1.1992. In spite of this the Corporation opened the tender and accepted it which is a process in the conduct of sale. Everything, therefore, done thereafter was nullity. Besides that the sale was completed during the pendency of this writ application. The principle of lis pendens is fully applicable. Respondent No. 4 purchased the hotel being conscious of the fact that his auction purchase will be subject to the result of this writ application. He made a gamble. In case this application is dismissed, he will get the hotel at a very cheap price.

4. Keeping all these facts, therefore, we allow this application and annul the sale of the hotel made in favour of Respondent No. 4 by the Corporation. The Petitioner should deposit the draft of Rs. 8,00000/- in the form of bank draft or Banker''s cheque with the Corporation within one week from today. The Corporation should, thereafter give up-to-date account indicating the dues against the Petitioner which the Petitioners undertake to pay within six weeks from the date when up-to-date account it served on him. Needless to say that Respondent No. 4 will be paid back by the Corporation the amount he has deposited. He will also be entitled to a lump sum amount of Rs. 30,000/- towards the interest and solatium. This amount also will be paid by the Corpora-lion to Respondent No. 4 and the Corporation in its turn will realise the same from the Petitioner. The Petitioner should pay this amount within two weeks from today. The Respondent No. 4 is directed to immediately hand-over the possession of the hotel to the Petitioner if he is in possession. In case there is any difficulty in

obtaining possession then the Petitioner will approach the District Judge, Aurangabad to execute the order as a decree and the District Judge will see that the possession is restored to the Petitioner without any delay.

