
(2003) 08 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 551 of 1997

Shri Faloudi Pulse Mills

APPELLANT

Vs

M.P. Financial Corpn.

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

State Financial Corporations Act, 1951 — Section 29

Citation : (2004) 1 MPJR 205 : (2004) 52 SCL 18

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : B.I. Mehta, for the Appellant; Shekhar Bhargava, Ritu Bhargava and Vinay Zelawat, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

The petitioner by this Writ Petition has prayed this Court to invoke extraordinary jurisdiction conferred under Articles 226 and 227 of the Constitution of India for granting the following relief :

(a) That, the respondent be kindly directed writ of mandamus not to alienate the Industry alongwith Plant & Machinery by private negotiation and without holding public auction and that too after notice to the petitioner.

An alternative relief has also been sought by the petitioner which reads thus :--

"If the respondent has taken over the Industry by passing any order, the same be kindly ordered to be quashed by a writ of certiorari or suitable orders may kindly be passed for quashing the order of taking over. However, the alternative relief has not been pressed during the course of argument by the learned counsel for the petitioner and hence, the entitlement of main relief is being considered."

The case of petitioner as put forth by him in his petition is that petitioner is a

registered partnership Firm who carries on business of manufacturing of Milling of Pulses at Pachor District Rajgarh (Biora). The M.P. Financial Corporation (hereinafter referred to as the Corporation) had sanctioned a finance of Rs. 7,15,000 for land and site development, construction of factory building, purchase of Plant and Machinery etc. and for the security of re-payment of the loan created an English mortgage of its land i.e. 0.318 hectare of Survey No. 200 situated at Village-Bilapura, Tehsil and District-Rajgarh in favour of the Corporation.

It has been further submitted by the petitioner that he did not repay the amount to the Corporation as according to it, it was beyond its control. A sum principal amount and interest and other incidental charges and for its realisation the Corporation issued notice through its counsel to the petitioner Firm. The petitioner through its counsel sent reply to the said notice. It has been further contended by the petitioner that later on came to know that the Corporation is likely to take over the Unit of the petitioner alongwith the mortgaged property and also another land area 0.191 hectare out of Survey No. 200 which is not the subject-matter of mortgage but is adjoining to the mortgaged property.

According to the petitioner, the Corporation after taking over the possession of the mortgaged property would transfer its title and possession to some other person for a meagre sum (for about Rs. 3,00,000) whereas the mortgaged property alongwith the plant and machinery may fetch an amount as per petitioner Rs. 20,00,000 and hence, if the Corporation is not restrained from disposing of the mortgaged property etc. without notice and hearing and providing opportunity to the petitioner, the petitioner may put to heavy loss. On the basis of aforesaid averments made in the petition the petitioner has sought the relief which has already been quoted hereinabove.

The Corporation by filing its return has denied the averments of the petitioner. It has been pleaded in the return that the entire loan amount to the tune of Rs. 7,15,000 was allowed to be disbursed till 31-3-1990.

However, the petitioner for the period of 31/2 years could not arrange for working capital from any nationalized Bank. As soon as the petitioner informed that the working capital may be sanctioned by the State Bank of Indore, Udankhedi Branch-District-Rajgarh the Corporation released the second charge on the properties mortgaged by the petitioner with the Corporation vide deed of mortgage dated 12-5-1987. Under the term loan agreement the petitioner was required to pay interest at the rate 15 per cent per annum at half yearly rests from December, 1987 and half instalment of Rs. 50,000 from 1-6-1989. The petitioner failed to pay either the interest or the instalments though he was invited to attend the periodical meeting of default/review committee convened from time to time at Bhopal Zonal Office, but, the petitioner did not attend the meetings.

Facing the typical position the Corporation served a legal notice which was

replied by the Counsel of the petitioner and thereafter on examining the reply the Corporation again called the petitioner before the default review committee which was convened on 17-11-1993 but no one attended the meeting despite a notice was served to the petitioner telegraphically. Finally the Corporation made a demand of its dues vide telegraphic notice dated 4-3-1994.

As the petitioner failed to repay the loan amount the Corporation exercised its special power conferred to it u/s 29 of the Financial Corporation Act, 1951 and took over the possession of the land, building, plant and Machinery mortgaged to it. At the time of taking over the possession of the Unit, the same was found to be closed and no industrial, activities were being carried in it, no one on behalf of the petitioner was found present at that juncture. The Unit was lying abandoned for quite some time. Thereafter the Surveyor of the Corporation inspected and prepared an assessment report indicating therein the value of property to be 5.540 lakhs.

The Corporation advertised for sale of the mortgaged property on six occasions. Four advertisement dated 12-1-1995 published in Chronicle; dated 23-7-1995 published in Dainik Bhaskar and Chronicle dated 22-9-1995 published in National Mail and dated 11-1-1996 published in Dainik Bhaskar. Despite having giving wide publicity the unit could not attract any purchaser willing to pay satisfactory price and with the lapse of the time value the unit was also decreasing as the machineries became 8-9 years old. Under these compelling circumstances, the Corporation considered the offer of respondent No. 2 viz. Purshottam Goyal on 22-10-1996 and decided to sell the unit for a consideration of Rupees Four Lakhs. The Corporation entered into an agreement with the respondent No. 2 on 18-11-1996 and ultimately a sale-deed was also executed in his favour on 28-6-1997 (Annexure P/7). On the basis of above pleadings it has been prayed that the petition be dismissed.

It has been argued by Shri B.I. Mehta, learned counsel for the petitioner that the alienation of the unit of the petitioner firstly by entering into the agreement (Annexure-R/16) with respondent No. 2 on 18-11-1996 and thereafter, executing a registered sale-deed on 28-6-1997 (Annexure-P/7) without any prior notice to the petitioner amounts to the mala fide action on the part of the Corporation, his further contention is that the sale-deed was executed on 28-6-1997 (Annexure-P/7) while the instant petition was filed much earlier to it viz, 26-3-1997 meaning thereby the doctrine of lis pendens as envisaged u/s 52 of the Transfer of Property Act protects the rights of the petitioner and merely because the sale-deed has been executed in favour of respondent No. 2 would not jeopardise the right of the petitioner. To bolster his contention, the learned counsel has placed heavy reliance on the decision of Division Bench of Karnataka High Court reported in Goudappa Appaya Patil Vs. Shivari Bhimappa Pattar and another, Goudappa Appaya Patil v. Shivji Bhimappa Pattar. It has also been put forth by the petitioner that in the advertisement to auction the unit the measurement of the property has been wrongly mentioned while in the actual sale the entire area

0.318 hect has been sold, hence this action amounts to mala fide.

Per contra it has been contended by Shri S. Bhargava, learned Senior Advocate that merely by saying that the action of the Corporation is mala fide would not suffice unless and until there is specific pleading to that effect. It is not the case of the petitioner that some private negotiation took place between the petitioner and respondent No. 2 and thereafter, the alienation by executing the sale-deed (Annexure-P/7) took place. By inviting the attention of this Court to Section 29 of the Act it has been contended by learned Senior Counsel Shri S. Bhargava that the Corporation was not required to serve any notice to the petitioner. To buttress his submission he has placed reliance on the latest pronouncement of the Supreme Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, . It has been vehemently argued by the learned counsel that it has come on record that the unit has been sold to the respondent No. 2 and he is possessing it but no relief has been claimed against him though, he has been impleaded as party to the petition as respondent No. 2.

Shri Vinay Zelawat, learned counsel appearing for the purchaser by placing reliance on a decision of the Apex Court in the case of Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, argued that there is no merit in the petition and the same deserves to be dismissed.

Before considering the rival contentions of learned counsels for the parties, it would be profitable to re-write Section 29 of the Act which reads as under :--

"29. Rights of Financial Corporation in case of default.--(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in getting its obligations, in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its power (x x x) under Sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as

incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and, the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purpose of suits, by or against the concern, and shall sue and be sued in the name of the concern."

On bare perusal of the aforesaid provision it would become clear like a noontday that no notice is required to serve upon the petitioner before getting the unit auctioned. Despite there is no provision in the law the Corporation, as mentioned hereinabove issued notice to auction the unit not only once twice or thrice but six times. This contention has not been controverted by the learned counsel for the petitioner. The petitioner firm was fully aware that a huge amount to the tune of Rs. 7,87,000 was required to be paid by it. The Corporation tried its best to get the matter settled but on account of slackness of the petitioner firm could not realize the amount which was required to be paid by the petitioner firm. In a petition under Article 226 of the Constitution this court can interfere only when the Corporation is unfair or unreasonable or its act is in violation of any statutory provision. The doctrine of fairness cannot be invoked to disable the Corporation from recovering its loan. This court would also not sit in judgment as it were hearing an appeal in order to resurrect or revive a sick unit. On the basis of the material placed before this Court one could not infer that there was any mala fide on the part of the Corporation.

Merely, because there is some irregularity in mentioning the size of the land, would not in itself be a ground to hold that there was a mala fide on the part of the Corporation. The Apex Court in the case of Jagdambe Oil Mills (supra) while analyzing the powers of this Court under Article 226 of the Constitution of India in context to Section 29, of the Act has held that if the debtor being a chronic defaulter the Corporation may seize the unit and may sell it by auction. The Court should not grant relief. The fact that the debtor did not repay the huge amount should not be marginalised and blinked away. The Apex Court further held that the debtor was prevented by unsurmountable difficulties from repaying the loan need to be established by adducing sufficient material. In the present petition in a very vague term the petitioner firm has tried to cloth its defaulting part that on account of the circumstances beyond control of the petitioner, it could not disburse the amount to the Corporation. Thus, unless and until the circumstances which refrained the petitioner from repaying the amount to the Corporation is pleaded and demonstrated by furnishing necessary documents, action of the Corporation putting the unit to auction cannot be said to be mala fide in any manner. The case of Jagdambe Oil Mills (supra) squarely covers the

entire controversy and in this view of the matter the petitioner in the present case is not entitled for any relief.

The case of Bihar State Financial Corporation v. Santu Lal Gupta AIR 2003 Jha 44 relied by the learned counsel for the petitioner is not at all applicable in the present factual scenario because in this case the sale of unit was made after 3 years from the date fixed for auction and in that context it was held by the Division Bench of Jharkhand High Court that sending of notice was pre-supposed. In the present case the facts are distinguishable and hence, the case of Santu Lal Gupta (supra) is not applicable in the instant case.

In the present case the unit was sold by the Corporation to the respondent No. 2 but no relief has been sought for the cancellation of the alienation and in absence of any such relief being sought by the petitioner Firm no relief could be granted to it.

In the case of Bharat Singh v. State of Haryana AIR 1988 SC 218 1 it has been held by the Supreme Court that when a point which is ostensibly the point of law is required to be substantiated by fact, is being raised by the writ petitioner he should not only plead but also prove by supplying furnishing necessary documents and if the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition the Court would not entertain those points. In an another case Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, it has been held by the Apex Court that the High Court would be justified in refusing to carry on investigation into the allegations of mala fides if necessary particulars of the charge making out a prima facie case are not given in the writ petition as the burden of establishing mala fides lies there heavily on the person who alleges it. The Supreme Court up held the decision of High Court dismissing the writ petition. If the ratio decidendi of the case of Bharat Singh (supra) and Tara Chand (supra) is tested on anvil of the present factual scenario it would reveal that in the present case, though the petitioner vaguely pleaded that the action of the Corporation is mala fide but necessary particulars regarding it has not at all been pleaded nor any material in the form of annexures has been annexed along with the petition and hence the contention of learned counsel of the petitioner that the action of the corporation is mala fide has no merit and is hereby rejected.

In the case of Contromix (P.) Ltd. (supra) it has been held by their Lordships of the Supreme Court that a public auction after adequate publicity ensure participation of every person who is interested in purchasing the property and jointly secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders joined together so as to depress the bid or the nature of the property to be sold is such that a suitable bid may not be received at public auction. In that event, the other suitable mode for selling the property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participants it is essential that every endeavour should be made to give wide publicity so as to get

the maximum price. Their Lordships further held that the considerations which govern the sale of public property would be applicable to a sale of property by the State Financial Corporation u/s 29. The sale by public auction is universally recognized to be best and most fair method and is beyond reproach and if it is not possible to adopt the said mode, sale may be held by inviting tenders. In these circumstances their Lordships held that a sale by inviting tenders was not ipso facto invalid and the sale would be considered in the light of the fact and circumstances of the particular case.

In the present case, also, for six times auction notice was advertised and thereafter an agreement was executed by the Corporation with respondent No. 2 and ultimately the unit was sold to him and hence the case of Sipcot (supra) squarely applies in the instant case.

The contention of learned counsel for the petitioner that the Surveyor of the Corporation assessed the values of the unit to be rupees 5.5 lakhs (Annexure R/9) but the unit was sold only for Rupees Four lakhs and hence the action of the Corporation is mala fide. Resisting this submission of counsel for the petitioner it has been stated by learned Senior Counsel for the Corporation that the same was only an opinion and more over the assessment of the petitioners Surveyor is dated 5-9-1994. However, on account of lapse of time, in the year 1996, when the property was sold the machine became more older and outdated and hence if the unit was sold for rupees 4 lakhs the action could not be said, from any angle, to be mala fide.

On the basis of above said premised reasons, the petition has no force and the same is hereby dismissed. Parties are directed to bear their own costs.