

(2007) 04 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 3444 of 2006

Shyam Kumar Arora

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) PLJR 328

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kr. Datta, J.

I.A. No. 1939 of 2007

1. The present interlocutory application has been filed on 28.3.2007 for amendment in the writ application to the extent that sale of New Wood Industries and the acceptance of money to the tune of Rs. 15 lacs by respondent No. 1 from newly added respondent Sunita Devi or respondent no, 4 be declared illegal and the handing over of possession of the unit in question namely, New Wood Industries to respondent No. 4 and/or newly added Sunita Devi on 2.6.2006 also be declared illegal and any development/action of the respondents during the pendency of the writ application after 8.3.2006 be declared illegal and arbitrary and the prayer/relief in the writ application be deemed to be amended to the extent indicated above. The matter had been earlier taken up on 7.3.2007 and on that date arguments were extensively advanced on behalf of the parties. Ultimately on that date it was submitted on behalf of the petitioner that even then the petitioner was willing to pay an amount of Rs. 60 lacs to the Corporation plus Rs. 15 lacs towards the plant and machinery and on payment of the same, the unit be handed over to him by the Corporation. The said offer was put to the learned counsel for the Financial Corporation and in view of the said offer learned

counsel for the Corporation sought adjournment to get instructions from his client in the matter. Accordingly, on 12.3.2007 the counsel for the Financial Corporation informed this Court that the Corporation will not accept such an offer at this belated stage when the sale with respondent Nos. 4 and 5 stood completed and all payments have been made and unit has also been handed over to the said respondents. This Court directed the learned counsel for the Financial Corporation to place the said fact before this Court on an affidavit and accordingly an affidavit stating the said fact was filed on 19.3.2007 on behalf of the Corporation giving the reasons for not accepting the offer made by the petitioner during the course of argument. On 19.3.2007 the matter was adjourned to 28.3.2007 and thereafter to 2.4.2007 and it has been taken up today. In the meantime on 28.3.2007 the present application for amendment was filed. Learned counsel for the Corporation opposes the present amendment application.

2. Learned counsel for the petitioner submits that the relief sought in the present interlocutory application has already been shown in Clause (II) of para-1 of the main writ application and it is merely a clarificatory amendment and thus it should be allowed. It is further submitted that since no counter affidavit to the amendment petition has been filed by either the Financial Corporation or the private respondent Nos. 4 and 5, they cannot be permitted to oppose the said application.

3. Learned counsel for the Financial Corporation, on the other hand, opposes the said prayer on the ground that the amendment makes out a new case and a new relief which ought not be allowed at this belated stage. Similar is the stand of learned counsel for respondent Nos. 4 and 5. It is submitted that the writ petition has been filed only for the purpose of directing the respondents to accept the offer of the petitioner under the OTS Scheme, 1994 and to make one time settlement of the entire money outstanding on 31.3.1994 and the relief stated in sub-para (II) of para-1 of the writ petition is subsidiary to the main relief claimed and thus it cannot be said that the change in relief now sought was already there in the original writ petition.

4. On a consideration of the rival contentions of the parties, this Court is of the view that the relief sought by the amendment application is not one that has been sought in the original writ petition since the matter related to acceptance of the petitioner's offer under the O.T.S. Scheme, 1994 and the relief claimed in sub-para (II) of para-1 of the writ application also related to the same relief and only claimed for adjustment of the money paid by the petitioner against loan amount after making one time settlement.

5. Learned counsel for the petitioner sought to advert to Annexure-4 and paragraph Nos. 16 to 18 of the writ petition stating that the petitioner had earlier also written to the Corporation for taking benefit under the O.T.S. Scheme, 2004 by seeking details of the said scheme from the corporation and by a cruet and cryptic response by its letter dated 10.2.2006, Annexure-4, the Corporation had

merely replied that the petitioner can obtain the form under category-I(C) after depositing Rs. 500/- from the office of the BSFC. On the basis of the same it is sought to be argued that the reference to making one time settlement in sub-para (II) of para-1 would refer to the later O.T.S. Scheme also.

6. The said contention of learned counsel for the petitioner is wholly unacceptable in view of the fact that the main relief claimed was that offer of the petitioner under O.T.S. Scheme, 1994 be accepted and one time settlement made on the basis of the said scheme and it was clearly stipulated in the relief claimed in para-1 that the settlement must be made in terms of the entire loan money as was outstanding on 31.3.1994. The said date cannot be inadvertent since originally it has been typed as 31.3.2004 but had been corrected by ink and the year was made 1994 and thus any reference to one time settlement even in sub-para (II) has to be treated as though the petitioner was referring to outstanding dues on 31.3.1994 and hence it cannot be said that the petitioner had made out a case for acceptance of his case under the O.T.S. Scheme after 31.3.1994.

7. In view of the aforesaid facts and further since the amendment application has been filed as late as on 28.3.2007 when the matter had only been adjourned at the request of the learned counsel for the Corporation to express the response of the Corporation to the offer in the court at the conclusion of the argument on behalf of the petitioner and after the Corporation had expressed unwillingness to accept the offer, it can hardly be said that it is not a belated attempt of the petitioner to get undue advantage in the matter.

8. Hence, for the above-mentioned reasons, I.A. No. 1939/2007 for amendment of the writ application is rejected.

9. Heard Mr. Rajendra Prasad, learned Senior counsel appearing for the petitioner, Mr. Y.V. Giri, learned Senior counsel for the Bihar State Financial Corporation, Mr. R.K.P. Singh, learned counsel for respondent Canara Bank and Mr. Manik Vedsen, learned counsel for respondent Nos. 4 and 5.

10. The petitioner has filed the writ petition for a direction upon the respondent Nos. 1 and 2, BSFC to accept the offer of the petitioner under O.T.S. Scheme, 1994 and to do one time settlement of entire money outstanding as on 31.3.1994 and for a further direction to redeem and free the property mortgaged with respondent No. 1 in favour of the petitioner after adjusting the money paid by the petitioner against the loan amount after making one time settlement.

11. The case of the petitioner is that the petitioner alongwith two other persons had started a partnership firm, namely, New Wood Industries, and taken a loan of Rs. 12.13,000/- from the Bihar State Financial Corporation (BSFC) between 1984 and 1987 and for raising the loan he had mortgaged the lands besides a flat constructed on the said land and the machinery, etc. installed on the said land, it is stated that the business of the petitioner was running satisfactorily and he was making payment of the instalments as per the schedule. In 1994 a one

time settlement Scheme (OTS Scheme) was announced by the respondent-Corporation. Under the said scheme the persons who wanted to avail the opportunity had to obtain an application proforma and after making deposit of certain percentage of loan outstanding against them may apply for One Time Settlement and as per the provisions made in the Scheme the same was to be made after payment of the said amount and the loanee was to be freed and the property under mortgage stood redeemed. It is stated that the petitioner had requested the respondent No. 1 to make out the amount to be deposited for availing the facility of OTS Scheme and after working out the same the petitioner had been directed to deposit Rs. 2,25,000/- which was 25% of the total dues outstanding on the stipulated date and thus it is stated that the total amount outstanding against the petitioner on that date was only Rs. 9 lacs. The petitioner deposited an amount of Rs. 2,25,000/- through Bank draft on 21.9.1994 for which receipt was granted to him. The stipulated date of outstanding dues under the scheme was 31.3.1994 and the petitioner continued waiting for some communication in this regard from the respondents but no such communication was received. The further case of the petitioner is that the petitioner continued to run from pillar to post to know the actual amount but nothing was done and thus he has been compelled to move this Court by filing the writ petition.

12. It is further stated that the mortgaged lands of the petitioner was advertised for auction sale and one Shri Rajesh Kumar, respondent No. 4 had purchased the same in the year 2002 for which the petitioner had no information earlier but later on he learnt that said Rajesh Kumar has subsequently backed out and resiled and did not deposit the stipulated amount. It is further stated that ultimately an order dated 12.3.2005 was passed by the Managing Director of the Corporation directing the Branch Manager to take possession of the mortgaged assets of the petitioner. It is further stated that the petitioner is still eager to pay the amounts under the OTS Scheme 1994 and it is solely due to the fact that the amounts had not been disclosed that he has not been able to repay the loan amount despite the fact that the financial position of the petitioner is not good and the business has run into loss and he had to wind up the business of New Wood Industries. The further case of the petitioner is that when the Corporation came out with the OTS Scheme, 2004, he had requested the respondent Nos. 1 and 2 to let him know about the said scheme but he was only informed that he can obtain form of category I(C) after depositing Rs. 500/-whereas the case of the petitioner ought to have been dealt under Clause 1(A) of the Scheme. The further case of the petitioner is that the working capital loan had been taken from Canara Bank, respondent No. 3 but since the account became irregular, the Bank filed Title Money Suit No. 22/1996 in the court of the Subordinate Judge-I, Patna which was later on transferred to Debts Recovery Tribunal where it is pending and the respondent No. 3 has second charge over the said mortgaged assets and hence it has been impleaded in the present application also. It is stated that in the said Title Money Suit No. 22/1996, the BSFC had filed its

written statement and in para 16 it had been admitted that the petitioner had applied for OTS Scheme. The proposal of the Unit was not eligible under OTS Scheme and as such the unit was advertised for sale on 16.10.1994 in the daily newspaper Hindustan Times.

13. The stand of the BSFC as taken in the counter affidavit is that the application is fit to be dismissed on account of laches and delay since the application has been filed almost 12 years after the petitioner had applied under the OTS Scheme. It is stated that the concern was not eligible for benefits under the OTS Scheme 1994 since the balance outstanding of the concern as on 31.8.1994 was Rs. 24.45 lacs and the value of the assets was Rs. 28.75 lacs which was higher than the balance outstanding. Hence by letter dated 31.1.1995 (Annexure-B) the concern was informed that they were not eligible for the scheme and they were further advised to make 25% of the balance outstanding for getting their loan rescheduled and not for the purpose of availing the OTS facility. It is stated that the concern had deposited Rs. 2.25 lacs on 21.9.94 alongwith OTS application form, much prior to the letter dated 31.1.1995 and further balance of outstanding on 31.3.1994 was not Rs. 9 lacs as mentioned by the petitioner but to the tune of Rs, 24.45 lacs. The OTS Scheme 1994 has been annexed as Annexure-A which is a circular dated 22.7.1993. In the opening part of the said circular itself it is stated that the scheme is applicable to those units whose outstanding have exceeded the value of their mortgaged assets with the Corporation and who are not wilful defaulters.

14. The further stand in the counter affidavit is that the Unit had been advertised and had been sold to respondent No.4, Rajesh Kumar and the sale order and its subsequent revision have been communicated to the concern and the original promoter including the petitioner vide memo No. 1120 dated 30.3.2002 and memo No. 231 dated 20.6.2002 (Annexures D and E) which have been received by their representatives which fact has been suppressed by the petitioner. It is further stated that under the OTS scheme, 2004 which was effective till 25.2.2006 the concern was eligible under category 1(C) of the Scheme which was applicable for the original promoter whose unit had already been sold on a valuation below the balance outstanding and the petitioner could have applied under this scheme for getting the benefit for payment of the balance loan which is figuring against his name. He did not avail the facility and did not apply against the OTS Scheme 2004. It is further stated that the unit had been handed over to its purchaser Rajesh Kumar In presence of the Executive Magistrate, Patna Sadar on 2.6.2006 which is evident from the letter No. 162 dated 3.6.2006 (Annexure-F).

15. A counter affidavit has also been filed on behalf of respondent No. 5, Sunita Devi who is partner of respondent No. 4, Rajesh Kumar purchaser of M/s New Wood Industries from the Bihar State Financial Corporation. It is stated therein that the said unit was advertised in the Hindustan Times on 13.12.2000 (Annexure-R/1) inviting tender/offer as the offer in hand was Rs. 24 lacs. Again a

notice was published in the newspaper on 29.9.2001 inviting offer for purchase of the said mortgaged assets of M/s New Wood Industries. In terms of the earlier advertisement the respondent No. 4 had made an offer of Rs. 26.50 lacs and after the fresh notice dated 29.9.2001 he enhanced the offer to Rs. 28 lacs. Thereafter the respondent No. 4 was called for negotiation during which he enhanced his offer to Rs. 30 lacs and also agreed to pay 40% of the consideration money initially and the remaining in 12 equal monthly instalments on the basis of the sale letter dated 30.3.2002 as also the revised sale order dated 20.6.2002. However, on failure of the respondent No. 4 to pay the amount of Rs. 12 lacs the Corporation cancelled/withdrew the sale order on 30.9.2002. Thereafter the respondent No. 5 approached the concern to become partner and jointly approached the Corporation for inclusion of partner and an amount of Rs. 12 lacs along with two instalments of Rs. 1.5 lacs amounting to Rs. 3 lacs with interest accrued during that period was deposited together. Thereafter the Corporation withdrew the cancellation letter on 29.11.2002 but no decision was taken on the inclusion of respondent No. 5 as partner. However, the unit was not handed over to respondent No. 4 and 5 and after a lapse of more than six months by letter dated 14.7.2003, respondent No. 4 was informed that the Corporation had turned down the request for inclusion of partner and demand was made for payment of interest as well as further instalments. Subsequently, the Corporation initiated action under Sections 29 and 30 of the BSFC Act, 1951. Respondent No. 4 filed CWJC No. 12893 of 2003 on 20.11.2003 against the decision of the Corporation to levy interest on balance consideration money for the period the assets were not handed over and for not allowing him for inclusion of partner. In the said writ petition the Corporation conceded the second issue regarding inclusion of respondent No. 5 as partner subject to making full payment and the petitioner was directed to file a fresh representation for waiver of interest money and accordingly the writ petition was dismissed as withdrawn by order dated 27.1.2005 (Annexure-R/8) with a direction that if the representation for waiver of interest is filed the Managing Director of the Corporation will pass appropriate order in accordance with law within one month. Thereafter a detailed representation was filed on 10.3.2005 by respondent No. 4.

16. However, instead of passing order on the same, the unit was again advertised for sale on 20.4.2005 for realising dues from respondent No. 4 even without handing over of the assets. Thereafter the respondent No. 4 filed CWJC No. 5069 of 2005 and by an interim order dated 11.5.2005 the Corporation was restrained by this Court from proceeding in the sale matter till disposal of the case. The representation was subsequently rejected by the Managing Director of the Corporation which has been challenged in CWJC No. 5069/2005 by filing I.A. No. 2918 of 2005. It is further stated in the counter affidavit that ultimately the balance consideration money of Rs. 15 lacs has also been paid to the Corporation subject to the condition that as a matter of fact the assets will be handed over to the partners and payment of interest dues will be subject to the decision of this Court in CWJC No. 5069 of 2005, which was approved by the

Corporation by letter dated 25.4.2006 (Annexure-R/10). Thereafter on 2.6.2006 the unit has been handed over to respondent Nos. 4 and 5.

17. The stand of the Canara Bank is essentially that the present dispute is between the petitioner and the Financial Corporation for which the latter is required to answer.

18. In the backdrop of the aforesaid facts, learned counsel for the petitioner submits that the petitioner is entitled to have his case considered under the OTS Scheme, 1994 since after the application of the petitioner under OTS Scheme, 1994 the rejection of the application was never communicated to him and the letter dated 31.1.1995 has never been communicated to the petitioner and thus it cannot bind the petitioner. It is further submitted that the petitioner had at all times tried to clear the outstanding dues and it is only on account of deliberate non-cooperation on the part of the Corporation that the same has not been cleared. Learned counsel further submits that the writ petition was filed on 9.3.2006 after service of a copy of the same on learned counsel for the Corporation on 8.3.2006 and the final cheque of Rs. 15 lacs had been issued thereafter by respondent Nos. 4 and 5, three days after the filing of the writ petition on 11.3.2006 which shows clear collusion between them. Further the unit it, self had been handed over on 2.6.2006 nearly three months after filing of the writ petition. For the said reasons, the said action of the Corporation and the respondent Nos. 4 and 5 is hit by the doctrine of lis pendens and cannot affect the right of the writ petitioner to be adjudicated in terms of the petition filed by him. Learned counsel further submits that the petitioner's offer of Rs. 75 lacs is beyond what had been accepted by the Corporation from respondent Nos. 4 and 5, i.e., Rs. 30 lacs. Thus, the rejection of the offer of Rs. 75 lacs made by the petitioner in Court is entirely unreasonable and show the collusion between the Corporation and respondent Nos. 4 and 5.

19. In this regard learned counsel refers to the decision of the Supreme Court in the case of Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Cavalet India Ltd. and Others, , in Para-19 (i) (b) of which it has been laid down that where the Corporation acts unfairly, i.e. unreasonably, then it will be open to the writ Court to interfere with the same. Learned counsel also refers to sub-para (ix) thereof in which it has been stated that reasonableness is to be tested against the dominant consideration to secure the best price. It is submitted that it can never be held that acceptance of offer of Rs. 30 lacs is better than the offer of Rs. 75 lacs and thus the Corporation is acting unreasonably in not accepting the ultimate offer made by the petitioner to the tune of Rs. 75 lacs for the entire unit including the plant and machinery.

20. Learned counsel also seeks support with respect to the said offer of Rs. 75 lacs on a decision of the Supreme Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , in para- 23 of which the Apex Court had granted the prayer of the original promoter of the unit, despite the opposition of the Financial Corporation, directing the Corporation to

intimate within a month from the date of order granting six months time to the original promoter from the date of such communication to pay the amount in full and only on failure to make the payment, it will be open to the Corporation to dispose of the seized unit in accordance with law in such manner as would bring in the highest price. On the basis of the said decision learned counsel submits that similar direction should be issued to the Corporation to accept the offer of Rs. 75 lacs which is much higher than the amount of Rs. 30 lacs realised by the Corporation for the said unit.

21. Learned counsel for the Financial Corporation opposes the present writ application on the ground that the relief has been sought after a gross delay of 12 years and thus the writ petition suffers from vice of delay and laches and is not maintainable for the said reasons alone. It is submitted that the mandamus has been sought for enforcing the scheme of 1994 which has expired in the year 1997 and thereafter two other schemes have been mooted by the Corporation. The further submission of the learned counsel is that it is clear from the provisions of the said Scheme, as contained in Annexure-B, that the petitioner did not come within the parameters of the said scheme and accordingly he had been informed by letter dated 31.1.1995 itself that his application for the benefit of the said scheme has been rejected giving reason that the valuation of the assets of the concern is higher than the balance outstanding, which was the basic requirement as per the OTS Scheme, 1994. It is further stated that by the said letter dated 31.1.1995 the petitioner was also requested to pay at least 25% of the balance outstanding in order to get his loan rescheduled but no such step for any payment was taken by the petitioner. Learned counsel submits that it is clear from the said annexures that a copy thereof had been forwarded to the petitioner and it cannot be believed that for such a long period of 11 years the petitioner was totally oblivious of what has happened to the application when any such information could have been easily obtained by the petitioner from the office of the Corporation even if the said letter had not been issued to him. The further submission of the learned counsel is that in case the Corporation had not acted upon the application of the petitioner, then the petitioner was obliged to approach this court after a reasonable time had elapsed and he cannot be permitted to do so after nearly 11 years from the date of rejection of the application.

22. Learned counsel for the BSFC further submits that the copies of the sale orders dated 30.3.2002 and 20.6.2006 had been communicated to the petitioner which had been duly received by his representatives as is evident from the Peon Book which has been annexed and in the said communication a clear option had been given to the petitioner to retain the unit on matching terms and conditions within 21 days but no action was taken even thereon by the petitioner. Thus, the petitioner himself had not acted upon the said communication and allowed the sale to become absolute and he cannot be permitted to challenge the rights accrued to the third party on account of his own deliberate inaction. It is further submitted that the petitioner himself admitted in the writ petition that he was

fully aware of the fact that the unit had been sold in the year 2002 itself to respondent No. 4, Rajesh Kumar and thus on his own admission, even if it is assumed that he was not earlier communicated with the sale orders, he ought to have approached the Corporation or this Court against the said sale but till date the petitioner has not challenged the said sale even in the present writ petition.

23. In view of the aforesaid facts it is submitted that it would be unjust for the Corporation to take up the offer of the petitioner to pay an amount of Rs. 75 lacs when after repeated advertisement the Corporation was able to get a best price and Rs. 30 lacs at the relevant time from respondent No. 4. It is submitted that there is no case of the petitioner that at the time when the sale had been made the amount obtained was unreasonable and less than what could be got in terms of the price situation prevailing in the year 2002. Thus the offer of Rs. 75 lacs at this stage is belated and cannot be accepted when right of third party had accrued.

24. So far as the contention of the petitioner regarding application of doctrine of lis pendens is concerned, learned counsel submits that even prior to the present writ petition filed by the petitioner there has been litigation between the respondent No. 4 and the Corporation and pursuant to the same the respondents have deposited the amounts and thus it cannot be said that the deposit of amounts/ handing over of the unit would be hit by doctrine of lis pendens.

25. Learned counsel for respondent Nos. 4 and 5 supports and reiterates the arguments made on behalf of the Corporation and further submits that it is evident from the series of advertisements made in the year 2000 onwards that the sale had been made to respondent No. 4 in a bona fide manner and the amount of Rs. 30 lacs that had been finally arrived at was just and fair and correctly reflects the market price of the unit as could be obtained in the year 2002 when the offer was accepted. It is evident from the repeated advertisement and the ultimate offer of Rs. 30 lacs given by respondent No. 4 that this respondent is bona fide purchaser and the sale is not collusive. Merely because after lapse of 5 years the petitioner is making offer of Rs. 75 lacs, as a desperate last attempt to retain the unit, does not mean that what was offered in the year 2002 was not fair value of the unit. It is submitted that with the passage of time the value of the assets, particularly the land and the building of M/s New Wood Industries, would appreciate in the normal course of events of which the Court can take judicial notice. With regard to doctrine of lis pendens, the learned counsel submits that final payment had been made by cheque dated 11.3.2006 pursuant to the litigation between the parties for which the respondent No. 4 had earlier approached this Court by filing a writ petition which was disposed of on 27.1.2005. It is further submitted that the respondent Nos. 4 and 5 were consistently vigilant with the exercise of their rights and when in the year 2005 the Corporation had again sought to advertise their unit, they had approached this Court by filing CWJC No. 5069/2005 in which the said sale had been stayed by this Court during the pendency of the said writ petition. The said writ petition

is prior to the writ application filed by the present petitioner and thus, it cannot be said that any amount paid, pursuant to the offer made by the respondent Nos. 4 and 5, on the basis of the earlier sale order which has not been set aside, as well as the orders passed in the two writ petitions would be hit by the doctrine of lis pendens.

26. On a consideration of the facts and circumstances and the rival contentions of the parties this Court is of the view that there is no merit in the submission of the learned counsel for the petitioner. Clearly the writ petition has been filed only for the purpose of getting the benefit of OTS Scheme 1994. In the present writ petition the sale made in favour of respondent Nos. 4 and 5 has not been challenged. So far as the claim of the petitioner for getting the benefit of the OTS Scheme, 1994 is concerned, the same is clearly barred in terms of the provisions of the Scheme as laid down in Annexure-A and it is evident that the petitioner's unit was not eligible for the benefit of OTS Scheme, 1994. It is also evident from the records that the petitioner had been duly informed about the rejection of his application. The claim of the petitioner that no such communication had been made to him appears to be totally false as there is no justification why no steps were taken by the petitioner since the years 1994 and 1995 till the year 2006 if the Corporation had not taken any action on the basis of the application filed for the benefit of OTS Scheme, 1994.

27. So far as the claim of the petitioner that he has made a better offer than the respondent Nos. 4 and 5 is concerned, it does not appear to be correct since the offer had come at a belated stage after more than 5 years when the sale order had become absolute and the same had been duly communicated to the petitioner. Even assuming that the said communication had not been made it is evident that the petitioner was aware of the said sale having been made but he took no steps to get the same set aside as illegal and contrary to law by this Court. Even in the present writ application no such claim has been made that the said sale order was illegal and not in accordance with law. The offer of Rs. 75 lacs in the year 2007 cannot be considered to be a better offer than the offer made in March, 2002 of Rs. 30 lacs with respect to a unit. Moreover this Court finds that repeated efforts had been made by the Corporation to obtain a better price for the said unit and only after getting the best price the deal had been closed with respondent No. 4.

28. So far as the present offer of the petitioner is concerned, it is a desperate attempt made by the petitioner to somehow retain the unit since it is clear from the records of the case that from the year 1995 onwards till date the petitioner has not paid a single penny to the Corporation. Such action of the petitioner would disentitle him to any equitable relief in his favour.

29. So far as the reliance of the learned counsel for the petitioner on the Supreme Court decision in the case of Karnataka State Industrial Investment & Development Corpn. Ltd. (supra) is concerned, the said decision totally goes against the petitioner. In para-19 of the said judgement it has been clearly laid

down by the Apex Court that 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 only two grounds on which this Court can interfere are if there is statutory violation on the part of the Corporation or where the Corporation acts unfairly i.e. unreasonably. In the present case, on the basis of the facts on the record and enumerated above, it is evident that there is neither any statutory violation on the part of the Corporation nor it can be said that the Corporation has acted unfairly or unreasonably. In the present matter, it is evident that at all stages the Corporation gave sufficient opportunity to the petitioner to get the benefit of the sale made in favour of respondent No. 4 by offering matching terms even though the said offer on matching terms was not required in view of the law laid down by the Supreme Court in the case of Haryana Financial Corpn. Vs. Jagdamba Oil Mills (supra) in which the law laid down in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, by which the said benefits had been directed to be provided, was overruled. Thus, the Corporation has acted more than fairly and reasonably in the present matter and no fault can be found with its actions.

30. So far as the reliance upon the directions in Haryana Financial Corpn. Vs. Jagdamba Oil Mills (supra) is concerned, regarding, the unit being given such an offer, the said case stood on an entirely different footing. In that case the unit had not already been sold and no third party rights had come into existence. It is only in that circumstance that the Apex Court had issued directions to test the bona fides of the original promoters by giving them six months time to clear the entire outstanding dues; such is not the case here and the right of third party has arisen in favour of respondent Nos. 4 and 5. The present petitioner, therefore, cannot be granted such relief when he filed a belated writ petition claiming benefit of OTS Scheme, 1994 which is no longer in existence and with respect to which the application of the petitioner had been rejected by the Corporation as early as on 30.1.1995 itself. In the result, there is no merit in the writ petition and it is accordingly dismissed.