(2000) 04 OHC CK 0008

In the Orissa High Court

Case No : Miscellaneous Appeal No. 619 of 1997

Sitaram Rice Mill APPELLANT

Vs

Orissa State Financial Corporation RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:
State Financial Corporations Act, 1951 — Section 31

Citation : (2000) 90 CLT 237 : (2000) 1 OLR 618

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : I.C. Dash and K. Sahoo, for the Appellant; M.M. Sahu and N. Dash, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The debtor has filed this appeal. Proceeding was initiated u/s 31 of the State Financial Corporation Act, 1951. The District Judge has found out the liability of the debtor and directed for realisation of the amount by selling the property mortgaged. The said order is under challenge in this appeal.

2. In course of hearing, the respondent was called upon to produce the copy of the accounts/ledger maintained by the Corporation. The counsel for the appellant has submitted a chart indicating that there have been many mistakes in the accounts furnished by the Corporation. The counsel has also argued that pendente lite and future interest is not payable. The counsel for the Corporation, on the other hand, has tried to explain the various discrepancies in the accounts. Prima facie, it appears that the accounting done by the O.S.F.C. requires to be clarified. Unless the matter is remanded to the District Judge, the parties may not get proper opportunity of explaining the various discrepancies or anomalies. It may be necessary to receive further evidence in the matter as the entries which are being challenged may be required to be explained by competent officer of the Corporation.

3. In course of hearing, the counsel for the O.S.F.C. also submitted that the Corporation has charged interest-tax as per the guidelines issued by the I.D.B.I, and R.B.I, from time to time. The learned counsel appearing for the appellant, on the other hand, submitted that there cannot be any justification for levying interest-tax or any other additional interest save and except what is contemplated in the agreement. This matter is also required to be determined and it may be that necessary evidence has to be adduced for this purpose.

4. The counsel for the appellant has also challenged the justifiability of commitment charges, whereas the counsel for the Corporation submits that commitment chargers are to be paid. Again, this is a matter which may require further elucidation by the competent officer of the Corporation.

5. The counsel for the appellant further submitted that the Corporation has claimed compound interest. This is again a matter which requires further clarification from both sides.

6. Having regard to all these aspects, in the interest of justice, the order of the Court below is set aside and the matter is remanded to the District Judge for fresh disposal. The parties are directed to appear before the District Judge on 11th May, 2000.

7. During pendency of this appeal, a sum of Rs. 5,00,000/- (five lakhs) had been deposited which has been kept in fixed deposit. Out of the said sum, a sum of Rs. 1,25,000/- was directed to be deposited before the Corporation. Without prejudice to the contentions of both parties, it would be proper if the aforesaid amount is adjusted by the Corporation towards the dues. Similarly, the balance amount lying in deposit in the Court along with the accrued interest shall be paid to the Corporation for necessary adjustment. The registry shall take steps to issue cheque/pay order in the name of the O.S.F.C. which shall be handed over to the learned counsel for the O.S.F.C. However, such adjustment shall be subject to the scrutiny of the District Judge and if it is ultimately found that any amount is to be refunded to the present appellant, the District Judge shall direct refund of such amount along with interest at the rate of 1 2 per cent on such excess amount, if any.

8. It is made clear that no-opinion has been expressed on any of the contentions raised by any of the parties and the District Judge is required to dispose of the matter afresh in accordance with law. The District Judge shall afford further opportunity of hearing to both parties and if necessary, further oral evidence/ documentary evidence may be adduced. The District Judge should try to dispose of the matter as expeditiously as possible preferably within a period of six months from the date of appearance of the parties. Since this order has been necessitated due to lack of proper materials and the Corporation was obliged to explain its accounts properly before the District Judge, I think it proper to direct that a sum of Rs. 3,000/- (rupees three thousand) shall be paid as cost to the appellant. Such amount of Rs. 3,000/- shall be adjusted against the accounts of

the appellant.

