(2009) 07 RAJ CK 0048

In the Rajasthan High Court

S.M. Lata APPELLANT

Vs

Rajasthan Financial Corporation and Others RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14
State Financial Corporations Act, 1951 — Section 29, 30, 32G

Citation : (2009) 07 RAJ CK 0048

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against auction proceedings initiated by respondent Rajasthan Financial Corporation ("Corporation") in exercise of powers u/s 29/30 of State Financial Corporation Act, 1951 ("SFC Act") and seeking further direction for restoration of possession of industrial Unit and also praying that account of petitioner may be settled under one time settlement scheme and excess amount lying surplus out of sale proceeds upon disposal of the unit be refunded to him along with interest.

2. Brief facts, relevant for adjudication of controversy raised herein, are that a loan of Rs. 4.70 lacs was sanctioned, in favour of M/s. Lata Iron & Steel Works, Alwar on 27.06.1985, for which documents were executed on 04.09.1985-out of which the petitioner availed of loan to the tune of Rs. 3,59,300/- upto 10.09.1987. The Unit remained closed since March, 1988 and electricity was also disconnected from January, 1989. However, petitioner did not make regular repayment and started making defaults in payment of principal loan and interest amount since 01.04.1987, for which various reminders (Ann.R/3 to R/7 annexed to additional affidavit dt. 21.05.2009) were sent to pay over dues towards principal & interest; and through registered letter dt.29.07.1989 (Ann.R.8), he was advised to clear over dues of Rs. 2.34 lacs within fifteen days, failing which legal action u/s 29 of SFC Act would be initiated. Since petitioner failed to deposit

over dues despite persistent demands (supra), legal notice u/s 30 of FC Act was issued on 15.09.1989 (Ann.R/9) demanding over-dues of Rs. 2,68,729/- in pursuance whereof, petitioner vide letters dt. 21.09.1989 (Ann.R/10) & 01.03.1990 informed that the Unit is lying closed on account of pollution problems and prayed for rebate of 10% and waiving penal interest since March, 1988.

3. However, Rs. 93,057/- were deposited by petitioner on 20.03.1990. Vide letter dt.17.05.1990 (Ann.R/11), he was called for discussion but did not turn up; hence again a registered notice dt.11.12.1990 (Ann.R/12) was issued to clear over-dues of Rs. 3,63,712 within fifteen days, otherwise action u/s 29 of SFC Act would be initiated. After reminders dt.16.01.1991 & 12.06.1991 (Ann.R/13 & R/14) and dt.10.10.1991 (Ann.R/15) advising the petitioner to come forward with concrete proposal within 15 days, he showed his inclination to settle account provided Corporation waives penal interest; and two cheuqes dt.23.11.1991 and 30.11.1991 each of Rs. 50,000/- were sent vide letter (Ann.R/16) but cheques were dishonoured so he was advised to deposit Rs. One lac vide letter dt.18.12.1991 (Ann.R/17). Again no efforts were made to clear over-dues, hence legal notice was served u/s 30 of SFC Act on 27.02.1992 (Ann.R/19) followed by registered post legal notice dt.06.09.1993 (Ann. R/24) u/s 30 of SFC Act, specifying over-dues of Rs. 3,07,247/- as on 01.07.1993. Since overdues were not fully cleared, legal notice u/s 30 of SFC Act (Ann.R/27) was issued on 10.01.1995 through registered post stating over dues of Rs. 2.73 lacs as on 01.01.1995 and followed by another legal notice (Ann.R/25) issued on 21.08.1995, which constrained the Corporation to take decision of taking possession of fixed assets of the unit u/s 29 of SFC Act as conveyed vide letter dt.24.01.1996 (Ann.R/29).

4. However, Corporation issued Circular dt.01.11.1997 (Ann.R/38) reviewing one time settlement Scheme having been in force upto 31.10.1997; as was decided in meeting held on 22.10.1997 to provide relief under one time settlement Scheme in loans falling in Doubtful & loss categories, making it operative from 01.11.1997 to 31.03.1998, for which all loan accounts classified as doubtful "A" & "B" and loss accounts as on 31.03.1997 were made eligible for consideration. Accordingly, defaulting unit holders were advised to get them registered by depositing 10% of outstanding due as on 01.10.1997 in November, 1997 or failing thereof, 25% of outstanding in December, 1997; and remaining amount payable in instalments (i) 25% in January, 1998; (ii) 25% in February, 1998 and balance in March, 1998 or earlier. Letter dt.11.11.1997 (Ann.P.5) accordingly was sent to the petitioner.

5. Indisputably despite letters dt. 29.07.1997 and 14.10.1997 (Ann.R/33 & R/34) followed by letter (Ann.P/5) to avail of one time settlement scheme during its enforcement from 01.11.1997 to 31.03.1998, petitioner did not turn up to clear over-dues rather failed to get himself registered as per OTS by depositing 10% of outstanding dues as on 01.10.1997 in Nov., 97 or otherwise 25% of outstanding

in Dec., 97.

6. However, petitioner deposited a sum of Rs. 1.08 lacs on 07.01.1998 at his own alongwith application requesting therein to treat it full and final settlement under OTS. It is relevant to mention that there was no communication from the side of Corporation about settlement being arrived at, which he was to deposit under the Scheme. In response to application dt.08.01.1998 and deposit of Rs. 1.08 lac at his own, he was telegraphically informed by the Corporation advising him to deposit Rs. 1.20 lacs plus other money latest by 31.03.1998 to settle the account under OTS, otherwise no benefit will be given.

7. Time and again, registered post notices one after the others for initiation of legal action u/s 30/29 of SFC Act were issued on 06.10.1998 (Ann.R/42), 17.08.2000 (Ann.R/45), 24.04.2001 (Ann.R/46) alongwith reminders (Ann.R/43, R/44, R/47); notice dt.23.10.2002 (Ann.R/48), besides legal notice for recovery of dues u/s 32-G of SFC Act issued on 25.08.2003 (Ann.R/49) and that apart, legal notice u/s 30 issued on 19.06.2004 (Ann.R/50) and lastly on 16.09.2005.

8. Despite umpteen reminders sent besides legal notices (supra), since petitioner failed to settle his account, registered post intimation was sent to petitioner on 06.10.2005 (Ann.R/54) that period of legal notice having expired on 05.10.2005, Corporation has decided to take over possession of the Unit on 19.10.2005, on which date, it was ultimately taken in the presence of notary public-intimation whereof was sent by registered post on 24.10.2005 (Ann.R/55) as per which, plants and machinery were almost missing at the site (E-177, MIA, Alwar).

9. Market Realizing Value of land (Rs. 7.43 lacs) & building (Rs. 5.34 lacs) was assessed by Corporation as of Rs. 12.12 lacs. Finally, public notice was published in "Rajasthan Patrika" dt.14.11.2005 for auction of Unit (E-177-MIA, Alwar) inviting bids-intimation whereof was also sent to petitioner vide registered letter dt.16.11.2005 (Ann.R/57) that auction of land and Building of the Unit would take place on 22.11.2005, 22.12.2005 and 24.01.2006. But no bidder came forward nor petitioner turned up despite opportunity afforded.

10. Further public notice was published in Dainik Bhaskar dt.10.02.2006 (Ann.R/58) for auction of the Unit in question on three dates (17.02.2006, 06.03.2006 & 17.04.2006)-intimation whereof was also sent vide registered letter dt.13.02.2006 (Ann.R/59). In pursuance of auction notice (Ann.R/58), respondent No. 4 was the only bidder who came forward on 17.02.2006 and offered bid. The Committee after taking note of bid offer of Rs. 12.41 lacs, finally approved it vide letter of approval dt.17.02.2006 (Ann.R/60)-as per conditions whereof, bidder was required to make payment of 30% of sale price as initial payment within 15 days from the date of approval letter and balance amount to be paid in 19 quarterly installments-pursuant to which, deed of conveyance was executed on 04.03.2006 (Ann.R/61). However, respondent No. 4 (auction purchaser) cleared its loan account finally on 27.08.2007-in pursuance whereof, no dues certificate was issued in her favour on 05.09.2007 (Ann.R/62).

11. Counsel for petitioner submits that once a sum of Rs. 1.08 lacs was deposited under one time settlement scheme on 07.01.1998 as would be evident from work-sheet prepared by Corporation which supports that total sum due was Rs. 1.08 lacs; the respondents were not justified in putting the Unit of petitioner to auction u/s 29 of SFC Act. Counsel further submits that petitioner made composite offer by specifically mentioning in his letter dt. 07.01.1998 that Rs. 1.08 lacs has been deposited as full and final towards over-dues under one time settlement scheme; and once amount was accepted, Corporation cannot be justified in segregating his composite offer. While accepting deposit of Rs. 1.08 lacs and later on raising other outstanding dues in no manner can be said to be justified; and Corporation cannot change its stand and it was bound by principles of promissory estoppel. In support, Counsel placed reliance upon decisions of Apex Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., Canara Bank and Others Vs. Shri Debasis Das and Others, and State of Orissa and Others Vs. Mangalam Timber Products Ltd.,

12. Counsel further submits that auction proceedings were initiated by issuing notice dt.13.02.2006 and publishing in Dainik Bhaskar on 10.02.2006 and there being only one bidder, without affording reasonable opportunity, the sale was finalised on 17.02.2006; thus very proceedings initiated for auction impugned and hurriedly confirmation of sale on 17.02.2006, itself was wholly arbitrary and action of Corporation was in violation of Article 14 of the Constitution. In support, Counsel relied upon decision of Apex Court in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, and Gajraj Jain v. State of Bihar AIR 2004 SC 3392.

13. Per contra, Counsel for Corporation submits that one time settlement scheme was introduced vide Circular dt. 01.11.1997 (Ann.R/38) making it operative from 01.11.1997 to 31.03.1998 in pursuance whereof, petitioner did not deposit 10% of over-dues in his loan account for getting him registered under OTS till November, 97, his case could not have been considered under OTS and no intimation was sent to petitioner but he deposited a sum of Rs. 1.08 lacs at his own alongwith application dt. 08.01.1998 (Ann.R.35), against which a letter was sent by Corporation on 09.02.1998 (Annex. R/36) followed with telegram dt.19.03.2008 (Ann.R/37) that Rs. 1.20 lacs and other dues was still due even under OTS which was to be deposited by 31.03.1998 so as to enable the Corporation to settle its account under the scheme.

14. Counsel submits that on opportunity being afforded (supra), petitioner did not turn up and benefit of OTS was not availed by him and being a defaulter; as a consequence whereof, legal action u/s 29/30 of SFC Act on account of non-payment of over-dues were initiated time and again as would be evident from material (supra) placed on record and finally legal notice for recovery of dues u/s 32(G) was served on 25.08.2003 (Ann.R/49) but again petitioner failed to clear over-dues, which constrained the Corporation to issue legal notice u/s 30 of SFC Act on 16.09.2005 (Ann.R/53) and possession after serving him further notice

was taken over on 19.10.2005 and only thereafter the Unit was put to auction through publication of notice in Rajasthan Patrika on 14.11.2005-intimation whereof was indisputably sent vide letter dt.16.11.2005 to petitioner, to which he never responded or brought any bidder who could pay better sale price and no action was taken by petitioner despite notice being served; and since there was no bidder having come forward, another auction notice was published in Dainik Bhaskar on 10.02.2006-notice whereof was sent to petitioner on 13.02.2006. Respondent No. 4 who was only the bidder, came forward to offer much more amount of MRV assessed by Corporation for the Unit in question, whose bid was finalised and possession was handed over to auction purchaser and finally cleared its account as is apparent from no dues certificate issued on 05.09.2007 (Ann.R/62); and at best what the balance remained as surplus out of sale proceeds received in course of auction impugned, can be refunded which could not have been paid because of instant petition being pendente before this Court. Counsel further submits that action has been taken up by Corporation in accordance with provisions of SFC Act and its action is also in consonance with provisions of the Constitution of India.

15. While supporting contentions (supra) made by Counsel for Corporation, it has been further submitted by Counsel for respondent No. 4 (bidder) that she was bonafide auction purchaser and petitioner failed to challenge at the stage when the Unit was put to auction and much after the sale was confirmed, he approached this Court by way of instant petition in April, 2006 while by that time, deed of conveyance was also executed in March, 2006; inasmuch as in September, 2007 after clearing the accounts, no dues certificate was also obtained. Thus, petitioner, if at all aggrieved, can be against Corporation only and respondent 4 being bona fide purchaser of the Unit, no relief can be claimed by petitioner qua her.

16. I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. It is manifest from record that out of loan to a sum of Rs. 4.70 lacs was sanctioned on 27.06.1985, petitioner availed of loan to a sum of Rs. 3,59,300/- after having executed documents on 04.09.1985. Petitioner started making defaults in repayment of loan disbursed to him since April, 1987. Numerous notices were served advising the petitioner to make repayment of over-dues as is evident from documents (Ann.R/3 to R/9) placed by Corporation alongwith affidavit whereby reminders were sent for settlement of the loan account. However, it appears that petitioner deposited amounts on some occasions, that were not sufficient to settle the account by clearing over-dues and finally, he was informed about one time settlement scheme introduced by Corporation through Circular dt.01.11.1997 (Ann.R/38) in pursuance whereof, petitioner indisputably failed to get it registered with Corporation by deposit of 10% of over-dues in loan account as on 01.10.1997; or 25% of overdues latest by 31.12.1997; yet his case was considered but it appears that petitioner did not come forward to clear over-dues. When no intimation was sent by Corporation for loan account being settled; anyhow,

petitioner voluntarily at his own deposited Rs. 1.08 lacs on 07.01.1998 allegedly towards full and final settlement as is evident from documents (Annex. P/7 and P/8) but immediately thereafter, when it came to the notice of Corporation that it has been considered by petitioner as full and final settlement, initially letter was sent on 09.02.2008 followed by telegram sent on 19.03.1998 (Ann.R/40) that after adjustment of amount deposited of Rs. 1.08 lacs, further amount of Rs. 1.20 lacs plus other money has to be deposited by 31.03.1998 so as to enable the Corporation to settle loan account in question under the Scheme.

17. It is not the case of petitioner that telegram dt.19.03.98 (Ann.R/40) was never served. However, petitioner did not turn up to deposit as per telegram (supra); so intimation was served for initiation of legal action u/s 29/30 of SFC Act through communications (Ann.R/42, R/45, R/46) and thereafter notice for recovery of over-dues u/s 32-G of SFC Act vide Annex. R/49 and finally, legal notice dt.19.04.2004 (Ann.R/50) u/s 30, followed notice dt.06.10.2005 (Ann. R/54), Corporation took possession on 19.10.2005 under intimation sent to petitioner on 24.10.2005 (Ann.R/55) and the Unit was put to auction through publication of notice initially in Rajasthan Patrika on 14.11.2005 notifying three dates - intimation whereof was also sent vide Ann.R/57 duly served upon petitioner and when no bidder came forward, fresh auction notice was published in Dainik Bhaskar on 10.02.2006 notifying three dates-intimation whereof was also sent to him on 13.02.2006 vide Ann.R/59; but when petitioner failed to take any effort in settlement of loan account; and taking note of MRV being assessed by Corporation Rs. 7.43 lacs for land while Rs. 5.34 lacs for building, the bid of respondent No. 4 offered of Rs. 12.41 lacs was finally accepted on 17.02.2006 and deed of conveyance was executed finally culminated into no dues certificate issued in favour of respondent No. 4 on 05.09.2007 (Annex. R/62).

18. Submission made by Counsel for petitioner about deposit of Rs. 1.08 lacs on 07.01.1998 allegedly under one time settlement scheme towards full and final settlement of account, as a result whereof Corporation was bound to accept his deposit without raising further demand through telegram for a sum of Rs. 1.20 lacs, in the opinion of this Court, is without any substance for the reason that no intimation was sent from the office of Corporation that a sum of Rs. 1.08 was due to be deposited against full and final settlement under OTS and if he voluntarily deposited at his own, it was not binding upon the Corporation and principles of estoppel has no application and that apart, without any loss of time, letter dt.09.02.1998 followed with telegram dt.19.03.1998 was sent especially raising further sum of Rs. 1.20 lacs plus other money has to be deposited so as to enable the Corporation to settle its account by 31.03.1998 under OTS but petitioner failed to deposit and never came forward to settle the outstanding loan account.

19. Judgments in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., Canara Bank and Others Vs. Shri Debasis Das and Others, and State of Orissa and Others Vs. Mangalam Timber Products Ltd., relied upon by Counsel for

petitioner are not even remotely related to the controversy raised in the facts of instant case, which may come to his assistance.

20. Contention about auction proceedings initiated hurriedly by Corporation as alleged by petitioner and thereby fair opportunity of hearing was not afforded to petitioner, is bereft of merit for the reason that numerous notices were served upon petitioner-reference whereof is made (supra); and even while putting the Unit to auction, notice was published in daily news papers of 14.11.2005 notifying three dates (22.11.2005, 22.12.2005 and 24.01.2006)-intimation whereof was also sent to petitioner who has not disputed that it was not received by him and that apart, publication of notice was itself general notice; but no bidder came forward; hence fresh public notice was published in Dainik Bhaskar on 10.02.2006 notifying dates of auction (17.02.2006, 06.03.2006 and 17.04.2006) duly conveyed to petitioner also. Ultimately, respondent No. 4 auction purchaser came forward and taking note of MRV and earlier attempts made by Corporation, her bid offer being commensurate with MRV, was approved on 17.02.2006 and deed of conveyance was executed in her favour on 04.03.2007; while petitioner approached this Court after deed of conveyance was executed in favour of auction purchaser, and much after auction proceedings were finalised and sale was confirmed by the authority.

21. It is also not the case of petitioner that the statement of account maintained by Corporation is not as per terms and condition of agreement or the amount paid by the petitioner has not been credited in his loan account-in absence whereof, the outstanding dues cannot be said to be disputed taking note of instalments deposited by petitioner from time to time, which has been credited in his loan account asper terms and conditions of agreement.

22. In SJS Business Enterprises v. State of Bihar (supra) on which petitioner placed reliance, Apex Court observed that while initiating proceedings u/s 29 of SFC Act, reasonableness has to be tested against the demand of outstanding to secure best price for the property to be sold in auction and that could be achieved only when there is maximum participation in process of auction sale through public notice inviting number of persons making bid offers, which is possible only after adequate publicity which ensures participation of persons interested in purchasing the property under auction and that alone could secure better price.

23. In instant case, after possession was taken over of the Unit, it was put to auction by public notice published in Rajasthan Patrika and Dainik Bhaskar which are widely circulated in State of Rajasthan on 14.11.2005 and 10.02.2006 respectively notifying three dates (supra) of auction apart from intimation whereof through notice to the petitioner and he had an opportunity to either bring bidder or participate in auction proceedings but neither he appeared nor attempt was made by him to bring a bidder so as to fetch better price of the property in auction which was finalised in favour of respondent No. 4.

24. It is not even the case of petitioner that property of petitioner would have fetched better price than bidder''s offer made in impugned auction. In the opinion of this Court, Corporation has taken reasonable steps in initiating proceedings u/s 29 of SFC Act and their action cannot be said to be arbitrary or in violation of Article 14 of the Constitution.

25. A feeble attempt was made by Counsel for petitioner that it was a composite offer made by petitioner while depositing of Rs. 1.08 lacs under OTS scheme which could not have been segregated by respondents, is bereft of merit for the reason that the petitioner on its own deposited without there being any intimation by respondents under OTS scheme and the respondents clarified their position based on record about additional amount which was required and payable for settlement of dues under one time settlement scheme duly intimated on 19.03.2008. However, what has been offered by petitioner could not be said to be an offer as intimated to the Corporation about payment which he made.

26. However, this Court finds substance in submission as regards refund of surplus amount out of sale proceeds. This fact remains undisputed that sale proceeds received upon auction of the unit in question is in excess of over-dues payable for settlement of loan account of the petitioner, which certainly requires to be refunded.

27. Consequently, this writ petition assailing auction proceedings and initiation of legal action under SFC Act fails and is hereby dismissed. However, respondent Corporation shall pay surplus amount out of sale proceeds available with it in loan account of petitioner alongwith interest @9% per annum from the date (17.02.2006) the Unit was put to auction, till actual payment to the petitioner. Compliance be made within one month from the receipt of this order. No order as to costs.