(2003) 02 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2964 of 1989

Smt. Radha Payari Devi — APPELLANT

Vs

Bihar State Financial Corpn. — RESPONDENT

Date of Decision : 21-02-2003

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

Citation : (2003) 2 PLJR 479 : (2003) 47 SCL 561

Hon'ble Judges : Sachchidanand Jha, J;P.N. Yadav, J

Bench : Division Bench

Advocate : Shashi Shekhar Dwivedi, V. Nath, Ashok Kumar and Rakesh Kumar, for the Appellant; Shravan Kumar, for the Respondent

Judgement

1. The dispute in this case relates to the dues of the Bihar State Financial Corporation (in short ''the Corporation'') against M/s. Bihar Industrial Engineering Company, a small scale industrial unit at Bhagwan Bazar in Chapra town. The writ petition was filed for quashing a notice of sale of the mortgaged assets in terms of Section 29 of the State Financial Corporations Act, 1951. The petitioners also prayed for a direction upon the Corporation to accord permission for sale of 4 Bighas land out of the mortgaged lands to enable them to liquidate the dues. The writ petition was disposed of by a Bench of this Court on 18-3-1988. The Court observed that though in view of the past conduct of the petitioners it was reluctant to grant any relief, in view of the readiness to sell part of 7.5 acres mortgaged land it was desirable to give them a chance to repay the entire dues. Accordingly, the Court allowed the petitioners to pay the whole amount of loan with up-to-date interest by selling vacant lands of plot Nos. 424, 432 and 445. In this manner the petition was allowed. The Corporation went to the Supreme Court in SLP (Civil) No. 10210/89. From the order of the Supreme Court dated 9-1-1990 it appears that the parties arrived at some kind of understanding under which the Corporation agreed and did, in fact, pay sum of Rs. 12,61,000. However, the final decision as to the quantum of dues was left open to be decided by the High Court. While, accepting the payment of Rs. 12,61,000 by the

petitioners in favour of the Corporation, it directed the petitioners to meanwhile furnish bank guarantee for Rs. 3 lakhs within one month from the date of the order to cover any additional amount which might be found payable by the petitioners to the Corporation. Within one week of the furnishing of the bank guarantee the Corporation was to return the title deeds relating to the hypothecated property to the petitioners so that they may be able to deal with them in the manner they liked. The Supreme Court observed that it is open to the petitioners to claim before the High Court that the actual amount payable by them to the Corporation was even less than Rs. 12,61,000 which had already been paid. The matter has thus come back to this Court on remand.

2. It is not necessary to notice the subsequent events in details. Suffice it to mention that the Bank Guarantee for Rs. 3 lakhs was furnished by the petitioners on or about 7-3-1990. As, however, hearing of the case could not be effectively taken up and meanwhile the life of the Bank Guarantee expired, in view of plea of the petitioners that the Bank had declined to extend the validation period without production of the original Bank Guarantee, on 20-12-1991 an order was passed to return the same to the petitioners, who, in turn, were directed to get it re-validated and re-file within 15 days from the date of return. By the same order dated 20-12-1991, with the consent of the parties, Isha Nath & Company, Chartered Accountants was appointed as Commissioner to determine the amount due to the Corporation. It transpired that Isha Nath & Company was not in existence. Accordingly, on 27-4-1992 Shri Ashish Kumar Tekriwal, a Chartered Accountant of M/s. A. Tekriwal and Associates, was appointed as the Commissioner. A dispute arose about the re-filing of the Bank Guarantee pursuant to the abovesaid order dated 20-12-1991. From the order dated 4-3-1993 it appears that a submission was made on behalf of the petitioners that the original Bank Guarantee was not returned by the office for the purpose of re-validation. However, the submission was rejected observing that if the petitioners had made any attempt they should have mentioned the matter before the Court which they never bothered to do. In the circumstances, the Court directed the petitioners to deposit Rs. 3 lakhs in cash by 6-3-1993. No such deposit was made. However, the case of the petitioners is that the Bank Guarantee was furnished which is on record of the case.

3. We have stated the aforesaid facts only for record. In view of the order that we are going to pass they have little relevance.

4. As indicated above, the Supreme Court remitted the case to this Court for determining the amount due from the petitioners to the Corporation with liberty to the petitioners to claim that the amount already paid in the Supreme Court i.e. Rs. 12.61 lakhs was more than the amount due.

5. When hearing of the case was taken up earlier on 29-1-2003, it was stated on behalf of the Corporation that the entire dues have been paid by the unit i.e. M/s. Bihar Industrial Engineering Company and a "No Dues" certificate has accordingly been issued by the Corporation and in the circumstances the petition

has become infructuous. In the supplementary counter affidavit, contents of which have been sworn by Shri Sudhir Kumar Thakur, Deputy Manager (Legal) of the Corporation, it has been stated that Chapra Branch of the Corporation has verified and re-calculated the account and as per reverified/rectified account the petitioner was found entitled to refund of Rs. 6,392.73P, which was adjusted against legal expenses as per terms of the agreement. On 26-3-2002 the managing partner of the concern, Jai Prakash Singh, made request to the Corporation to adjust the amount of Rs. 5,000 deposited on 15-3-1989 as earnest money as well as tender money of Rs. 5,000 deposited by one Chandra Shekhar Singh against the dues with assurance that he was ready to pay the remaining amount after such adjustment. The request of Jai Prakash Singh was considered and on 31-3-2002 after sum of Rs. 13,000 was paid by him, ''No Dues'' certificate was issued on 30-7-2002. In this manner the entire dues of the unit stands liquidated.

6. On behalf of the petitioners, however, a different stand was taken. It soon became apparent that what was being said was really the stand of one of the partners, Hriday Kumar Singh, brother of Jai Prakash Singh, From submissions of the counsel it became clear that there were differences between the brothers and the conflicting stand of Jai Prakash Singh and Hriday Singh are nothing but manifestation of their personal differences. In the facts and circumstances, Shri S.S. Dwivedi, learned counsel appearing on behalf of the petitioners (read Hriday Kumar Singh) submitted that as it may be onerous for this Court to determine the amount payable to the Corporation, or the petitioners, the Court may appoint a Chartered Accountant as Commissioner, as was done earlier on 20-12-1991. Shri Shravan Kumar, learned counsel appearing for the Corporation, submitted that a much bigger amount was, in fact, payable to the Corporation but the Corporation agreed for sum of Rs. 12.61 lakhs during the pendency of the case before the Supreme Court as part of the settlement. Besides, on the request of the Managing partner Jai Prakash Singh, the corporation has already given ''No Dues'' certificate in the circumstances set out above, which should be treated to be the end of the dispute, and if any dispute is sought to be raised and Commissioner ,is appointed to determine the account, the entire case should be left open. In other words, it may be left open to the Corporation to show that higher amount was payable in or about 1990 than Rs. 12.61 lakhs paid on 9-1-1990. He stated that as per the statement served on the petitioners the Corporation was entitled to further sum of Rs. 12.68 lakhs in 1990 itself.

7. After making submissions for sometime, counsel for the parties agreed that the rights and liabilities of the parties may abide by the result of statutory audit of the accounts of the Corporation. Undisputedly, the accounts of the Corporation are subject to statutory audit and, therefore, if in course of audit any amount is found due from the petitioners to the Corporation, or vice versa, the same shall be paid. Shri Dwivedi wanted that such audit be made in presence of the petitioners. It is not known if the statutory audit for the relevant period has already been completed or not. If it has been done already, the relevant details

may be furnished to the petitioners. If it has not been done, the same should be done after notice to the petitioners. Needless to say that in course of audit if any amount is payable by the petitioners to the Corporation, the same shall be paid. On the other hand if the amount already paid by the petitioners is found to be excess, the same shall be refunded. Those payments will carry interest at prevailing rates. All this should be done preferably within four months of receipt of copy of this order.

8. This writ petition is thus disposed of, with the consent of the parties, in the terms indicated above.

