

(1997) 07 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1010 of 1994

Sri Devi Prasad Steels Pvt. Ltd.

APPELLANT

Vs

A.P.S.F.C. Ltd. Hyd.

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 226

State Financial Corporations Act, 1951 — Section 29

Citation : (1998) 3 ALD 169 : (1998) 1 ALT 154 : (1998) 94 CompCas 837

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Mr. Vilas Afzulpurkar, for the Appellant; Mr. P.R. Prasad, for the Respondent

Judgement

1. The above writ petition is filed for a direction in the nature of Mandamus directing the Respondent Corporation to grant rebate, waiver of Credit Guarantee Commission (CGC) charges and concessional rate of interest to the petitioner and for payment of interest on the amount of excess sale consideration which was withheld by the Respondent-Corporation after the petitioner's unit was put for sale.

2. Brief facts are that the petitioner Company was sanctioned a term loan of Rs.28 lakhs on 11-9-1985 for setting up a Steel re-rolling Mill in Pernamitta village, Prakasam District. The said term loan was required to be repaid in 13 half yearly instalments commencing from the two years from the date of the release of any part of the loan by Respondent-Corporation. The repayment of term loan instalments commenced from 11-1-1988. The petitioner unit was affected on account of power cuts imposed by the Electricity Board in the middle of 1987 and suffered set back. State Bank of India, Ongole also sanctioned working capital to the petitioner. However, on account of default in repayment of the loan, the Respondent-Corporation after serving recall cum-sale notices, finally seized the unit on 7-6-1989. A meeting of consortium members was also

held to consider revival package and finally as no option was available, the Respondent-Corporation proceeded to sell the property and published notifications in that behalf inviting offers for purchase. In response to the advertisement, the highest offer received was from G. Seetharamaiah in a sum of Rs.57 lakhs. At the date of finalisation of the sale of the unit, a sum of Rs.45,62,849.40 ps.was due. There was thus an excess sale consideration of Rs.11,37,150.60 ps. The excess sale consideration of Rs.11,37,150.60 ps. was remitted by the Respondent-Corporation to the State Bank of India vide three cheques dated 22-2-1992. 17-2-1992 and 6-2-1992.

3. The petitioner claims that the sale was finalised in March, 1991 whereas the excess sale consideration was wrongfully withheld for over eleven months until it was remitted by the Respondent-Corporation to the State Bank of India. The petitioner claims interest on the amounts so withheld.

4. In the counter affidavit filed on behalf of the Respondent-Corporation, no reasons have been stated for withholding the amount after the sale was confirmed in favour of the purchaser. The only explanation submitted in the counter affidavit filed on behalf of the Respondent-Corporation is to the following effect :

"The excess sale consideration was remitted to the State Bank of India vide our Cheque Nos.151280, 152310, 151259, dated 22-2-1992.17-2-1992 and 6-2-1992 respectively. The excess sale consideration was transferred to the Working Capital loan account of the Company on the above dates only after complying with the formalities by the purchaser of the Unit."

5. Sri P.R. Prasad, learned Standing Counsel for the Respondent-Corporation, however, submitted that the amounts were not withheld for any unreasonable period and that as soon as they were received from the purchaser within reasonable time, the same was remitted to the State Bank of India. The learned Counsel placed before Court the relevant file of the Respondent-Corporation dealing with the subject. A perusal of the copy of Letter No. ACC/Mr & R/ APR/1990-91, dated 9-3-1991 shows that the offer of Sri G Seetharamaiah offering a sale consideration of Rs.57 lakhs for purchase of land, buildings, plant and machinery belonging to the petitioner was accepted by the Respondent-Corporation subject to the condition that -

(i) Purchaser shall pay Rs.23,86,544.10 ps. (Rupees Twenty Three Lakhs Eighty Six Thousands and Five Hundred and forty four and paise ten only) which included Rs.50,000/- already paid towards EMD.

(ii) upon such payment and after executing the required loan security documents the petitioner shall take possession of the unit on or before 28-3-1991 failing which the sale shall stand cancelled.

(iii) the balance of Rs.33,13,455.90ps. shall be paid by the purchaser over a period of six years in 11 half yearly instalments. The 1st such instalment shall be

at Rs.3,13,455.90 ps. and the remaining 10 instalments was determined at the rate of Rs.3 lakhs. The 1st instalment to be paid at the expiry of one year from the date of taking possession.

(iv) interest at 18% on the said balance amount of Rs.33,13,455.90 ps. Was stipulated.

The assets agreed to be sold shall be under equitable mortgage/hypothecation having first charge to the Respondent Corporation till the subsistence of the loan.

6. It is thus seen that Respondent-Corporation agreed to receive Rs.23,86,544.10 ps. (this sum represent 100% over and above the Corporation's term loan and includes therein a sum of a Rs.11,37,150.60 ps. being the excess sale consideration which is payable to the petitioner) from the purchaser. The said amount was payable by the purchaser to the Respondent-Corporation on or before 28-3-1991 i.e., the date on which possession was to be delivered to the purchaser. The balance amount of Rs.33,13,455.90 ps., the Respondent-Corporation allowed the purchaser to pay in instalments. The petitioner Company whose unit was so sold, however, was neither informed of the sale transaction nor the terms on which the sale was effected by Respondent-Corporation in favour of the said G. Seetharamaiah. The entire decision was taken in this behalf by the Respondent-Corporation without knowledge, information or consent of the petitioner Company as to the terms on which the sale transaction was finalised. The petitioner was kept in the dark all through.

7. As already noticed, a sum of Rs.45,62,849.40 ps. was the total sum due to the Respondent-Corporation from the petitioner Company towards its outstanding on the term loan. Excess sale consideration of Rs.11,37,150.50 ps. had therefore to be paid by the Respondent-Corporation to the petitioner Company as soon as the sale transaction was finalised. The Respondent-Corporation had no justification to retain the excess sale consideration of Rs.11,37,150.60 ps. which was due and payable to the petitioner as soon as the sale transaction was finalised by the Respondent-Corporation. No reasons have been stated as to why the said sum was not forthwith paid to the petitioner or remitted to the State Bank of India, who held second charge over the assets of the unit of the petitioner Company which was sold. The excess sale consideration was remitted to the State Bank of India only in February, 1992. The action of the Respondent-Corporation is thus withholding the excess sale consideration of Rs.11,37,150.60 ps. beyond 31-3-1991 (the date by which the purchaser was required to pay Rs.23,86,544.10 ps.) in terms of the letter of acceptance issued by the Respondent-Corporation dated 9-3-1991 to the purchaser, is unreasonable and arbitrary.

8. Learned Standing Counsel for the Respondent-Corporation, however, submitted that the purchaser made payment of Rs.11,50,000/- only and paid the balance amount of Rs.11 lakhs and odd somewhere in January, 1992. Even if that position is accepted, the Rupees Eleven lakhs and odd received by the

Respondent-Corporation in the first instance should have been made over to the petitioner or remitted on his behalf to the State Bank of India. That amount constituted the excess sale consideration and could not have been held by the Respondent-Corporation. Any amounts over and above the sum of Rs.45,62,849.40 ps. were legitimately due and payable by the Corporation to the petitioner Company. The Respondent-Corporation had an obligation to pay the same as soon as they finalised the sale with purchaser. The Respondent-Corporation could not stipulate any terms or grant time in respect of the said excess sale consideration which was rightly due and payable to the petitioner Company. It cannot be denied that in so far as the amounts which were due to the Respondent-Corporation (Rs.45.62,849.40 ps.) from out of the sale consideration, it could deal with the same in any manner including granting time or instalments and subject to such terms and conditions as it deemed fit. The same could not however be said with respect to the excess sale consideration (Rs.11,37,150.60 ps.) over which the Respondent-Corporation had no rights and was merely a trustee, the beneficial owner of the said amount being the petitioner.

9. Accordingly, it has to be held that the Respondent-Corporation having withheld the excess sale consideration of Rs.11,37,150.60 ps. until the same was remitted to the State Bank of India on petitioner's account, Respondent-Corporation has rendered itself liable to pay interest at the same rate at which it has stipulated interest from the purchaser viz., 18% per annum from 1-4-1991 upto the dates on which the amount was remitted to the State Bank of India.

10. With regard to the other claims made by the petitioner viz., waiver of Credit Guarantee Commission charges (C.G.C.) at 1% per annum, rebate and concessional rate of interest, it must be stated here that the same arise out of otherwise are relatable to the original contract and form part of the terms of the loan. They are thus in the nature of contractual obligations between the lender and borrower. Any dispute or settlement in respect thereof has to be by a properly instituted suit before a Civil Court of competent jurisdiction and not by invocation of the jurisdiction of this Court under Article 226 of the Constitution of India.

11. Before any reliefs can be granted in respect of the said claims, certain disputed questions of fact need to be resolved and the same can appropriately be done in a properly constituted suit before a Civil Court of competent jurisdiction. It is therefore held that the above writ petition in so far as the said claims are concerned is not maintainable, it is therefore not necessary to consider the contentions in respect of the said claims. They are left open for being adjudicated before the appropriate forum if the petitioner is so advised to file a suit.

12. It was the contention of learned Standing Counsel for the Respondent-Corporation that the above writ petition on the very same grounds should be held not maintainable even as regards the interest on excess sale consideration. I cannot accept the said contention inasmuch as the sale of the unit and

realisation of the sale consideration are not subject-matter of the contract (Term loan). The realisation of the sale consideration was consequent to the default and in exercise of the statutory right vested in the Corporation u/s 29 of the State Financial Corporations Act. The Respondent-Corporation exercised the said statutory right of seizure and sale. Respondent-Corporation had a corresponding obligation, therefore, to pay the excess sale consideration to the petitioner over and above the amounts that were lawfully due to the Corporation towards the loan amount. The realisation of the excess sale consideration is directly attributable to the statutory power exercised by the Respondent-Corporation u/s 29 of the Act. The Respondent, it cannot be disputed is a State or an instrumentality of State within the meaning of Article 12 of the Constitution of India and has an obligation to act fairly in its dealings. The action of the Respondent-Corporation in withholding the excess sale consideration which was due and payable to the petitioner, no sooner the sale transaction was finalised and amounts received, the same was liable to be paid by the Respondent-Corporation to the petitioner or to the State Bank of India on account of the petitioner. Delay in withholding the same was neither fair nor tenable. The Respondent-Corporation is thus liable to compensate for its wrongful act of withholding the due amounts payable to the petitioner.

13. In the result, the writ petition is allowed in part. A direction shall issue to the Respondent-Corporation to pay to the petitioner interest at the rate of 18% per annum on the sum of Rs.11,37,150.60 ps. reckoned from 1-4-1991 the date the amount was remitted by the Respondent-Corporation to the State Bank of India, Ongole through Cheques dated 22-2-1992, 17-2-1992 and 6-2-1992.

14. Time for payment is granted upto three months from the date of receipt of a copy of this order.

15. In the circumstances, there shall be no order as to costs.