(2012) 09 PAT CK 0071

In the Patna High Court

Case No : CWJC No. 4006 of 2012

State Bank of India APPELLANT

Vs

Bihar industrial Area Development Authority and Others RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Bihar Industrial Area Development Authority Act, 1974 — Section 6(2)

Citation : (2013) 2 BC 457 : (2012) 4 PLJR 1035

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Pramod Kumar Thakur, for the Appellant; Lalit Kishore and Piyush Lall, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner State Bank of India (hereinafter referred to as the Bank) and the Bihar Industrial Area Development Authority (hereinafter referred to as the BIADA), respondent no. 1. None appears for respondent no. 4, although under order dated 5.9.2012 this Court directed the counsel for the BIADA to ensure service of notice of these proceedings on respondent no. 4 their subsequent lessee. It is submitted by the counsel for the BIADA that in compliance of the order dated 5.9.2012 notice was served on respondent no. 4 to appear in these proceedings but respondent no. 4 has not chosen to appear in the matter. In the circumstances, this writ petition is being disposed of on the basis of the submission made by the counsel for the Bank and the BIADA.

2. Bank sanctioned loan to respondent no. 3 the earlier lessee in recognition of the fact that lease deed dated 3.12.2001, Annexure-1 for the lands over which unit in question was raised was executed by and between the North Bihar Industrial Development Authority, Muzaffarpur the predecessor of BIADA and'' respondent no. 3.

3. Counsel for the Bank submitted that primal consideration for grant of loan to respondent no. 3 was that the unit in question raised over the lands of BIADA

stood mortgaged in favour of the Bank after receipt of no objection from North Bihar Industrial Development Authority, Muzaffarpur under letter no. 490 dated 11.12.2001, Annexure-2. Having sanctioned loan the financial conduct of respondent no. 3 was not satisfactory and in appreciation of unsatisfactory conduct of respondent no. 3 the Bank chose to close the loan account with notice to respondent no. 3 to deposit the entire arrears, which could not be deposited. For recovery of the loan amount amounting to Rs. 34,57,208.59/- Bank instituted O.A. No. 28/2002, which was allowed and certificate was issued for recovery of the aforesaid amount, on the basis of which R.P. No. 6/2004 was initiated by the Bank against respondent no. 3 in which proclamation of sale dated 3.3.2008 was issued but while conducting sale proceedings it transpired that the unit leased out in favour of respondent no. 3 has been allotted to respondent no. 4 after cancelling the lease deed executed in favour of respondent no. 3. Counsel for the Bank submitted that the cancellation of the lease executed in favour of respondent no. 3 without the process of civil court is contrary to sub-clause (2) of Section 6 of the Bihar Industrial Areas Development Authority Act, 1974. It is further submitted that in any case, before cancelling the lease of respondent no. 3 and allotting the leased property in favour of respondent no. 4, it was obligatory on the part of BIADA to have issued notice to the Bank as the loan was granted to respondent no. 3 only after receipt of no objection from BIADA under letter dated 11.12.2001, Annexure-2.

4. Counsel for the BIADA submitted that lease in favour of respondent no. 3 was cancelled on 18.6.2007 and information about cancellation was given to Rajendra Nagar Branch of the Bank wherefrom respondent no. 3 had obtained loan, allotment in favour of respondent no. 4 was made, thereafter on 9.12.2010. It is, however, accepted that from perusal of the instructions received from BIADA it does not appear that any notice was given to the Bank against the proposed cancellation of the lease executed in favour of respondent no. 3 or for the allotment made in favour of respondent no. 4. It also does not appear from the instruction that order cancelling the lease of respondent no. 3 was ever served on the Bank by the BIADA authorities. It is thus, quite evident from the instructions produced by the counsel for BIADA that BIADA unilaterally proceeded to cancel the lease of respondent no. 3 without information to the Bank.

5. In such circumstances, without granting any protection to respondent no. 3, it is directed that BIADA should own up and pay the amount found due against respondent no. 3, failing which it shall be open for the Bank to recover the said amount from BIADA by impleading BIADA as party in the recovery proceeding. With the observations and directions above, the writ petition is disposed of.