
(2003) 08 JH CK 0012
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5472 of 2002

Sudist Narain Thakur

APPELLANT

Vs

Bihar State Financial Corporation

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2004) 2 CTLJ 152 : AIR 2004 Jhar 91 : (2004) AIR Jhar HCR 620 : (2004) 2 BankCas 50 : (2003) 4 JCR 725 : (2004) 1 CCC 177 : (2004) 2 BC 50

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.P.N. Roy, for the Appellant; L.K. Lal, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The main question that falls for consideration in this writ application is whether the respondents-Bihar State Financial Corporation is entitled to charge interest on the sanctioned amount of loan from the date of sanction or from the date when the actual possession of the assets have been delivered to the petitioner.

2. It appears that the unit of M/s. Bihar Wood Product, Daltonganj was auction sold by the respondent-Corporation and the bid of the petitioner was accepted. Out of the total consideration amount of Rs. 5,25,000/- the petitioner deposited Rs. 1,31,250/- within the stipulated time as per the agreement. After issuance of sale order an agreement was executed by and between the petitioner and the respondent-Corporation on 31.1.1995 and on the same day actual physical possession of the premises was given to the petitioner. After handing over possession of the premises the petitioner started making re-payment of the amount to the Corporation. The petitioner learnt at a later stage that the Corporation is charging interest from the date when the auction was held some times in 1994.

3. Respondents" case, on the other hand, is that the Board of the Corporation approved the sale of the mortgaged assets in favour of the petitioner and, accordingly sale order was issued on 23.9.1994 in which it was specifically mentioned that current interest with effect from 1.9.1994 will be realized from the purchaser at the current rate of interest i.e., 18% before handing over the possession and, thereafter, current interest will be paid on due date and, as such, as per the terms of sale order interest upto date of handing over possession from 1.9.1994 was to be paid by the petitioner.

4. Admittedly the unit of M/s. Bihar Wood Product, Daltonganj was mortgaged with the Corporation and on default in payment of the dues of the Corporation, the same was put on auction some times in 1994. The petitioner has annexed a copy of the office order dated 19.9.1991 issued by the Managing Director of Bihar State Financial Corporation addressed to all the Deputy General Managers, Regional Managers, Branch Managers and all officers of Recovery Section informing that actual interest against the loan will seize from the date of opening of tender and will re-start from the date of handing over actual physical possession. The said letter is quoted bereinbelow which reads as under :

"OFFICER ORDER

All officers of the Recovery Section, All RMs and BMs are directed to expedite the mutual sale in respect of which the execution of documents would be done henceforth, at the Regional Offices and the documents would be sent to the H.O. for safe custody.

In cases of sale of mortgaged assets on mutual basis, that the mortgaged assets of non-viable sick, closed and abandoned units as well as those of wilful defaulting units the minimum cash down payment would be 25% of the outstanding as on last half yearly closing date. After preparation of comparative statement of tenders and sale and in principle decision for sale of mortgaged assets of the unit in favour of a tenders demanding to deposit 7.5% of the balance outstanding in addition to the earnest money, within 15 days of the issue of the letter showing intention to sell the assets on terms and conditions specified. In case of deposit of 7.5% of the balance outstanding as per demand the sale order would be issued clearly demanding the payment of balance amount of the dash component within 21 days from the date of issue of letter to take over the execution of the documents, the handing over of the actual possession would be done within the period of 21 days. New ledger should be opened from the date of handing over the actual physical possession of the assets to the new purchaser.

The accrual of interest against the loan will seize from the date of opening of tender and will re-start from the date of handing over of actual physical possession.

This order comes into force with immediate effect."

5. Mr. L.K. Lal, learned counsel appearing on behalf of the Corporation has drawn my attention to Annexure-A to the counter affidavit which is sale order in which there is a stipulation that current interest with effect from 1.9.1994 will be realized from the purchaser at the current rate of 18% before handing over possession and, thereafter, current interest will have to be paid by the purchase on due dates. This clause of the sale order is totally against the terms of the office order, Annexure-2 issued by the Managing Director of the respondents-Corporation in 1991. The Corporation in the counter affidavit has stated that the said office order dated 19.9.1991 was not operative in view of the fact that the units are being sold on the basis of best offer receipt. It is, therefore, clear that the stand of the Corporation is that the office order shall be made applicable as per the convenience of the Corporation and not as per law and the norms.

6. It is well settled that in the matter of trading and business activities of the Public Enterprises, the immunities and privileges possessed by the Government Companies or Corporation are subject to fundamental rights and in furtherance of the Directive Principles of State Policy. The contract entered into by these Public Enterprises and the Government Company shall not be unconscionable, unfair, unreasonable and opposed to Public Policy. Law in this regard has been settled by the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Their Lordships observed that the test of reasonableness or fairness of a clause in a contract where there is inequality of bargaining power is another theory recognized in the sphere of law of contracts. The Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or a clause in a contract entered into between parties who are not equal in bargaining power.

7. Admittedly in the instant case the auction of the premises was held on 1.9.1994 and the petitioner deposited the amount so directed by the Corporation. Thereafter, final deed of agreement was executed by and between the Corporation and the petitioner and possession of the premises was delivered to the petitioner on 31.1.1995. The petitioner, after taking possession of the premises, started carrying on business and also started depositing installments. In my considered opinion, therefore, the petitioner would be liable to pay interest from the date when the possession of the premises was delivered to the petitioner. The Managing Director rightly issued office order (Annexure-2) directing all the officers of the Corporation to charge interest from the date when possession of the premises is delivered to the auction purchaser. The clause contained in the agreement is, therefore, unfair, unreasonable and against the public policy and violative of Section 23 of the Contract Act.

8. For the aforesaid reason this writ application is allowed and the respondent-Corporation is directed to charge interest from the date of handing over possession of the premises.