(2012) 01 PAT CK 0146

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10677 of 2007

Sunita Devi APPELLANT

Vs

The Bihar State Financial Corporation and Others RESPONDENT

Date of Decision : 12-01-2012

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

Citation : AIR 2012 Patna 118

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : N.K. Agarwal, M/s. Mushtaque Alam and Vikash Mohan, for the Appellant; K.D. Chaterjee and Vinay Krishna Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner challenging order dated 27.06.2007 vide Memo No. 155 issued by the Managing Director, Bihar State Financial Corporation rejecting the representations dated 10.03.2005 and 14.05.2007 filed by the petitioner for waiving of interest on balance consideration money treated as loan till the date of actual handing over of the possession of mortgaged assets sold by the Corporation and for payment of interest on deposit made from December, 2002 to 02.06.2006 and also for declaration that the respondent-Corporation was not entitled to charge any interest on balance consideration money treated as loan till the assets were handed over to the petitioner and further for payment of interest to the petitioner by the Corporation on the amount of Rs. 15 lacs deposited as cash component of the consideration money from December, 2002 till 02.06.2006 i.e. the date on which assets were handed over to the petitioner. Learned counsel for the petitioner claimed that the respondent-Corporation had advertised sale of mortgaged assets of M/s. New Wood Industries, Jakkanpura, Patna for realization of its dues u/s 29 of the State Financial Corporation Act and one Rajesh Kumar gave offer for purchase of the mortgaged assets for a total consideration of Rs.

28 lacs besides earnest money of Rs. 50 lacs, where after negotiation for sale was finalized in favour of Rajesh Kumar for a total consideration money of Rs. 30 lacs including earnest money of Rs. 50 thousands with cash component of 40% and the balance amount of consideration money was to be treated as loan and accordingly sale order and revised sale order were issued on 30.03.2002 and 20.06.2002 respectively.

2. It was averred by the petitioner that for reasons beyond the control, Rajesh Kumar could not deposit cash component of the consideration money within time and consequently the respondent Corporation vide order dated 30.09.2002 withdrew/cancelled its sale order. It was also averred that the said Rajesh Kumar obtained consent of the petitioner for becoming a partner in the venture and for providing financial support for purchase of the mortgaged assets already negotiated and thereafter discussed the matter with the officials of the Corporation who agreed to revive the sale order subject to payment of 40% of consideration money including Rs. 50 thousands being earnest money plus two installments of Rs. 1.5 lacs each, where after the petitioner arranged the said money and paid to the Corporation in shape of bank drafts drawn in favour of the respondent-Corporation.

3. It is claimed that the Corporation in spite of receiving the aforesaid money did not approve the routine request for inclusion of the petitioner as partner of M/s. Rajesh Kumar and subsequently on 20.12.2002 agreement was executed between Rajesh Kumar and the Corporation for sale-cum-payment of balance loan according to which assets were to be handed over to the purchaser concerned and there was no condition for payment of any interest or installments incorporated as pre-condition for handing over the assets.

4. It is also claimed by the petitioner that subsequently on 14.07.2003 the Corporation sent letter to M/s. Rajesh Kumar turning down his request for inclusion of a partner and raising interest and other demands. This order was challenged by the said Rajesh Kumar in C.W.J.C. No. 12893 of 2003 which was dismissed as withdrawn on 27.01.2005 with observation that if such a representation was filed by Rajesh Kumar, the Managing Director of the Corporation would consider his request and pass an appropriate order in accordance with law. It is also submitted that in compliance of the said order the said Rajesh Kumar filed application dated 10.03.2005 before the Managing Director of the Corporation but instead of passing any order on the said representation, the Managing Director advertised the mortgaged assets for sale on 20.04.2005 in daily Hindi newspaper "Aaj". This was challenged by the said Rajesh Kumar by way of filing C.W.J.C. No. 5069 of 2005. During the pendency of the said writ petition the representation of Rajesh Kumar was rejected by the Managing Director vide order dated 16.05.2005 and hence the said Rajesh Kumar filed I.A. No. 2918 of 2005 for adding relief challenging the said order. However, the said C.W.J.C. No. 5069 of 2005 as well as I.A. No. 2918 of 2005 were disposed of on 04.04.2007 with a direction to the authorities to take a

decision after considering afresh the issue regarding waiver of interest by the Corporation in terms of resolution of the Board of Directors of the Corporation. Furthermore, a liberty was also given to Rajesh Kumar to file representation before the authorities of the Corporation within four weeks with respect to the claim of interest with effect from December 2002 till 02.06.2006 the date on which assets were handed over to him.

5. In compliance of the order of this court, Rajesh Kumar did not file any representation and it was only Sunita Devi (this writ petitioner) who filed a representation before the Managing Director of Bihar State Financial Corporation.

6. In view of the aforesaid order of a Bench of this Court, the matter was considered in detail by the Managing Director of the Corporation vide order dated 26.06.2007 and it was held that in terms of agreement change in constitution of purchaser for which Rajesh Kumar was insisting was not permissible and that compelled the Corporation to impose condition of full payment along with accrued interest by the purchaser before handing over assets and consideration of request for inclusion of partner and in those circumstances which were created by the purchaser himself, assets could not be handed over earlier and as such it is the purchaser who is liable to pay interest chargeable in terms of agreement. It was also held that since assets could be handed over only after 100% payment of consideration amount and for the delay in handing over assets to the purchaser concern, the purchaser concern was himself responsible and hence the request of Sunita Devi for allowing interest on their payment from the date of handing over was not acceptable and the same was rejected.

7. Learned counsel for the petitioner challenged the said order on the grounds mentioned above and also relied upon a decision of the Jharkhand High Court in case of Sudist Narain Thakur v. Bihar State Financial Corpn. and others, reported in AIR 2004 Jha 91 : (2004 AIR Jhar HCR 620), in paragraph-4 of which it has been held that the actual interest against the loan will seize from the date of opening of tender and will not re-start from the date of handing over of actual physical possession. He also relied upon a decision of another Bench of this court dated 16.01.2002 passed in C.W.J.C. No. 15363 of 2001 (M/s. Great India Tobacco Factory v. the Bihar State Financial Corporation & others), in paragraph-7 of which it was held that the payment of interest shall commence from the date following the petitioner got possession of the entire assets. This order had been affirmed by a Division Bench of this Court vide order dated 03.04.2002 passed in L.P.A. No. 387 of 2002.

8. On the other hand, learned counsel for the respondents submitted that the aforesaid orders of the High Court are not decisions on any point rather in a certain set of facts and circumstances directions were given, but in the instant case facts and circumstances being completely different, the said orders are not applicable. It is also claimed that in the earlier case Corporation was not in a position to hand over the remaining assets but in the instant case both the parties are bound by the agreement in which petitioner had given undertaking

but thereafter did not make any payment. Furthermore, Rajesh Kumar was the purchaser and this writ petitioner Sunita Devi was a subsequent entrant claiming to be partner in Rajesh Kumar firm which had already been rejected by the Corporation earlier.

9. In the said circumstances learned counsel for the respondents submitted that this writ petition is not maintainable by the petitioner (Sunita Devi) in the absence of Rajesh Kumar as there is no privity of contract between the petitioner and Bihar State Financial Corporation because Bihar State Financial Corporation had agreement with Rajesh Kumar.

10. From the facts and circumstances of the case as well as the materials on record this court finds that it was Rajesh Kumar only who was the purchaser and had entered into the agreement with the Corporation. Furthermore, when the sale order in favour of Rajesh Kumar was cancelled by the Corporation it was Rajesh Kumar on whose application the cancellation was withdrawn as is apparent from order dated 29.11.2002. So far the writ petitioner (Sunita Devi) is concerned, she may have deposited any amount with the Corporation on behalf of the said Rajesh Kumar, but that cannot legally lead to any assumption that the Corporation had ever accepted her as a partner of Rajesh Kumar rather the request for accepting her as partner of Rajesh Kumar had already been rejected by the Corporation much earlier.

11. Previously also writ petitions and interlocutory applications were filed only by Rajesh Kumar in this court. In C.W.J.C. No. 5069 of 2005 also a liberty was given to the petitioner of that writ petition, namely Rajesh Kumar, vide order dated 04.04.2007 to file a representation before the authorities of the Corporation but instead of Rajesh Kumar the petitioner of that writ petition, it was Sunita Devi, who is the petitioner of this writ petition, filed representation in the Corporation which has rightly been rejected by the authorities concerned. In such a situation the case laws relied upon by learned counsel for the petitioner are not applicable to this case.

12. So far the relief sought by the petitioner is concerned, the facts and circumstances of the case clearly showed that delivery of possession of the assets was delayed due to circumstances created by the purchaser as the assets could be handed over only after 100% payment of consideration amount and frivolous pleas were raised for inclusion of a new partner which was rejected much earlier, but in spite of that the matter was delayed by the purchaser Rajesh Kumar who did not even file any application as directed by this court while deciding C.W.J.C. No. 5069 of 2005 filed by the said Rajesh Kumar. In the aforesaid facts and circumstances, this court does not find any merit in this writ petition, which is accordingly dismissed.

