

(2010) 09 PAT CK 0017
In the Patna High Court
Case No : LPA No. 200 of 2007

The Bihar State Financial Corporation and Another APPELLANT
Vs
Baid Nath Prasad Gupta and Others RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

State Financial Corporations Act, 1951 — Section 29(1), 29(4), 29(5)

Citation : (2012) 1 PLJR 457

Hon'ble Judges : Shiva Kirti Singh, J; Hemant Kr. Srivastava, J

Bench : Division Bench

Advocate : Y.V. Giri, Raju Giri, Mrigendra Kumar Singh, for the Appellant; Alok Kumar Sinha for the Respondent 1 and Mr. Mohan Kumar Singh for the Respondents 2-5, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh & Hemant Kumar Srivastava, JJ.—Heard Mr Yadu Vansh Giri, learned Senior Advocate appearing for the appellants, the Bihar State Financial Corporation and its official and learned counsel appearing for the respondent no. 1. Although the dispute between the appellant Corporation and the writ petitioner Baid Nath Prasad Gupta has a long and chequered history, the present dispute raised by the appellants relates to a question of law arising from observations and directions made by the learned Single Judge of this Court at the end of the judgment and order under appeal dated 18.9.2006 passed in CWJC No. 6108 of 2006 which is as follows:-

"Liberty is granted to the petitioner to bring on record before the Certificate Officer authentic documents to show that he was divested of his possession on a date earlier than the sale in 1997. If the documents are brought on record and cannot be controverted by the respondent Corporation then the Certificate Officer would fix the date when the petitioner was divested of his possession. Having fixed the date no interest in the account would accrue after the day when possession of the unit has been taken over by the Corporation and the amount of

certificate dues would, accordingly, be modified. The Corporation would be at a liberty to establish that possession in fact had not been taken over prior to 1997."

2. On behalf of appellants it has been submitted that although the issue generated on account of aforesaid direction/observation was not canvassed before or decided by the Commissioner or by the learned Single Judge, it follows as a logical corollary from the impugned observation/direction that liability of the defaulting industrial concern in question towards payment of interest on the outstanding dues shall cease as soon as the Corporation is shown to have taken over the management or possession of the industrial concern u/s 29(1) of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act"). According to learned Senior Counsel for the appellants, such an issue having grave financial implications should not have been decided without proper pleadings and without adverting to the provisions in the agreement or in the Act. It was further submitted that under the agreement the liability to pay interest upon the outstanding dues is not in dispute and such a liability of interest over the outstanding is not adversely affected by any provisions in the Act. On the other hand, reliance was placed upon sub-section (4) of Section 29 of the Act to submit that the obligation or liability of the Corporation to discharge any part of the debt due to the Financial Corporation arises only when the money is received on account of its action u/s 29(1) of the Act. The discharge of a part of the debt alone will not amount to modification of agreement so as to debar the Corporation from realizing interest over the remaining dues. According to the learned Senior Counsel for the Corporation, the law is well settled that if the sale proceeds are not sufficient to take care of the entire debt due to the Corporation, in that event the residue of the debt remains the liability of the industrial concern which is in default hence there can be no good reason to hold that such liability will not include interest as per agreement.

3. Before considering the arguments advanced on behalf of the respondent no. 1 it is relevant to notice in brief the facts leading to the writ petition which has been decided by the learned Single Judge by the order under appeal. The learned Single Judge has noticed that the writ petitioner had taken loan from the Corporation and due to default in payment of the loan, the Corporation instituted Certificate Case No. 1 of 1986-87 before the Certificate Officer, Chapra. In the said certificate proceeding an issue arose as to what would be the effect of an attempt to sale the property of the industrial concern in and around 1990 and ultimate sale in favour of another purchaser in 1997. The Divisional Commissioner, Saran at Chapra decided the said issue against the writ petitioner by his order dated 2.2.2006 passed in Certificate Revision Case No. 27 of 1996-97. A copy of that order contained in Annexure-10 to the writ petition shows that according to the learned Commissioner, if an auction does not result in realization of money then the borrower remains liable to repay the loan till it is fully realized. The last paragraph of the order of the learned Commissioner runs as follows:-

"After hearing the petitioner and perusing the record and the impugned order, it is clear that the root cause of the dispute is regarding the auction of the said Unit and subsequent non-realization of the auctioned amount. The question that arises here, as argued in the impugned order of the learned Collector, is that if in an auction, the amount is not realized then who should be held responsible-the borrower or the lender. It is clear that the borrower remains liable to repay the loan till it is fully realized. The process of auction is only a means and not the end. Otherwise, there can always be manipulated auction where the bidder can bid an unrealistically high amount not with a view to take the auctioned property but just with a view to exonerate the borrower from his liability. If such a thing is allowed with impunity, then the entire mechanism of lending becomes a farce. The impugned order of the learned Collector is clearly defective on this score and is therefore set aside. The due amount less the auctioned proceeds, if any, is definitely recoverable from the borrower and is accordingly recoverable from the Ops in the instant case. The petition is allowed."

4. The order under appeal discloses that the learned writ court found no error or illegality in the ultimate view taken by the learned Commissioner that the borrower remains liable to repay the loan till it is fully realized. However, it further considered the arguments advanced on behalf of the writ petitioner as to whether the unit was sold earlier or in 1997 and came to conclusion that it was subsequently in 1997 that the unit was actually sold and possession delivered for a short period for a consideration of about rupees seventeen lacs. Thereafter, the writ court has correctly observed-"This is a sale and to that extent, the petitioner is relieved of his liability otherwise the balance outstanding is a subsisting liability there being no concluded sale earlier". It is not understandable and clear as to why a further observation has been made that the order of the Commissioner under challenge is modified to that extent. The same view was apparently taken by the Commissioner also.

5. The observation at the end of the order has been extracted above and that is the bone of contention between the parties. The learned counsel for the appellants, as noticed above, has taken a categorical stand that according to the established law, which has been rightly appreciated by the learned Commissioner and which has also been accepted by the writ court as per its views extracted above, the subsisting liability will continue to exist. There is no basis for any inference that such dues shall always remain a fixed amount and cannot gather interest. According to the appellants, there being no provision in the agreement or in the Act to the contrary, the subsisting dues after deducting the sale proceeds as per law shall continue to grow on account of permissible interest as per agreement till the liability is completely cleared.

6. On the other hand, learned counsel for the respondent has submitted that from a judgment of the Ranchi Bench of this court in CWJC No. 2789 of 1994(R) (Electrodes India, Jamshedpur vs. BSFC & Ors.) it would be apparent that the Corporation cannot impose interest on the outstanding amount beyond the date

when it takes possession of the industrial concern in default, A careful perusal of the aforesaid order of the Ranchi Bench dated 16.1.1995 shows that the learned Single Judge in a short order, devoid of relevant facts, proceeded to hold so on the basis of a submission by the counsel for the Corporation. Mr. Y.V. Giri, learned Senior Counsel for the Corporation is correct in submitting that the said order is based upon concession without examining the provisions of the Act and the agreement which alone can help the defaulting industrial concern from getting rid of its liability to pay interest over subsisting dues. Even the subsequent orders passed in the aforesaid case of Electrodes India, Jamshedpur in LPA or in review are of no help to this Court in deciding the issue under consideration because the relevant facts of that case are not clear as to whether possession was handed over on account of sale or otherwise. Further, as noticed above, the order was based upon concession and hence, cannot be treated as a binding precedent by way of a judgment laying down law upon considering the relevant provisions of the Act or other relevant materials.

7. On a careful consideration of rivals submissions and the provisions of the Act, we find merit in the submission advanced on behalf of the appellants that the liability to pay interest over the subsisting dues after sale of the concern unit cannot come to an end only on account of take over of management or possession by the Corporation u/s 29(1) of the Act. Section 29(4) of the Act indicates that it is only on receipt of the money on account of take over or sale that the Corporation is obliged to Act as a trustee for such money which has to be applied in order of priority indicates in the aforesaid provisions of law i.e. sub-section (4) of Section 29 of the Act. In absence of receipt of any money, the Corporation cannot apply it so as to reduce the debt of the unit in default. No doubt, the provisions noticed above provide for the contract to have overriding effect but no provisions touching the aforesaid issue could be shown to us from the agreement between the parties.

8. The submission advanced on behalf of the respondent that sub-section (5) of Section 29 of the Act makes the Financial Corporation owner of the concern and, therefore, liability to pay interest would no longer be on the defaulting unit is found to be of no substance. The fiction created by sub-section (5) is only for the purpose of suits by or against the concern. It makes no distinction between the debt due to the Financial Corporation from the defaulting unit on account of principal or interest components. The debt due to the Financial Corporation has to be paid by the defaulting unit as per the views of the learned Single Judge also. Hence, in such circumstances, it cannot be accepted that on account of action u/s 29(1) of the Act leading to possession of the industrial concern by the Corporation, the concern shall be relieved of its liability to pay interest on the dues. As a result of aforesaid discussions, we are constrained to allow this appeal and to hold that the liberty granted and directions issued at the end of the order under appeal which has been extracted earlier shall be of no consequence and shall stand deleted. No costs.