

(2002) 01 PAT CK 0067
In the Patna High Court
Case No : L.P.A. No. 1131 of 2000

The Bihar State Financial Corporation and Others	APPELLANT
Vs	
A.K. Films and Another	RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Bihar State Financial Corporations Act, 1951 — Section 29
Constitution of India, 1950 — Article 226

Citation : (2003) 1 BC 246 : (2002) 50 BLJR 442 : (2002) 1 PLJR 497

Hon'ble Judges : P.N. Yadav, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Shrawan Kumar, Rajiv Nayan Singh, Shola Sandhwar and Brij Bhushan Mishra, for the Appellant; Binod S. Tiwary and Vinay Kirti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Bihar State Financial Corporation (hereinafter referred to as "the Corporation") and its officers are appellants against the judgment dated 19.5.2000 passed by the learned Single Judge, by which he has quashed the order, dated 1.4.1995 issued by the Assistant General Manager (Z-VI) of the appellant-Corporation, rejecting the prayer of the respondent-Firm to give benefit of One Time Settlement Scheme (for short "O.T.S. Scheme") dated 24.5.1995 issued by the appellant-Corporation as well as the notice asking the respondent-Firm to pay 25% of balance outstanding dues within one week, otherwise, assets of it would be sold. The learned Single Judge also directed the appellant to consider the case of O.T.S. on the basis of dues as it stood against the respondent-Firm on 1.4.1995, on which date the order of rejecting its claim under O.T.S. was passed.

2. The facts necessary for disposal of the present appeal are that one Arvind Kumar Sinha started a firm in the name and style of M/s. A.K. Films, situated in Boring Canal Road, Patna, in the year 1974 with a view to produce film and hire

shooting equipments pertaining to Film Production in Patna. The said unit was an industrial unit and was also granted S.S.I. registration certificate. The respondent-Firm approached the appellant-Corporation for financial assistance and the latter accepted its proposal and approved the scheme for developing facilities for production/processing of motion pictures on hire to producers of films such as are exhibited through licensed Cinema Houses. The Corporation formulated a project of 5.42 lacs and sanctioned a term loan of Rupees 3.86 lacs on 17.10.1978 with stipulation that the remaining amount of Rupees 1.56 lacs or more was to be invested by the respondent-Film itself. The appellant-Corporation sanctioned the aforesaid amount under technical entrepreneur scheme without asking for any collateral security. Out of the said amount, a sum of Rs. 2.76 lacs was issued by cheque for establishing a letter of credit in favour of German Suppliers of Camera, lenses and tape-recorder on 30.10.1978 and the remaining amount of Rs. 1.10 lacs was released to the Custom authorities. Bombay, for payment of custom duty. The amount released for payment of custom duty was not sufficient to pay entire custom duty and the respondent-Firm approached for further loan with the appellant-Corporation and a loan of Rs. 1.14 lacs was further sanctioned subject to providing security by respondent No. 2 Lal Mani Devi, mother of aforesaid Arvind Kumar Sinha, by joining as a partner of the propriety-film and executing a mortgaged deed in favour of the respondent-Corporation by offering 13 Kathas of land as collateral security.

3. According to the respondent-Corporation, as the unit was facing serious crisis and was virtually becoming sick and was suffering from various maladies, the Managing Partner of the respondent-Film, namely, Arvind Kumar Sinha approached one Ashok Kumar Singh, Proprietor of M/s. Swastik Films, Patna, and the latter agreed to purchase the imported equipments for a sum of Rs. 7.50 lacs and a memorandum to that effect was also signed between them. Said Arvind Kumar Sinha informed the appellant-Corporation that he has negotiated for sale of the firm with M/s. Swastik Films and he also gave an undertaking to pay balance due to the Corporation after adjusting the saleproceeds within a period of three years in 12 quarterly instalments. However, later on M/s Swastik Films backed out and the said agreement could not be finalised, thereafter, the respondent-Firm approached the Corporation for rehabilitation of the unit but the said prayer was also rejected as it was not permissible in law.

4. Thereafter, on 27.7.1993 the appellant-Corporation through a circular came out with a scheme to give relief to such units having not cleared of the dues. The said scheme was known as O.T.S. Scheme and its benefits were available to those units, whose outstanding dues have exceeded the value of their mortgaged assets with the Corporation and those loanees who after availing the loan from the Corporation could not have any reason whatsoever set up the industry and come into production (irrespective of the value of their mortgaged assets vis-a-vis outstanding on them). However, the scheme is not applicable to wilful defaulters of either of those categories. The respondent-Firm, admittedly, applied for grant of benefit of O.T.S. Scheme dated 22.7.1993. The matter was

considered by the appellant-Corporation and in terms of the Scheme, the respondent-Firm was directed to deposit Rs. 1 lac in connection with its offer to avail benefit under O.T.S. Scheme and the same amount was deposited.

5. The appellant-Corporation issued another circular dated 20.1.1994 regarding the O.T.S. Scheme and modified the earlier circular with a clear stipulation that the terms and conditions of the earlier circular, which have not been modified, shall remain in force. The appellant-Corporation considered the case of the respondent-Firm in terms of the scheme and rejected the same by order dated 1.4.1995 on the ground that on re-verification of the valuation of the mortgaged assets, the scheme is not applicable in its case. A copy of which has been annexed as Annexure 1. Thereafter, a notice (Annexure 2) was issued to deposit 25% of the outstanding dues, failing which, step will be taken to sell the mortgaged/hypothecated assets. When the respondent-Firm did not deposit the same, steps were taken against it u/s 29 of the Bihar State Financial Corporation Act and orders were passed. Thereafter, respondent-Firm filed a writ application challenging the orders of the appellant-Corporation.

6. The stand of the appellant-Corporation is that respondent-Firm is a wilful defaulter. Though the loan was disbursed in 1978-79, but no amount was paid to the Corporation for four years and even subsequently the payments were highly irregular. Up to 13.2.1995, the respondent-Firm paid only Rs. 3,51,850. When the dues were not cleared, steps were taken to sell the unit in 1983. Thereafter, it made part payments. Again the appellant-Corporation asked the respondent-Firm to make full payment but it did not pay the same and submitted a proposal for rehabilitation, which was rejected. After coming into effect of the O.T.S. Scheme, the respondent-Firm filed an application and the total valuation of the hypothecated and collateral security was assessed to Rs. 35.57 lacs in March, 1995 and the balance outstanding against the firm on 28.2.1995 was Rs. 35,06,359. The value of the mortgaged assets was more than the amount of balance outstanding in the month of March, 1995 and, thus, the O.T.S. Scheme was not applicable as it was applicable only in cases where the balance outstanding is much more than the value of the mortgaged assets. This apart, the O.T.S. Scheme is not applicable in the cases of wilful defaulters of either of these categories. The respondent-Firm was a wilful defaulter. The second category of the O.T.S. Scheme was not applicable as the respondent-Firm has itself admitted of having come in production. Thus, in brief, the stand of the appellant-Corporation before the learned Single Judge was that the case of the respondent-Firm was not covered by the O.T.S. Scheme.

7. The learned Single Judge having considered the matter allowed the writ application and came to the conclusion that the unit after being set up has not gone into production and as such the appellant-Corporation should have considered the case of the respondent-Firm under the second category of the scheme, which provides that those loanees, who after availing the loan from the Corporation, could not for any reason whatsoever set up the industry and come

into production irrespective of the value of their mortgaged assets vis-avis outstanding on them, are entitled to the benefit of the O.T.S. Scheme. The same has not been done and, accordingly the learned Single Judge directed the appellant-Corporation to consider its case from the angle.

8. The learned Counsel appearing on behalf of the appellant-Corporation submitted that the respondent-Firm nowhere in the writ application even claimed that the industry has not been set up and it committed serious error in holding that it was an admitted position that the unit has not gone into production. This point was raised for the first time during the course of argument and the attention of the learned Single Judge was drawn to the statement made in paragraph 21 of the counter-affidavit, wherein it was stated that the respondent-Firm has admitted that the unit has gone in production and has done a considerable work, but even then the learned Single Judge allowed the writ application on the ground that unit has not gone into production and is entitled to consideration of its case under the O.T.S. Scheme in terms of its second category. It is further submitted on behalf of the appellant-Corporation that in view of absence of any statement in the writ application that the firm has not gone into production, there was no necessity for the appellant-Corporation to bring on record documents filed by the respondent-Firm itself showing that the unit has gone into production. The said documents have been appended with the memorandum of appeal to show that the unit had gone into production and as such is not entitled to the benefit of the O.T.S. Scheme under the second category.

9. Learned Counsel appearing for the respondent-Firm, on the other hand, submitted that the unit has not gone into production after it being set up and as such the learned Single Judge rightly held that the case of the respondent-Firm should be considered under the second category as provided under the O.T.S. Scheme i.e., if the unit after availing loan from the Corporation could not set up industry for any reason whatsoever and come into production, it shall be entitled to the benefit of the O.T.S. Scheme.

10. At the outset, it is to be stated that while exercising the jurisdiction under Article 226 of the Constitution, the High Court does not sit over the decision of the Corporation as an appellate authority and it can interfere with the decision taken by the Corporation only when there is a statutory violation by it or it acts unfairly and unreasonably. Thus, it has to be seen whether the decision taken by the appellant-Corporation denying benefit of O.T.S. Scheme to the respondent-Firm is. contrary to its circulars or is unreasonable or unfair to the loanee.

11. As stated above, the respondent-Firm was a defaulter and has paid only a few instalments and rupees ten lac has been paid by it subsequently in pursuance of an order passed by this Court while the matter was pending before the learned Single Judge. The total amount paid by the respondent-Firm is Rs. 13.52 lacs including rupees one lac deposited for availing of the benefit under the O.T.S. Scheme, whereas, the total outstanding dues till today as noticed above is

Rs. 51.65 lacs. The appellant-Corporation with a view to help sick units came out with O.T.S. Scheme on 21.7.1993, a copy of which was appended as Annexure "8" to the writ application and it provided that if the unit is not a wilful defaulter in that case two types of units/loanees are entitled to the benefit of the O.T.S. Scheme on the terms and conditions mentioned therein. One category is of such units, whose outstanding dues have exceeded the value of their mortgaged assets with the Corporation, whereas, the second category is of those loanees, who after availing the loan from the Corporation could not for any reason whatsoever set up the industry and come into production. In the second category, the question of valuation of the unit assets vis-a-vis the outstanding dues against the unit was not a relevant consideration. The said Scheme was modified by the circular dated 26.10.1994, a copy of which was appended as Annexure 13 to the writ application, by which certain modifications were made with regard to valuation of the collateral security mortgaged to the Corporation, but there was no change with regard to categories of the units entitled to the benefit of the O.T.S. Scheme.

12. The respondent-Firm applied for benefit of the aforesaid scheme. No where it was stated by it that it has not gone into production at all and, thus, the case of the firm was considered under the first category and it was found that the outstanding dues have not exceeded the value of the mortgaged assets with the Corporation and as such the claim of the firm was rejected. Neither before the learned Single Judge nor before this Court the respondent-Firm has challenged the aforesaid reasons for rejecting its prayer for grant of benefit under O.T.S. Scheme. Thus, it has to be accepted that the outstanding dues at the relevant time had not exceeded the value of the mortgaged assets with the Corporation and the unit was not entitled to the benefit of the claim under the first category of the O.T.S. Scheme.

13. So far as the second category is concerned, the question arises as to whether the respondent-Firm after availing the loan from the Corporation could not set up the industry and come into production or not. As stated above, nowhere in the writ application, it has been stated that the unit has not gone into production, on the other hand, during the course of argument, it was submitted before the learned Single Judge that the respondent-Firm has produced one documentary film on Dr. Rajendra Prasad, which won the National Award (see paragraph 3 of the judgment). As there was no assertion in the writ application regarding non-production, the appellant-Corporation did not bring the documents on record to show that the unit had gone into production. Before this Court, the appellant-Corporation has filed a large number of documents, genuineness of which has not been challenged at all to show that the unit has gone into production. In this connection, it is important to refer those documents. Annexure 1 to the memorandum of appeal is the certificate of registration (without permanent registration) of 1986 regarding grant of S.S.L. unit to the respondent-Firm, wherein it is stated that the unit had gone into production from 1.4.1981. Annexures 3 to the memorandum of appeal is a letter dated 16.10.1985 written

by Arvind Kumar Sinha, Managing Partner of the respondent-Firm with regard to capital subsidy. It is mentioned therein that the commercial activities had commenced from April, 1981. Annexures 2 and 4 to the memorandum of appeal are the letters dated 1.11.1985 and 2.9.1985 respectively written by said Arvind Kumar Sinha to the respondent-Corporation, in which it is clearly mentioned that the commercial activities had started from April, 1981. On 15.10.1984, said Arvind Kumar Sinha wrote a letter to the General Manager, District Industries Centre, for grant of subsidy to his S.S.I. unit and the document appended there with shows that two films were under production. Copy of the said letter is appended as Annexure 5 to the memorandum of appeal. As stated above, the genuineness of these documents have not been challenged. Thus, the unit has already gone into production in 1981 itself and in that view of the matter the unit is also not entitled to the benefit of the O.T.S. Scheme under its second category.

14. The learned Single Judge at one place in his judgment has observed that the unit has already gone into production and produced a documentary film on Dr. Rajendra Prasad, but at the other place he has observed that admittedly the unit has not gone into production. The finding that the unit has not gone into production was against the materials on the record. The respondent-Firm had not stated in the writ petition that the unit has not gone into production and only on the basis of the oral statement without any evidence, the learned Single Judge came to the aforesaid conclusion, which cannot sustain in the eye of law. Thus, the learned Single Judge was not right in quashing the order denying benefit of O.T.S. Scheme to the respondent-Firm.

15. In the result, this appeal is allowed and the judgment passed by the learned Single Judge in C.W.J.C. No. 4360 of 1995 is set aside.