(2009) 05 OHC CK 0030

In the Orissa High Court

Tribhuban Das APPELLANT

Vs

Orissa State Financial Corporation and Others RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 108 CLT 71 : (2009) 1 OLR 1016

Hon'ble Judges : B.S. Chauhan, C.J;I. Mahanty, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the petitioner and for the Corporation. By order dated 16.4.2009, notice had been issued by this Court for personal appearance of the Branch Manager of the concerned Branch of the Orissa State Financial Corporation (OSFC), to explain about various questions raised by this Court vide its said order. Shri Basant Kumar Sahu, Branch Manager, OSFC, Sambalpur and in-charge of OSFC, Bargarh Branch present in the Court today.

2. Upon hearing learned Counsel lor the opposite parties as well as the Branch Manager concerned, we are constrained to observe herein that the affairs of the OSFC need to be looked into and investigated since glaring instances of injustice especially to small borrowers also tantamount to criminal act have been brought to the notice of the Court in various proceedings. In the present case, although a sum of Rs. 77,000/- had been sanctioned in favour of the loanee on 18.4.1978, but only a sum of Rs. 3,750/- was released in favour of the loanee on 25.10.1979. The interest thereon has been computed from time to time. (From the ledger it appears that there had been a credit of Rs. 13,29 towards interest accrued prior to the date of disbursement of Rs. 3,750/- i.e. on 25.10.1979). Thereafter, the loanee has deposited a sum of Rs. 1,000/-on 21.2.1990, Rs. 1,000/- on 14.3.1990, and Rs. 548.08 on 31.3.1990. The remaining balance was Rs. 611/- as interest on the disbursed amount.

A question that arises is that for an outstanding of Rs. 611/- as interest on a paltry amount disbursed amount, how could assets mortgaged by the. loanee could be sold by the Corporation on 27.3.2002 for such a petty amount by issuing a sale letter in favour of the auction purchaser-opposite party No. 5. In the note filed by the learned Counsel appearing for the Corporation, it is indicated that though a sale letter has been issued in favour of the opposite party No. 5 and possession of the property has been handed over to him, but no deed of transfer in his favour has yet been registered.

3. It further appears that a sum of Rs. 1,20,000/- has been received by the Corporation from the auction purchaser, on 21.3.2002 against the alleged outstanding dues of Rs. 611/- as interest on the paltry disbursed amount, and in spite of the same, no amount whatsoever has been yet returned to the owner of the property. It is contended that in view of the pendency of the present writ petition neither registration has been made in favour of the auction purchaser nor the amount has been returned to the petitioner-loanee.

4. In paragraph 4 of the writ petition an averment has been made that opposite party-corporation has received a sum of Rs. 12,800/-from the Orissa Small Scale Industries (OSIC) on 27th February, 1979 purportedly towards seed capital of the loanee.

5. In paragraph 5 of the counter affidavit filed by the Corporation it is admitted that OSIC had sanctioned seed capital loan of Rs. 12,800/-vide letter dated 20.2.1979 in favour of the petitioner''s unit.

6. In view of the aforesaid circumstances, it is clearly reveals that OSFC has in fact released only a sum of Rs. 3,750/- to the loanee and has recovered substantial portion thereof by 1990 and leaving an alleged balance of Rs. 611/-. The OSFC has retained in its possession the seed capital amount advanced by the Orissa Small Industries Corporation to the tune of Rs. 12,360/-, from out of which it is claimed that sum of Rs. 540/- had been released to the petitioner, and the balance is retained by the OSFC for last thirty years. Further a sum of Rs. 1,20,000/- i.e. the sale value of the property paid by the auction purchaser has also been illegally retained by the Corporation since 2002.

7. The aforesaid facts clearly spell out the situation that arises is that while the Corporation harasses small loanees for meagre loans while instances have come to our notice in the past where loanees of huge amount who are admitted defaulter, there has been total inaction on the part of the Corporation for recovery of the same.

8. This Court in the case of M/s. Bhagyalaxmi Powerloom Unit v. State of Orissa and Ors. 2009 (I) OLR 33, in which loan amounting to crores of rupees was taken by the company in 1982, but the Corporation did not muster the courage even to send a notice of demand of any instalment for 26 years and to proceed for recovery of the same. The Court was constrained to inform the Chief Secretary in that matter with a request to take up the matter in the interest of the State.

9. In the instant case for recovery of a sum of Rs. 611/- on disbursed amount of

Rs. 3750/-, the property of the petitioner worth of Rs. 1,20,000/- has been sold by the Corporation. These facts clearly shocks our judicial conscience.

10. Learned Counsel for the opposite parties as well as the Branch Manager, OSFC could not provide any satisfactory answer as to why for recovery of such a meagre outstanding amount, property worth Rs. 1,20,000/- has been sold.

11. This Court in Swastik Agency and Others Vs. State Bank of India, Main Branch and Others, has categorically decided the issue by considering large number of decisions of the Apex Court and came to the conclusion that for recovery of a petty amount property of much higher value should not be sold. The said judgment in Swastik Agency (supra) has been affirmed by the Hon''ble Supreme Court vide its judgment and order dated 9.4.2009 in SLP (Civil) No. 7548 of 2009 (State Bank of India and Ors. v. Swastik Agency and Ors.).

12. Considering all the aforesaid facts-circumstances of the case, we are of the view that the instant case is a clear case of fraud and tantamounts to a criminal act, for which the concerned authority of the Corporation required to be taken to task. Hence, we are disposing of the writ petition with the following directions:

(1) The petitioner is directed to pay a sum of Rs. 5,000/- to the O.S.F.C. within four weeks from today subject to final computation of outstanding dues and on such deposit, the Corporation shall hand over the possession of the property to the petitioner within a period of one week from the date of deposit of the said amount.

(2) The OSFC is directed to refund Rs. 1,20,000/- to the auction purchaser-opposite party No. 5 along with interest '' 12% p.a. to be calculated from the date of receipt of the amount till date of refund.

(3) The Corporation shall return a sum of Rs. 12,800/- to the Orissa Small Scale Industries Corporation received by it for loan towards seed capital of the loanee along with interest '' 12% p.a. from the date of payment till its refund within a period of four weeks from today.

(4) Registry is directed to send a copy of this order alongwiih a copy of the writ petition and also the original documents/ records produced before us to the Principal Secretary, Industries Department Government of Orissa.

(5) The Principal Secretary, Industries Department, Government of Orissa is requested to examine the facts of the case, issue necessary directions to the Corporation and to take appropriate action against the erring officers in this case including initiation of Department/Criminal Prosecution as may be deemed necessary.

(6) The ledger and documents produced before us be retained in the record fpr transmission of the same to the Government. However, we are giving liberty to the Corporation to take all Xerox Copies of the said ledger/documents. The said original ledger/documents be returned to the Corporation after investigation is

complete.

