(2003) 09 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No. 36491 of 2002

Uday L. Pehekar APPELLANT

Vs

Karnataka State Financial Corporation Ltd. and Others RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2004 Kar 93 : (2004) 2 KarLJ 231 : (2003) 4 KCCR 383 SN : (2004) 53 SCL 67

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Lawyers Inc. and T.S. Amar Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioner, a borrower from the first respondent-Karnataka State Financial Corporation Ltd. (the Corporation'' for short) has approached this Court praying for quashing of a sale deed dated 10-8-2002 executed in favour of the third respondent by the first respondent Corporation pursuant to the properties to the assets of the petitioner having been sold in the proceedings for recovery of the amounts due by the petitioner and in favour of the respondent Corporation. The petitioner has also sought for a writ in the nature of mandamus to direct the Corporation to consider the proposal of the petitioner for a ''One-time settlement'' and other incidental reliefs.

2. As per the petition averments, petitioner, who had started a small scale industrial unit in the name and style as M/s. Indu Ice and Cold Storage at Bijapur, had been given financial assistance to the extent of Rs. 12.58 lakhs by the first respondent Corporation starting from the year 1987 up to 1994. Petitioner has averted that he had also repaid in all about Rs. 14 lakhs in respect of the loan that he had obtained from the Corporation and had mortgaged his property bearing Municipal No. 192/A/ 1C/2 in ward No. 6, Bijapur as a collateral security for the repayment of the loan.

3. It appears that the petitioner''s business and industry could not prosper, that he incurred losses and as such was forced to close down the unit. It is the version of the petitioner that the machineries were in fact sold with the permission of the Corporation itself and the sale proceeds were remitted to the Corporation to be adjusted against the loan amount etc. Petitioner has averred that he had addressed a letter requesting the respondents to permit him for what is known as ''one-time settlement'' as per his letter dated 25-2-2002; that the respondents 1 and 2 had responded to such an offer; that he had been initially advised to remit 5% of the amount outstanding to consider such a proposal and even subsequently has been advised to remit 25% of a sum of Rs. 6 lakhs. It is the case of the petitioner that the petitioner did initially pay a sum of Rs. 38,000/- and had subsequently, as per the directions of the first respondent Corporation, sent a cheque for a further amount of Rs. 1,12,000/-. The version of the petitioner is that though respondents 1 and 2 did receive this cheque, they had not taken any action on the same thereafter and the petitioner, suspecting the bona fides of the respondents 1 and 2, had in fact issued a legal notice dated 30-3-2002 (copy at Annexure-E to the writ petition) and there being no proper response to this legal notice and on the other hand, the respondents 1 and 2 having sold this property referred to above in favour of the third respondent as a per sale deed dated 10r8-2002 which the petitioner came to know only subsequently, has approached praying for quashing of the sale deed and for other consequential reliefs as indicated earlier.

4. Shri Amar Kumar, learned counsel for the petitioner has made a two fold submission -- that the respondents 1 and 2 have acted in an arbitrary manner in proceeding ahead with the sale of the property in question even without bringing the same to the notice of the petitioner and further the action on the part of respondents 1 and 2 in selling the property in favour of the third respondent even without responding to the petitioner''s request for a one-time settlement of the loan amount outstanding by the petitioner in favour of the Corporation, only demonstrates the lack of bona fides on the part of respondents 1 and 2 in selling the property and in fact that the petitioner avers that it is, an outright mala fide action which was only to pre-empt the attempt on the part of the petitioner to save his property by making the one-time settlement which if should have been accepted, petitioner could have paid the amount and could have saved his property. The action on the part of respondents 1 and 2 is characterised as one which is not fair and tainted by mala fides and arbitrariness and the sale deed dated 10-8-2002 being in pursuance of such action on the part of respondents 1 and 2 is only to be set aside.

5. Statement of objections has been filed on behalf of respondents 1 and 2 as well as by third respondent. In a detailed statement of objections filed on behalf of respondents 1 and 2 which is buttressed by producing as many as seventeen documents as Annexures to the same, it is asserted that the petitioner in fact has suppressed material facts and has misrepresented the factual position before this Court; that the petitioner is not a person who is entitled for any relief at all

at the hands of this Court in the exercise of writ jurisdiction; that when it is an admitted fact that the petitioner is a defaulter in repayment of the loan advanced to him by the Corporation and such defaults had necessitated the Corporation to exercise its power u/s 29 of the State Financial Corporations Act, 1951 (''the Act'' for short) and take over the unit also to sell the machineries by which a sum of Rs. 2.90 lakhs had been realised and as the dues by the petitioner remained outstanding and in spite of several notices the petitioner not having cleared the amounts, further action/sale of the mortgaged property was taken; that the action on the part of the respondents 1 and 2 in bringing the mortgaged property to sale is well within their powers and due to the compelling reasons in the circumstances of the case when the petitioner was deliberately avoiding any payment and had been dragging the matter endlessly without coming up with any concrete proposal either to settle the loan amount or making any substantial payment towards discharge of the loan amount. It is asserted in the statement of objections that the Corporation, had been making efforts to sell the property belonging to the petitioner ever since April, 1997; that the first advertisement for the sale of the property was published in the Samyukta Karnataka News daily dated 12-4-1997, that on each and every occasion the petitioner was coming up with some lame excuse or sought for the proposal to settle the due amount and to avoid the sale; that it had been so advertised for sale on as many as eight occasions and the last of such advertisement was on 23-10-2001 in the Viyaya Karnataka News Daily; that the petitioner was all along aware of the action on the part of the respondent-Corporation to sell the mortgaged property and to realise its dues and the petitioner if had any bona, fides, could have paid the amount and definitely could have avoided the inevitable action; that the Corporation had responded very positively to the offer of the petitioner for a one-time settlement; that the petitioner never made any timely payments even as per the communication issued by the Corporation in response to the proposal of the petitioner for a one-time settlement; that the petitioner had been apprised as per a letter dated 30-10-2001 about the paper publication for the sale of the property which had been issued on 23-10-2001 and had been furnished with a copy of the said advertisement and to bring offers if any on his part also on that occasion. The petitioner was further intimated as per a letter dated 19-12-2001 that the highest offer that had been received by the Corporation in respect of the property as per the auction sale that had been fixed to 3-12-2001 was a sum of Rs. 6 lakhs and that he had been given an opportunity to bring a better offer if any from his side. The petitioner in fact had responded to this letter as per his letter dated 27-12-2001 as per Annexure-R3 indicating that he has been making attempts to bring a buyer, mostly one of his relatives, who can purchase the property for a better price. The respondents had also replied to the offer of the petitioner to the so-called one time settlement and had apprised the petitioner that if the petitioner is interested in saving the property from being sold, he should come up with a minimum payment of 25% of the amount of Rs. 6 lakhs, i.e. Rs. 1.5 lakhs, within a period of ten days from 30-1-2002 as per letter of this date, a copy of which is produced as Annexure-R4. Petitioner had been further apprised that in respect of this amount, while the Corporation had received only a sum of Rs. 38,000/-, the balance of Rs. 1.28 lakhs had not been paid and unless it is so paid within one week, further action will be taken as per the letter dated 1-3-2002 (copy at Annexure-R5).

6. It is the assertion of respondents 1 and 2 that the petitioner having not paid the amount, respondents were left with no other choice but to go ahead with the sale and though the highest offer that was offered for the petitioner''s unit was Rs. 6 lakhs, the bidders were invited to the office of the Corporation and by a negotiated settlement held on 19-3-2002, the offer was increased to Rs. 7,11,000/- by the third respondent and the property was accordingly being sold in favour of the third respondent for this amount. The entire sale amount was received by the Corporation by 31-3-2002. The petitioner was subsequently addressed of this development also and was put on notice. Even after adjusting this amount of Rs. 7,11,000/- petitioner was due in a sum of Rs. 17,55,733.50P. as on 10-8-2002 which was communicated to the petitioner by a letter dated 23-7-2002 (copy at Annexure-R9). The respondents 1 and 2 have asserted that the petitioner had been given maximum number of opportunities and indulgence to repay the loan amount, that he had been apprised of every stage of development; that the petitioner was very much aware of the advertisement issued on 23-10-2001 in Vijaya Karnataka News Daily and subsequently thereafter, but notwithstanding, the petitioner had not made any payment for avoiding the sale transaction or to reduce his liability. These respondents have asserted that the petitioner''s conduct is without any bona fides and that the petitioner does not deserve any indulgence at the hands of this Court.

7. Shri B. Rudra Gowda, learned counsel appearing for respondents 1 and 2 submitted that the action of the part on the respondent-Corporation is reasonable, fair and in consonance with the procedural requirement, that the petitioner has no right to seek for a writ in the nature of mandamus to accept his so-called one time settlement offer, more so when the petitioner has not evinced any interest to pursue the matter. Learned counsel submits that the said offer was only in the context of avoiding sale of the mortgaged property and was never as a one time settlement for discharge of the entire loan outstanding in the account of the petitioner. Learned counsel for respondents 1 and 2 also submits that the Corporation had never indicated to the petitioner that his entire outstandings could be settled on payment of a sum of Rs. 6,10,000/- as offered by the petitioner, which in fact the petitioner also never implemented.

8. Statement of objections has also been filed on behalf of the third respondent. It is inter alia stated that this respondent had offered the highest price amount of Rs. 7.11 lakhs; that the entire amount was paid on 31-3-2002 and that the first respondent had been informed that this respondent incurred a total expenditure of Rs. 10 lakhs for the purchase of the unit itself. It is also asserted that the third respondent has further invested a sum of Rs. 30 lakhs for purchasing the machineries which had been installed in the premises which she had purchased;

that this respondent had in fact addressed letters to the Managing Director, K.S.F.C. requesting them to ensure that the interim order granted by this Court is got vacated as the interim order had come in the way of the third respondent starting her activity in the industrial unit and causing great loss and hardship to her. The respondent has also asserted that the petitioner had suppressed material facts before this Court and managed to obtain an order of stay by filing a writ petition much subsequent to the third respondent having been put in possession of the property except to the extent of the portion which the petitioner was using as a residence and had caused considerable hardship and loss to the third respondent. This respondent has also prayed for dismissal of the writ petition.

9. Sri Somnath Reddy, learned counsel appearing for respondent No. 3 has made submissions on the same lines and has drawn the attention of the Court to the fact that the sale deed dated 10-8-2002 executed in favour of the third respondent cannot be made subject-matter for seeking a writ of certiorari at the hands of this Court inasmuch as the sale deeds, having been executed in a proper manner and- in accordance with the relevant procedures, that it is definitely not Just and equitable to set aside the sale at this point of time and at the instance of the petitioner whose conduct lacks bona fides. It is also submitted that the petitioner having closed down his unit itself long back, there was no possibility of the petitioner reviving his unit whereas third respondent has now set up her industrial unit after making heavy investment, she is about to start her industry and it is not necessary for this Court to interfere in a matter of this nature in the exercise of writ jurisdiction.

10. Though Sri Amar Kumar, learned counsel for the petitioner has contended that even the procedure for effecting the sale of the property is not fair and the property is not sold in public auction which is a requirement, this submission cannot be accepted inasmuch as the property had been sold only pursuant to an advertisement dated 23-10-2001 that it will be sold in public auction. In fact the highest offer received at the auction sale which had been fixed to 3-12-2002 was a sum of Rs. 6 lakhs which was also made known to the petitioner and the petitioner was invited to get better offers if any from his side. In the absence of any such better offer and buyer on the side of the petitioner, the Corporation nevertheless invited the interested bidders to participate in negotiating settlement and ensured that the highest offer was further increased to Rs. 7.11 lakhs as offered by the third respondent. If at all the action on the part of the first and second respondents is to the advantage of the petitioner in realising a better price for the property sold and not to the detriment of the petitioner. The action cannot be said to be bad on this account.

11. In so far as the contention with regard to a one-time settlement Is concerned, it should be noticed that it is not under any statutory provision. Borrowers like the petitioner have no right that one time settlement should be accepted by the respondent-Corporation. In fact it is in the nature of a

concession extended by the Corporation by receiving interest at a reduced or concessional rate if the entire outstanding towards principal and interest at such rate/rates is paid by the borrowers at one time so that the entire transaction Is cleared once and for all. It is within the commercial prudence of the respondents to accept or reject such an offer. It is only when bona fide offer to which the Corporation has indicated its acceptance and has later on rejected it without any reason or justification, there can arise an inference of arbitrariness on the part of the respondent-Corporation. No such case is made out in the present petition. On the other hand, the facts reveal that it is only the petitioner''s conduct which lacks bona fides and that the petitioner in fact never made use of the various opportunities that were extended to him for making payment. Petitioner cannot complain that the respondents have not acted in good faith in not accepting his one time settlement offer. If at all such an offer fell through, it was only because of the inaction on the part of the petitioner and lack of interest on his side.

12. Viewed from any angle, I do not find any justification for. interfering with the course of action taken by respondents 1 and 2.

13. I do not find any merit in this writ petition which deserves exercise of writ jurisdiction for invalidating any action on the part of the respondents 1 and 2.

14. In the circumstances, this writ petition is dismissed.