
(2009) 04 OHC CK 0036
In the Orissa High Court

Uttam Prasad Gupta

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

State Financial Corporations Act, 1951 — Section 29, 30

Citation : AIR 2010 Ori 3 : (2010) 1 BC 442 : (2009) CLT 34 Supp : (2009) 2 OLR 830 Supp : (2010) 6 RCR(Civil) 940

Hon'ble Judges : B.S. Chauhan, C.J.;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ petition has been filed for a direction quashing the order dated 10-3-2004 (Annex.-I) of the Orissa State Financial Corporation (hereinafter called "the Corporation") intimating the petitioner that due to non-payment of the dues, the physical possession of the mortgaged hypothecated assets of Hotel Puja at Koida had been taken u/s 29 of the State Financial Corporations Act, 1951 (hereinafter called "the Act") on 2-3-2004; and also for quashing sale notice dated 13-1-2005 (Annex.-8).

2. The facts and circumstances giving rise to this case are that the petitioner had taken a loan of Rs. 8 lakhs in the year 1999. The loan agreement was executed on 28-4-1999 by mortgaging the property in dispute as financial security. The petitioner, Shri Uttam Prasad Gupta along with Smt. Chinmayee Gupta and Miss Rita Gupta also executed personal guarantee bond to the Corporation. Petitioner availed loan, however, did not pay the instalments. Therefore, the opposite party-Corporation cancelled the undisbursed loan vide letter dated 24-1-2004. Due to non-payment of Corporations dues, the demand notice dated 24-1-2004 was issued to the petitioner giving him opportunity to clear up the demanded dues of Rs. 2,84,337.74 within the stipulated period. Petitioner neither paid any amount nor made any response to the said demand notice, the opposite party No. 2 issued the notice recalling the entire loan liability u/s 30 of the Act vide letter

dated 6-2-2004 giving further opportunity to the petitioner to pay the entire dues of the Corporation within the stipulated period, The petitioner did not pay the same within the time stipulated. Therefore, proceedings under the Act were initiated by the Corporation and physical possession of the mortgaged hypothecated assets was taken. As the petitioner adopted an indifferent attitude altogether, sale notice (Annex-8) was issued, of which the petitioner had full knowledge, The sale notice was also published in the newspapers. Opposite Party No. 3 was the sole person who responded to the said sale notice and after negotiation, the property had been sold to him over and above the upset price. Hence this writ petition.

3. Dr. A. K. Rath, learned Counsel appearing for the petitioner submitted that in the facts and circumstances of the case, as the sale has been conducted in violation of the statutory requirements and in case there was only one bidder, instead of setting the property with him by negotiation, a fresh notice of sale should have been issued. Auction cannot be held with one bidder. Further, petitioner had always been willing to pay the loan, but his offer for one time settlement was not at all accepted by the opposite parties. The sale has been executed in favour of opposite party No. 3 by opposite party No. 2 in violation of the interim order passed by this Court dated 16-4-2004 by which opposite party No. 2 was restrained to alienate the property by any means in favour of any other person. Therefore, petitioner is entitled for the relief sought.

4. On the other hand Ms. S. L. Patnaik, learned Counsel for the Corporation and Mr. Sarangi learned Counsel appearing for opposite party No. 3 have argued that Court cannot issue direction to reach One Time Settlement (OTS). The property had been settled in favour of the opposite party No. 3 strictly in accordance with law. Petitioner had full knowledge of sale notice. He ought to have challenged it within time. Petitioner filed the original writ petition, but relief for quashing the sale notice was not sought. Thereafter, he moved an application for amendment. Even in that application quashing of sale notice was not sought, rather prayer for adding certain grounds had been made. The said application for amendment was allowed and petitioner was asked to file a consolidated petition. He has introduced the prayer which has never been sought and allowed in the application for amendment. The conduct of the petitioner, playing such fraud with the Court, disentitle him for any relief. There is no prohibition in law to settle the property by auction if there is only one bidder. The interim order passed by this Court on 16-4-2004 was till the next date i.e. 10-5-2004, which was not extended and the petitioner never made an application for extension of the said interim order. Therefore, there was no restrain order for sale of the property on the date it was settled in favour of opposite party No. 3. Hence this petition lacks merit and liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. It is settled legal proposition that any order passed or any action taken in

contravention of the interim order of the Court is a nullity and it requires merely a declaration, rather than setting aside the said order. (vide *Mulraj Vs. Murti Raghonathji Maharaj*, ; *Surjit and others Vs. Harbans Singh and others etc. etc.*, ; and *Gurunath Manohar Pavaskar and Others Vs. Nagesh Siddappa Navalgund and Others*,).

However, in the instant case the order passed by this Court on 16-4-2004 was only up to the next date of listing i.e. 10-5-2004 and it had never been extended. Therefore, we are of the opinion that there was no restrain order for settling the said property on the date of settlement.

7. Admittedly in the Original Writ Petition, there was no prayer for quashing the sale notice (Annex.-8). Nor such relief has been prayed for while moving application for amendment of the petition, and it has been introduced only while filing the consolidated writ petition, after the amendment application was allowed. Dr. Rath has not been able to furnish any explanation as under what circumstances such a course has been adopted by the petitioner. The conduct of the petitioner amounts to abuse of process of the Court, which makes him disentitle for any relief before the equity Court and the petition is liable to be rejected only on this ground.

8. In *Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others*, , the Supreme Court has observed as under:

No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions.

9. Similar view has been reiterated by the Supreme Court in *K.K. Modi Vs. K.N. Modi and Others*, ; *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others*, and *Raj Kumar Soni and Another Vs. State of U.P. and Another*, .

10. In *Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another*, the Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.

11. In *Sabia Khan and Others Vs. State of U.P. and Others*, , the Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

12. In *Abdul Rahman Vs. Prasony Bai and Another*, the Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law.

13. Even otherwise, petitioner never made any attempt to make any payment of the instalments. The sale notice was issued five years ago. Petitioner had full knowledge of the sale notice. If he had any grievance regarding the fixation of the up set price or any irregularity in conduct of auction, he ought to have brought it to the notice of the appropriate authority. No attempt had ever been made at his behest. The issue as to whether an auction by a single bidder is permissible has been considered by the Division of this Court in Project Construction Organisation (IDC) Workers" Union and Hirakud Industrial Workers (IDC) Officers" Association Vs. State of Orissa and Others, , wherein it has been held that there was no wrong in negotiating with a single bidder. The object of inviting the tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Therefore, when a single bidder comes forward, the vendor can certainly negotiate with him to fetch a better price with cogent reason.

14. As we have not found any cogent reason to take a view contrary to the same and as judicial discipline and decorum is to be followed by the co-ordinate Bench, we do not find any substance in the submission made by Dr. Rath.

15. So far as issuing direction to reach one time settlement is concerned, the same is no more res-integra.

16. The issue has been considered by the Division Bench of the Allahabad High Court in M.M. Accessories and Another Vs. U.P. Financial Corporation and Another, , wherein the Court held that no direction can be issued to a party under the Statute where the duty is discretionary and authority, upon whom the duty vests, has exercised its discretion reasonably and within its jurisdiction. While deciding the said case, reliance has been placed on the judgments of the Apex Court in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, ; Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, and Dr. Umakant Saran Vs. State of Bihar and Others,

17. The Court further expressed its, anguish upon entering into such an uncalled for OTS in a unwarranted case, observing that every person would like to get one time-Settlement in his favour as every person likes to get his liability reduced and pay less than what he is liable to pay under the contract executed by him.

18. In Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, , the Hon"ble Supreme Court held that the guidelines issued by the Reserve Bank of India providing for O. T. S. are only in the nature of internal guidelines for the banks and financial institutions. They are purely executive instructions and have no statutory force. They do not create any right in favour of the borrowers.

19. Similar view has been reiterated by a Division Bench of Punjab & Haryana High Court in M/s. D. S. Mechanical Works v. State Bank of India and Anr. AIR 2008 P&H 162.

20. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Apex Court considered a similar issue and held as under:

...Regular payment is the rule and nonpayment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the need of the intended borrowers with the available finance.

Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.... That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given...fairness cannot be a oneway street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedure have been followed.

21. It is a matter of bilateral agreement. Making recovery of loan is to be governed by the agreement between the parties. The Court cannot issue a direction to the financial institution to reach in one time settlement. Thus, we find no force in the contentions raised by Dr. A. K. Rath, learned Counsel for the petitioner.

22. In view of the above fact-situation, petition lacks merit and is accordingly dismissed.

B.N. Mahapatra, J.

23. I agree.