
(1990) 12 AHC CK 0096

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1594 of 1990

Vivek Chand Jain

APPELLANT

Vs

The U.P. Financial Corporation

RESPONDENT

Date of Decision : 06-12-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Uttar Pradesh Financial Corporation Act, 1951 — Section 19, 29

Citation : (1991) 1 AWC 128

Hon'ble Judges : R.R.K. Trivedi, J;A.P. Mishra, J

Bench : Division Bench

Advocate : P.N. Saxena, for the Appellant;

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this writ petition counter and rejoinder affidavits have been exchanged between the parties and learned Counsel for the parties have agreed that the writ petition may be heard and finally disposed of at this stage.

2. This Petitioner has challenged the action of the Respondent serving on him a notice u/s 19 of the U.P. Financial Corporation Act, 1951 (hereinafter referred to as the Act) and demanding from him Rs. 424298-60 alleging that the Petitioner has committed contravention of the terms of the deed and has committed default in payment of the loan as per Schedule mentioned in the sale deed and thus he is liable to pay the aforesaid amount within the period stipulated in the notice failing which further action for the transfer of assests shall be taken.

3. The facts, in brief, giving rise to the aforesaid controversy are that one M/s Raj Laxmi Textiles, Kanpur had taken loan from the U.P. F. C, hereinafter referred to as the Corporation, for establishing some industrial unit at Panki Industrial Area No. H-44 and H-45. The unit was established. However, the borrower failed to pay the instalments. Consequently, action u/s 29 of the Act was taken. The Petitioner offered to purchase vacant land and building for a consideration of Rs.

3,40,000/-. The offer made by the Petitioner was accepted on certain terms and conditions by the Corporation which was communicated vide letter dated 4-6-1986, annexure I to the writ petition. The terms and conditions contained in the aforesaid letter are being quoted below:

1. 25% shall be paid as down payment of the offered amount immediately.
2. The balance unpaid amount shall be paid in five years with the gestation period of one year in equate half yearly instalments which will bear current rate of interest from the date of taking over the possession of the unit.
3. Statutory liabilities on the fixed assets, if any, shall be paid by you and the Corporation shall not be liable for the same. Besides, the premium on land to UP SIDC and dues of UP SEB will also be payable by you.
4. The unit may be transferred as per rules of the Corporation.
5. The offer will remain valid up to one month from the date of this letter. Earnest money will be forfeited if you fail to deposit down payment within stipulated period.

4. As is clear from the aforesaid terms and conditions the offer made by the Corporation to transfer the land and building was to remain valid up to one month from the date of the letter and the Petitioner was to comply with condition No. 1 within a period of one month. Petitioner deposited the requisite amount of Rs. 85,000/- by 12-6-1986. Thus he complied with his part of the obligation. Thereafter obligation on the part of the Corporation was to hand over possession and to execute a transfer deed. It appears that vacant possession of land and building was sought to be transferred on 21-6-1986 but as several items of machinery were lying there, vacant possession could not be given and the Petitioner was directed to take possession of the machines also lying therein and was required not to hand over the same to M/s Raj Laxmi Textiles without the permission of the Corporation. Shri Raj Kumar, owner of M/s Raj Laxmi Textiles in the meantime filed writ petition in this Court challenging the action of the Corporation in which an interim order dated 10-7-1986 was passed to the following effect:

The Financial Corporation will be entitled to sell half portion of the vacant land as has been offered by the Petitioner. However, till 11th August, 1986, the factory and the remaining half portion of the land shall not be sold.

5. The aforesaid interim order continued in effect up to 18-1-1988. The effect of the interim order was that neither vacant possession of the land and building could be given to the Petitioner nor the sale deed could be executed, After the stay order was vacated on 18-1-1988, the sale deed was executed in favour of the Petitioner on 5-2-1988. The sale deed is annexure IV to the writ petition. A perusal of the sale deed will show that a repayment schedule of the remaining amount. Of Rs. 2,50,000/- was contemplated between the parties and this amount could be paid by the Petitioner in nine instalments by the period ending

on 24-12-1991. Condition No. 3 of the transfer deed is also very relevant for the controversy between the parties which reads as under:

3. That the Vendor do hereby confirm that on and from the date of execution of these presents, the borrower and the Vendor shall be deemed to be mortgagee for balance unpaid amount till date of its payment with interest and other dues of properties, as mentioned in the schedule attached here to and the Vendee acquires good marketable title over the said property, to which the Borrower had hitherto possessed (Except charge of Vendor for unpaid amount as aforesaid).

6. In paragraph 7 of the sale deed, annexure IV, also the date of possession has been mentioned as 21-6-1986. The Respondent Corporation has served a notice dated 18-12-1989, annexure IX, on the Petitioner u/s 29 of the Act. The Petitioner has impugned the validity of this notice on the ground that he had already paid Rs. 85,000/- and thus the principal amount shown as Rs. 3,40,000/- in the notice is incorrect. The second contention is that the amount of interest has been illegally charged from the alleged date of possession, i.e. 21-6-1986 and the amount of interest shown is incorrect. The third challenge of the; Petitioner against the said notice is that he deposited certain amounts which have not been taken into account. The amount of such deposits is Rs. 61,250/- as shown in annexure 8 and 8-A to the writ petition.

7. The defence of the Corporation is that as the Petitioner was put in possession of the land and building on 21-6-1986, he is liable to pay interest as agreed by him and mentioned in condition No. 2 of the offer made on 4-6-1986. Regarding the principal amount of Rs. 3,40,000/- it has been stated that it is only due to clerical mistake that the whole of the principal amount has been shown and the amount of Rs. 85,000/- and further deposits made by the Petitioner have not been adjusted and this mistake will be corrected by the Corporation. Thus the controversy between the parties remains only in respect of the amount of interest for which the Petitioner is liable to pay under the agreement dated 4-6-1986 which culminated into a transfer deed dated 5-2-1988.

8. We have heard the learned Counsel for the Petitioner and learned Counsel for the Respondent. We are conscious of the limitations in enforcing contractual obligations in exercise of jurisdiction under Article 226 of the Constitution but in the present case as there is no controversy regarding the facts. Further there is no doubt that the Respondent is a statutory Corporation and would be "other authority" within Article 12 of the Constitution of India as held in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., . The actions of statutory bodies like the Respondent are always subject to scrutiny and they must stand the test of fairness and reasonableness. Hence, we are of the view that in the facts and circumstances of the case the action of the Respondent though under a contract may be looked into to determine as to whether the Respondent Corporation has legally demanded the interest from the Petitioner from the alleged date of possession, i.e. 21-6-1986 and whether this action of the Respondent is reasonable, fair and does not suffer from arbitrariness.

9. Normally an agreement entered into between the parties has to be given effect to and the parties are required to discharge their respective obligations. In the present case in view of condition No. 2 the Petitioner agreed to pay interest from the date of taking over possession. He voluntarily agreed to this condition. But the Petitioner, it appears, agreed to such condition under a bonafide impression that the sale deed shall be executed by the Corporation within a reasonable time. It is true that there is no stipulation in the agreement dated 4-6-1986 regarding the time for executing the sale deed but under law the Corporation could ordinarily be expected to execute the same within a reasonable time. However, admittedly the sale deed could not be executed for about two years on account of the stay order passed by this Court in the writ petition filed by the earlier borrower. The execution of the sale deed on 5-2-1988 cannot be said to be a reasonable time as understood in normal facts and circumstances. For this delay of two years the Petitioner cannot, be blamed in any manner. In other words, in fact the Corporation failed to discharge its obligation of executing the sale deed within a reasonable time on account of the interim order. The Petitioner deposited Rs. 85,000/- by 12-6 -1986 under an expectation that the sale deed in his favor shall be executed within a reasonable time, In fact the act of execution of the sale deed was a consideration for the agreement the Petitioner entered into with the Corporation to pay interest from the date of possession; as on account of some event unforeseen to both the parties that condition could not be fulfilled, the Corporation could not legally charge interest from the date of alleged possession. In the facts and circumstances of the case it can be inferred that there was an implied condition to execute the sale deed within a reasonable time. The Corporation could not legally take benefit of its own failure in fulfilling the obligation may it be for any reason.

10. The other aspect of the case is that the Petitioner could not get vacant possession of the land and building which was necessary for initiating his fresh business activities. Though there is dispute about the date of actual possession but from the material on record it is clear that the Petitioner could not get vacant possession of the property purchased by him before 30-12-1987 when the earlier borrower removed the machines and goods from the premise purchased by the Petitioner. Thus even assuming that the Petitioner continued to enjoy possession it could not be said that it was for any benefit. As against it the amount of Rs. 85,000/- deposited by him remained with the Corporation and it enjoyed it. Thus the action of the Corporation is also not equitable.

11. It is relevant to mention here that the Petitioner made several representations before the Corporation in which he prayed that he should not be fastened With the liability of paying interest from the alleged date of possession and it should be charged from the date of execution of the sale deed i.e. 5-2-1988. The Corporation accepting the grievance of the Petitioner vide resolution dated 29-0-1988 exempted him from the liability of paying compound interest for the aforesaid period. This was done considering the facts and

circumstances mentioned in the representations made by the Petitioner and particularly the facts mentioned in Annexure "7" to the writ petition. There was no legal and valid reason for the Corporation not to exempt the Petitioner from the liability of interest from the alleged date of possession, i.e. 21-6-1986. If the correctness of the facts stated in the representations was acceptable for exempting him from the liability of compound interest, there is no legal and valid reason as to why he could not be absolved of the liability of interest from 21-6-1986 which on the face of it was unjust and inequitable. The liability to pay interest is that of a borrower and in the present case as clear from condition No. 3, the Petitioner became borrower only from the date of the execution of the sale deed, i.e. 5-2-1988. For this reason also he was not liable to pay interest. The alleged delivery of possession to the Petitioner was meaningless as no business activity could be started by him in absence of the sale deed which was necessary for obtaining financial assistance. Thus the action of the Corporation in realising interest from the alleged date of possession cannot be in any manner termed to be fair and reasonable in the facts and circumstances of the case. The action of the Respondent Corporation does not stand the test of fairness and reasonableness as [stated above. It is also not legal or equitable.

12. For the reasons mentioned earlier the writ petition deserves to be allowed and the impugned order/notice dated 18-12-1989, filed as An-tenure "9" to the writ petition, is liable to be quashed. The Petitioner was directed to deposit an amount of Rs. 46,000/- by this Court vide order dated 4-1-1990, This amount has been deposited by the Petitioner. As already noticed earlier, the Petitioner had already deposited an amount of Rs. 61, 250/-before service of the impugned notice. Considering the payments made by the Petitioner it can be reasonably inferred that he has a bona fide intention to pay the amount due to the Corporation Up to 21st December, 1990, the Petitioner ought to have paid to the Corporation Rs. 2,04,000/- towards principal amount. He has paid only Rs. 1,47,250/-. He shall pay the remaining balance on or before the due date and shall further keep on paying the amount according to the repayment schedule provided in the sale deed. The Petitioner shall be liable to pay interest from the date of the sale deed at the agreed rate.

13. Thus, the writ petition is allowed. The impugned order--notice dated 18-12-1989 is hereby quashed. The Petitioner is relegated to the position of a borrower and he shall pay the amount to the Corporation according to the observations made earlier in this order. The Corporation shall fix the liability of the Petitioner, taking into account the amounts deposited by him, afresh regarding the principal amount and the interest in view of the observations made above and the Petitioner shall pay such amount on or before 31-12-1990. There will be no order as to costs.