

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th August, 2010.

W.P.(C) No.10026/2009, CM No.8361/2009 & CM No.5668/2010 (both for interim relief).

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M/S GAURAV SAURAV PLAST (INDIA) Petitioner
Through: Mr. R.K. Vats, Advocate.

versus

DELHI FINANCIAL CORPORATION Respondent
Through: Mr. Sanjay Poddar, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a borrower from the respondent Delhi Financial Corporation, a State Financial Corporation within the meaning of the State Financial Corporations Act, 1951 preferred this petition upon being faced with a notice dated 11/15th June, 2009 issued by the respondent in exercise of powers under Section 29 of the SFCs Act calling upon the petitioner to pay the outstanding loan amount of Rs.1,28,78,605.60p and threatening the petitioner, upon failure to make such payment with action for taking over the possession of the property of the petitioner at D-1654, DSIDC, Narela

Industrial Area, Delhi – 110 040 and plant & equipments installed therein mortgaged with the respondent. The petitioner in the writ petition, besides seeking quashing of the aforesaid notice under Section 29 has also sought a mandamus directing the respondent to settle with it as per Guidelines and Directives of the RBI and as had been done in other cases. It is *inter alia* the case of the petitioner that the petitioner is being discriminated against and the respondent has not settled with the petitioner on the same terms as the respondent had settled with M/s Khera Nursing Home and M/s Waris Metal Pvt. Ltd.

2. The petition came up before this Court first on 13th July, 2009 when the notice of the petition was issued on the offer of the petitioner to pay the amount of Rs.17 lac with interest to the respondent. This Court vide order of the same date, on the application of the petitioner for interim relief also ordered that any action pursuant to the proceedings initiated under Section 29 shall be subject to the outcome of this petition.

3. Though the petitioner had made the offer as aforesaid and on the basis whereof notice was issued, the petitioner filed CM No.13795/2009 contending that since the offer earlier was for payment of Rs.16 lac without interest, the order should be modified. The said application was dismissed on 6th November, 2009 holding that the offer of the petitioner as given in the Court was recorded in the earlier order and the contention of the petitioner did not call for modification of the order.

4. The respondent in the meanwhile took possession of the property aforesaid. The petitioner filed CM No.5668/2010 to restrain the respondent from proceeding under Section 29 of the State Financial Corporation Act. Since by that time advertisements had already been issued by the respondent for sale of the property of the petitioner. This Court vide order dated 7th May, 2010 while permitting the respondent to open the tender, restrained it from taking a final decision thereon. The said order continues to be in force. The counsels for the parties have been heard.

5. The counsel for the petitioner has contended that the petitioner is being discriminated and the respondent is refusing to settle with it as it has settled with others. It is further contended that the proprietor of the petitioner being a member of the Scheduled Caste is also entitled to interest benefit.

6. The counsel for the respondent has contended and there is dispute as to facts and that the loan was advanced to the petitioner in the year 1996-97 for the purposes of setting up a unit on the plot aforesaid at DSIDC, Narela Industrial Area, Delhi - 110040 that the petitioner has been in default since beginning and show cause/default notices were issued to the petitioner way back in 1997; earlier also notices under Section 29 were issued to the petitioner on 15th December, 1997, 12th June, 1998, 16th November, 1998, 25th February, 2000, 12th September, 2000 and lastly on 11/15th June, 2009 as aforesaid. It is further contended that in or about the year 2000 the

petitioner had filed a suit for injunction against the respondent before the District Court; the respondent was enjoined by interim order in the said suit also; that during the hearing of the application for interim relief on 8th February, 2001 before the Addl. District Judge, the petitioner offered to make part payment of Rs.7.5 lac but was directed to pay 50% of the then outstanding amount; the petitioner however challenged the same before this Court in CRP No.194/2001; that before this Court again the petitioner undertook to pay Rs.7.5 lac on or before 31st March, 2001 and the balance amount as per the revised schedule to be fixed by this Court; that the petitioner did not deposit any amount inspite of his undertaking and ultimately the Revision Petition was dismissed as not maintainable on 4th March, 2004 owing to the judgment in ***Shiv Shakti Co-operative Housing Society Vs. Swaraj Developers*** (2003) 6 SCC 659. The respondent thereafter initiated proceedings against the petitioner under Section 31 of the State Financial Corporations Act. During the pendency of the said proceedings, the case of the petitioner was again considered by the respondent in the meeting held on 31st July, 2006. It was noticed in the said meeting that the petitioner had been insisting on one time settlement on the same pattern as settlement with M/s R.K. Khera Charitable Trust. It appears that the petitioner had also made a representation to the National Commission for Scheduled Castes and where also a similar grievance was made. The respondent, in accordance with the settlement with M/s R.K. Khera Charitable Trust found a sum of Rs.17,27,942/- to be due from the petitioner

as on 31st July, 2006. In the said minutes, the claim of the petitioner for 4% concession in interest was also considered. It was found that the said benefit in interest had been given to the SC/ST operators of CNG buses and was being reimbursed by the Government of NCT of Delhi; however there was no such scheme with respect to the loans granted by the respondent and as such the same could not be accepted.

7. The counsel for the respondent further points out that the petitioner did not accept the aforesaid proposal also, drawn up in accordance with the settlement with M/s R.K. Khera Charitable Trust. The counsel for the respondent then invites attention to the proceedings dated 10th March, 2008 before the Mediation Cell of the District Court arising out of proceedings under Section 31 of the Act initiated by the respondent. The petitioner in the said proceedings admitted that the proposal in the meeting aforesaid of the respondent for settlement at Rs.17,27,942/- was in accordance with the settlement with M/s R.K. Khera Charitable Trust and admitted that he could not pay the amounts at that time owing to financial constraints and offered to pay the said amount if the proposal was revived and revalidated. The respondent for the sake of settlement and inspite of the Scheme under which the aforesaid offer was made having lapsed, again revived the proposal for payment of Rs.17,27,942/- together with interest. Attention in this regard is invited to the letter dated 8th July, 2008 issued to the petitioner calling upon the petitioner to pay Rs.17,27,942/- along with interest at 13% p.a. from 1st

August, 2006 till the date of payment. The petitioner still did not pay the amount. The respondent then withdrew the proceedings initiated under Section 31 and issued the notice aforesaid impugned in this petition under Section 29 of the Act. It is further pointed out that in pursuance to the said notice the possession of the property aforesaid of the petitioner has already been taken. It is further informed that though the petitioner had during the pendency of this writ petition deposited post dated cheques for Rs.17.28 lac with the respondent but out of the same also, only the cheques for Rs.6.5 lac were realized and the balance cheques dis-honoured. The counsel for the respondent thus contends that the claim of the petitioner that he is discriminated against is baseless in as much as the petitioner himself had admitted the offer of Rs.17,27,942/- given to him to be in accordance with the settlement with M/s R.K. Khera Charitable Trust and has failed to honour the same. It is further contended that the Scheme under which the petitioner is claiming settlement has long since lapsed and the petitioner cannot now be extended the benefit thereof. It is further informed that in the auction held by the respondent the highest bid of approximately Rs.66 lac has been received and which bidder has also deposited a sum of Rs.15 lac with the respondent. It is informed that there are electricity and water dues of over Rs.8 lac on the property and unearned increase of approximately Rs.40 lac will have to be paid for transfer of leasehold rights in the land underneath the property in favour of the highest bidder. The counsel for the respondent also relies on *Andhra Pradesh State Financial Corporation Vs.*

M/s. G.A.R. Re-Rolling Mills (1994) 2 SCC 647 to contend that the respondent was entitled in law to invoke both Section 29 & Section 31 against the petitioner.

8. The petitioner has in rejoinder contended that since the respondent has declared the account of the petitioner as a NPA (Non Performing Asset), the respondent is prohibited from proceeding against the petitioner in exercise of powers under the State Financial Corporation Act. It is again disputed that the settlement offered was in accordance with M/s R.K. Khera Charitable Trust. He also contends that respondent having realized at least Rs.6.5 lac out of the cheques for Rs.17.28 lac deposited by the petitioner during the pendency of this writ petition, is now not entitled to proceed with the notice impugned in this petition. It is contended that the respondent has been making different offers at different times and which shows that no reliance whatsoever can be placed on the computations of the respondent. Attention is particularly invited to the offer of the respondent to settle for Rs.16 lac even after having made the settlement offer of Rs.17.28 lac. The counsel further contends that the respondent has never disclosed as to how the settlement offers communicated are being computed; how much amount is towards principal amount and how much towards interest. He also contends that the claim of the respondent for interest from 1st August, 2006 at 13% p.a. is unjustified. The counsel for the respondent informs that the respondent itself pays interest at 12% p.a. to SIDBI.

9. The aforesaid facts would disclose that the petitioner has successfully held up the payment of dues of the respondent for the last over 10 years. The petitioner has dragged the respondent to all possible foras viz the District Court, this Court and the National Commission for Schedule Castes & Scheduled Tribes. The documents in support of the contentions aforesaid of the respondents and which are not controverted disclose that the petitioner before the Mediation Cell of the District Court admitted the then offer to be in accordance with the settlement with M/s R.K. Khera Charitable Trust but still failed to make the payment. Such a borrower cannot expect any discretion from this Court. After all the respondent Corporation has been set-up to encourage industrialization and offer assistance by giving financial assistance in the shape of loans and advances etc. repayable in easy instalments and if its dues remain held up as the petitioner has succeeded in doing and if it is embroiled in litigations in different foras, it would be prevented from doing the laudable task for which it has been set-up. The petitioner has neither been able to make out a case of discrimination nor of being entitled to proposal for settlement in accordance with the Scheme of the Reserve Bank of India. The petitioner was given such offers and failed to accept or comply with the same and cannot repeatedly ask for such settlements. In so far as the contention of the petitioner of the respondent giving different offers and reducing its settlement amount from time to time is concerned, that would not lead to a conclusion of the actions of the respondent being unreliable or the offers given by the respondent being not

in accordance with the Guidelines. The respondent as a Financial Institution is interested in early recovery of its dues without any impediment and in such endeavour appears to have reduced the amounts on which settlement could be arrived at from time to time but the petitioner still failed to accept or comply with any of the said offers. No further indulgence can be shown to the petitioner. Similarly encashment of cheques for Rs.6.5 lacs out of total cheques for Rs.17.28 lacs would also not estopp the respondent when the balance cheques have been dishonoured.

10. The Full Bench of this Court as far as back as in *Digambar Prasad Vs. S.L. Dhani* MANU/DE/0243/1969 held that the grant of a writ of certiorari, as sought by the petitioner herein, is in the discretion of the court and court will decline to exercise discretion where conduct of the petitioner is such that it would be inequitable and unjust to grant him the relief. This Court would be loath to exercise discretion in favour of petitioner who inspite of opportunity has failed to repay the public dues.

11. The petition is dismissed. I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

9th August, 2010

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