

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1517 of 2014

In

C. REV. 235 of 2005

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Sun Biotechnology Limited, its registered office at Millanpur, Rehabari, Guwahati, Assam and its administrative office at 21 A, shakespeare Sarani, Kolkata, through its director Kali Chand Sharma, son of Shri B. P. Sharma, resident of Plot No. 16, 164, Mandhana Bithur Road, P.O. & P. S. Mandhana, District Kanpur

.... Appellant

Versus

1. The Bihar State Financial Corporation, having its Head Office at Frazer Road, P. S. Kotwali, Town and District Patna, Bihar, through its Managing Director
2. The Branch Manager, Bihar State Financial Corporation, Katihar Branch, Katihar, Bihar
3. The Industrial Financial Corporation of India Limited, its registered office at IFCI Tower, 61, New Delhi - 110019

.... Respondents

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WITH

Letters Patent Appeal No.756 of 2014

IN

Civil Writ Jurisdiction Case No. 3578 of 2012

- =====
1. The Bihar State Financial Corporation, a body Corporate Constituted under the State Financial Corporation Act, 1951, through its Managing Director having its office at Fraser Road, Patna, Pin - 800001
 2. The Managing Director, Bihar State Financial Corporation Fraser Road, Patna, Pin - 800001

.... **Appellants**

Versus

1. The Katihar Jute Mills Limited, a Company incorporated under the Provisions of Indian Companies Act, 1913 within the meaning of Companies Act, 1956, through its Director, Vinod Kumar Chamaria, registered office at No. 178, Mahatma Gandhi Road, 2nd Floor, Room No. 114, Kolkata - 700007
2. Vinod Kumar Chamaria S/o Late Ratan Lal Chamaria Director, Katihar Jute Mills Limited resident of 43, Hare Prasad Shastri Sarani, Block - E, New Alipore Kolkata - 700053
3. Vijay Kumar Chamaria S/o Late Ratan Lal Chamaria

Director, Katihar Jute Mills Limited resident of 61/23, More Avenue, Kolkata – 700048

4. 4. IFCI Ltd., a Company incorporated and registered under the Provisions of the Companies Act, 1956, having its registered office at IFCL Towers, 61, Nehru Place, New Delhi - 110019, and one of its office at Maurya Lok Commercial Complex, Block 'C' (3rd Floor) Dak Bunglow road, Patna - 800001 through its Assistant Manager
5. The Branch Manager, Bihar State Financial Corporation Zila School Road, Purnea Branch, District - Purnea (Bihar)

.... **Respondents**

Appearance :
(In LPA No.1517 of 2014)

For the Appellant/s : Mr. Suraj Samdarshi, Advocate
Mr. Vikram Mehta, Advocate
For the Respondent/s : Mr. Anil Jaiswal, Sr. Advocate
Mr. Y.V. Giri, Sr. Advocate
Mr. Nikhil Kumar Agrawal, Advocate

(In LPA No.756 of 2014)

For the Appellant/s : Mr. Anil Jayaswal, Sr. Advocate
For the Respondent/s : Mr. Harendra Prasad Singh, Advocate
Mr. Arbind Kumar, Advocate
Mr. Aslam Ansari, Advocate
Mr. Jitendra Kumar Roy, Advocate

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

CAV ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

13 15-09-2015 The appellant, who is an auction purchaser, has filed this appeal under Letters Patent of Patna High Court against the order, dated 06.08.2010, dismissing the Civil Review No.235 of 2005, preferred against the order, dated 27.09.2005, passed in C.W.J.C. No. 6910 of 2005,



which was disposed of with observations and directions contained therein. Subsequently, the appellant filed I. A. No. 9444 of 2014 praying therein for leave to assail the original order, dated 27.09.2005, passed in the writ petition, on the ground that inadvertently, the said prayer could not be incorporated in the first paragraph of the memorandum of appeal as well as in the relief portion thereof.

2. The writ application was filed against the order passed by the learned Sub-Judge-I, Katihar, in Title Suit No.46 of 2002, and the order of the Appellate Court, passed in Miscellaneous Appeal No.7 of 2004, refusing to accede to prayer of injunction of the appellant-petitioner and also the prayer for appointment of a Surveyor to ascertain the actual area of the land not handed over to the auction purchaser in terms of sale notice as well as the present mortgage value of the area of land sold in auction to the auction purchaser and to restrain the Bihar State Financial Corporation (hereinafter referred to as 'the BSFC') from realizing the installments without ascertaining the actual area of land, the possession whereof have been handed over to the auction purchaser and the value thereof.

3. During the pendency of writ application, the



appellant filed a number of Interlocutory Applications. For instance, I.A. No.8549 of 2014 was filed for condonation of delay of 3 years 90 days in filing the appeal against the order, dated 16.8.2010, passed by a learned single Judge rejecting Civil Review No.235 of 2010. I.A. No.8550 of 2014 was filed seeking a direction to maintain *status quo*. I.A. No.8593 of 2014 was filed for stay of operation of the letter, dated 12.11.2014, issued by the BSFC threatening to sell the premises purchased by the appellant for default in payment of installment.

4. Both the BSFC and the Industrial Financial Corporation of India (hereinafter referred to as 'IFCI'), who are respondents in this case, have filed their respective counter affidavits.

5. Apart from the merit of the case, they have opposed the appeal on the ground of (i) maintainability and (ii) limitation.

6. Before we consider the grounds of resistance by the BSFC and the IFCI and the reply of the appellants in support of their case, it would be apposite to notice the facts of the case.

(a) M/s Katihar Jute Mills Ltd. is a company incorporated in the year 1934 under the Indian Companies Act, 1930. It owned various properties



including a Jute Mill at Katihar known as Katihar Jute Mill. Respondent No.1 is a body corporate constituted under the State Financial Corporation Act, 1951. Respondent No.2 is its officer and Respondent No.3 is also a company incorporated under the Indian Companies Act, 1930. Both respondent Nos. 1 and 3 are financial institutions and authority within the meaning of Article 12 of the Constitution of India.

(b) M/s Katihar Jute Mills Limited took loan from B.S.F.C. amounting to Rs.24 lacs and odd, between 1972 to 1974, for which the company executed a mortgage with respect to 77.07 acres of land along with its machinery. The said unit, Katihar Jute Mills, also took loan of Rs.28.25 lacs from the IFCI.

(c) The Unit defaulted in repayment of loan on account of which a sum of Rs.200 lacs became due, on 31.03.1998, to the BSFC and a sum of Rs. 345 lacs, as on 07.04.1998, to the IFCI. As the loan was not being repaid, the Board of Directors of BSFC decided to take possession of the mortgaged land as well as hypothecated assets of Katihar Jute Mill. The BSFC accordingly advertised for sale of the mortgaged assets under Section 29 of the State Financial Corporation Act, 1951.



(d) The Board of Directors of BSFC in its meeting, dated 27.3.2000, approved the auction sale of mortgage and hypothecated assets of Katihar Jute Mills in favour of S.B. Agro (India) Limited, Kolkata, now, the appellant, for a consideration of a sum of Rs.4.50 crores. The final order of sale of mortgaged/hypothecated assets was issued on 21.06.2001 and an agreement for sale-cum-payment of balance loan was entered into between the parties on 14.09.2001 (Annexure-2); however, wrongly typed in the writ petition as 14.01.2001. Initially, cash payment, equivalent to 15% of total consideration, amounting to Rs.67.50 lacs, was made and the balance consideration amount of Rs.382.50 lacs was to be treated as term loan, as per the practice, to be paid within a period of 5 years in 20 quarterly installments of Rs.19,12,500/- each. The first installment of loan was to fall due on completion of a period of six months from the date of issue of sale order. The rate of interest was fixed at 16% per annum with quarterly rest. In case of default, a penal interest was leviable at 2% per annum on the amount during the period of default. BSFC and IFICI were to share the sale proceeds on *pari passu* basis.

7. It is the case of the appellant that out of 77.07 acres of purchased land mentioned in the sale deed, a



vast area of the land was unavailable. Some of the lands, pertaining to Khata No.745, had already been acquired by the Government for Burma Colony. Some lands of Khata No.747, known as Bhora-bari land, were also acquired by the Government. In short, as per the appellant, the following lands were not handed over to it:

i) 8.59 acres of land were acquired by the Land Acquisition Department for rehabilitation of refugees from Burma;

ii) 5.82 acres of land were acquired by the Land Acquisition Department for Food Corporation of India;

iii) An area of 43 acres were encroached upon by other persons claiming themselves to be the owners of the land; and

iv) 1.2307 acres of land were in possession of one Shiv Bachan Singh and 3 Kathas of land were in occupation of Brahmasthan.

8. The appellant, vide its letter, dated 30.3.2002, brought all the above facts to the notice of Respondent No.2. It is the further case of the appellant that as the BSFC failed to hand over the possession of approximately 58 acres of land out of the total area of 77.07 acres, it had no option but to institute a suit, namely Title Suit No.26 of 2002, in the Court of learned Sub Judge-I,

Katihar, praying mainly for the following reliefs:

i) For a declaration that out of 77.07 acres of land purchased from the BSFC as the later failed to deliver possession of the entire land;

ii) For a decree of compensation along with interest.

9. The appellant filed injunction petition under Order 39 Rules 1 and 2 of the Civil Procedure Code, which was refused by the learned Sub-Judge I, Katihar, vide order, dated 04.09.2004, passed in Title Suit No.46 of 2002 as well as learned 3rd Additional District Judge, Katihar, vide order, dated 02.06.2005, passed in Miscellaneous Appeal No.07 of 2004.

10. Being aggrieved, the appellant filed C.W.J.C. No.6910 of 2005 challenging the refusal of injunction also praying therein for appointment of Surveyor to ascertain the actual area of land, which was not handed over to it in terms of the sale notice and to ascertain the present mortgaged value of land with a further prayer to restrain the BSFC from realizing the installment. The writ application was disposed of with certain directions, which, in short, are as follows:

" i) The appellant within one month would approach the BSFC with detailed of its grievances backed up with evidence and the

later was directed to settle such grievances at the earliest but not later than six months from the date of the petitioner approaching the Corporation;

ii) In the event, the matter could not be settled, a letter to the said effect was to be given by the BSFC and the appellant was to file the said letter before the Trial Court which would proceed to decide the issue;

iii) The trial court would decide the matter of appointment of Pleader Commissioner. If the trial court came to the conclusion that the lands purported to be sold was acquired by the State much prior to the date of agreement, the learned Single Judge directed the BSFC not to treat the appellant as defaulter and the period of default from the date it commenced until the end of September, 2005 shall be ignored by them and the appellant shall start making payment of installments from the month of October, 2005 in terms of the agreement and shall also pay up-to-date interest, including the period when it did not pay the installments, at the rate mentioned in the agreement and also on the dates mentioned therein from October, 2005;

iv) In the event, the Suit was to be ultimately decreed in favour of the appellant then to such extent the consideration money was to be proportionately reduced and the BSFC was liable to refund the same along with interest from the date of payment of the

first installment."

11. Being aggrieved by the order of writ Court, the appellant filed a Civil Review No.235 of 2005, which was dismissed by the learned Single Judge on 6.8.2010. Against the dismissal of Civil Review, the appellant filed the present appeal in the year 2014 after more than 3 years, i.e., beyond the period of limitation. By its order, dated 17.12.2014, the Court has condoned the limitation.

12. Later on, I.A.No.9444 of 2014 was filed praying therein for leave to assail the original order, dated 27.9.2005, on the ground that the appellant had, inadvertently, failed to incorporate the same in paragraph 1 i.e., in the prayer portion of the appeal.

13. The respondents have opposed the filing of the appeal against the order dismissing review application as well as subsequent prayer seeking leave to challenge the original order, dated 27.9.2005, passed in C.W.J.C. No.6910 of 2005.

14. We find that the appeal is preferred against two separate orders. Initially, it was filed against the order, dated 6.8.2010, passed in Civil Review No.235 of 2005, refusing to interfere with the order, dated 27.9.2005, passed in C.W.J.C. No.6910 of 2005. Later on, leave has been sought for to challenge the original order, dated 27.9.2005, passed in C.W.J.C. No.6910 of

2005 by filing I.A.No.9444 of 2014.

15. With regard to the second prayer, a specific plea was taken in I. A. No. 944 of 2014 that due to inadvertence of the learned Counsel, the challenge to the original order in the memorandum of appeal as well as in the prayer portion thereof could not be incorporated, though all foundational facts were laid. The counsel for the respondents opposed the prayer to grant relief.

16. We have examined the matter and found the explanation, offered by the appellant, to be reasonable and plausible. As such, on the date of hearing, we indicated that we are granting leave to appeal against the original order and we allowed the same..

17. At this juncture, it would be relevant to point out that vide order, dated 17.12.2014, we had already condoned the delay in filing the appeal against the order rejecting the Civil Review application.

18. Coming to the main appeal itself, we find that the respondents have raised the following main objections, both regarding the maintainability of the appeal as well the merit of the case:-

i) The appeal against original order is barred under law of limitation inasmuch as it has been filed nearly after 9 years after passing of the order,

dated 27.9.2005, in C.W.J.C.No.6910 of 2005.

ii) The writ application was under Article 226 of the Constitution of India which itself was not maintainable against the order passed by a Civil Court in a title suit.

iii) In case the writ application is deemed to be under Article 227 of the Constitution, then, no appeal would be maintainable in view of Clause 10 of Letters Patent of Patna High Court and a number of decisions on the point including ***Salini Shyam Shetty & another vs R.S. Patil***, reported in ***(2010) 8 SCC 229***.

iv) Otherwise also, the appellant has no case on merit.

19. We would, now, examine one by one the objections taken by the respondents. We, would, first consider the issue of limitation.

20. Learned counsel for the respondents submits that the writ application was disposed on 27.9.2005, whereas the same has been challenged only in the year 2014, i.e., after a delay of nearly 9 years. However, the appellant had filed a Civil Review No.235 of 2005, which was dismissed on 6.8.2010. The principle of merger would have no application, where a Civil Review



application is dismissed. In such circumstances, the limitation would accordingly run from the date of original order in view of principles laid down by the Hon'ble Apex Court in the case of ***D. S. R. Steel (P) Ltd. v. State of Rajasthan***, reported in **(2012)6 SCC 782**. He asserts that there was utter negligence on the part of the appellant in omitting to challenge the original order and over the years, valuable right has accrued in their favour on failure to challenge the original order all this while.

21. There cannot be any dispute to the proposition of law that if a Civil Review application is dismissed against the original order, which, if challenged, later on, the limitation would run from the date of original order and not from the date of dismissal of the review application. The law on the issue stands settled by Hon'ble Apex Court in **D.S.R. Steel (P) Ltd.** (supra). The core issue would, however, be whether the appellant has made out a case for condonation of delay. The Courts have held that the law of limitation is a substantive law and has definite consequences on the right and obligation of parties concerned. As such, once a valuable right accrues in favour of one party as a result of failure of the other party to explain the delay by sufficient cause, it would be unreasonable to take away that right, when the



delay is directly the result of negligence, default or inaction of the parties and, therefore, the party, seeking condonation of delay, must show that he was prevented by sufficient cause in filing the appeal. Such explanation has to be reasonable or plausible so as to convince the court that the explanation is not only true but worthy of exercising judicial discretion in favour of the applicant. Reference can be made, in this regard, to the decision of the Hon'ble Apex Court in the case of **Balwant Singh v. Jagdish Singh & Ors**, reported in **(2010)8 SCC 685**, wherein the Court has held as follows:

"We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the



averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party”.

22. Thus, in the light of the principles laid down by the Apex Court, we would examine whether the appellant has made out a case for condonation of delay. We find that the appellant purchased 77.07 acres of land of Katihar Jute Mills along with its plant and machineries, in the year 2001, in an auction sale. The final order of sale of mortgaged/hypothecated orders of Katihar Jute Mills was issued, on 21.6.2001, for a consideration amount of Rs.4.50 crores; out of which, the down payment of Rs.67.50 lacs was made immediately. The agreement for sale-cum-payment of balance loan was entered into by the parties on 14.9.2001. The balance amount of Rs.3.825 crores was treated as a term loan as per the practice of BSFC to be paid by the auction purchaser (appellant) in five years in 20 quarterly installments of Rs.19,12,500/- each. It appears that the appellant



subsequently by the following year or so had paid a total sum of Rs.2.30 crores as against consideration of Rs.4.50 cores. On physical verification, the appellant found that about 15-16 acres of land had been acquired by the Government much before the auction sale for rehabilitation of refugee from Burma as well as for requirement of Food Corporation of India. Besides this, heavy chunk of land was under unauthorized occupation. The appellant made a complaint, on 27.03.2000, to the BSFC and, eventually, instituted a suit giving rise to Title Suit No.46 of 2002, seeking reliefs, which have already been set out in the preceding paragraphs. The appellant prayed for injunction, which was refused, both by the learned trial Court and also by the learned appellate Court, which led to filing of C.W.J.C. No.6910 of 2005. Though the Writ Court did not interfere with the order refusing injunction, it, nonetheless, issued certain directions to the parties, which have already been mentioned, in details, in preceding paragraphs. Under Lawyer's advise, Civil Review No.235 of 2005 was filed, which was dismissed on 06.08.2010. The appellant, in the meantime, had been pursuing its remedy in terms of the direction passed in the writ application. Finally, the appeal was filed in the year 2014 against the order



passed in Civil Review application. However, as in the appeal, the prayer, challenging the main original order passed in the writ application was not incorporated, leave was sought for to challenge the same as well which has been allowed.

23. We, thus, find that the appellant, who had deposited a sum of Rs.2.30 crores, had a grievance that quite a large chunk of land mentioned in the auction sale was not available. Further- more, the appellant did not sit silent, over its grievances, but pursued its legal remedy. However, as the matter did not move, the appeal was filed in the year 2014.

24. We, thus, find that the appellant was not entirely negligent in the matter. The explanation, furnished by the appellant, is not totally unworthy of reliance and, as such, in the interest of justice, we condone the delay in filing the appeal against the original order passed in the writ application, more so, because the ignorance of error of the Counsel cannot be read or interpreted as negligence of his client.

25. This takes to the next issue: whether the writ application itself was maintainable as it was preferred under Article 226 of the Constitution of India as claimed by the respondents. According to the respondents, the



appellant had preferred the writ application under Article 226 of the Constitution of India. He submits that no writ would be maintainable against a judicial order passed by a civil court and only a petition, under Article 227 of the Constitution of India, would be maintainable. We would broadly agree with the submission of the respondents that against judicial order passed by a civil court, a petition, under Article 227 of the Constitution of India, would be maintainable in view of the decision of the Apex Court in the case of **Radhey Shyam vs Chhabi Nath**, reported in **(2015) 5 SCC 423**.

26. It is relevant to state herein that in **Radhey Shyam** (supra), the Apex Court, on hearing the matter, had doubted the correctness of law laid down in **Surya Dev Rai v. Ram Chandra Rai**, reported in **(2003) 6 SCC 675**, wherein it was held that the order of Civil Court was amenable to judicial review under Article 226 of the Constitution of India. The matter was placed before a three Judges bench, which has held at paragraph 29, that judicial order of Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India and the contrary view to the said extent, in **Surya Dev Rai** (supra), was overruled.

27. In the case at hand, the writ application was,



admittedly, filed under Article 226 of the Constitution of India and, as such, in view of recent decision of the Apex Court, in **Radhey Shyam** (supra), a writ petition would not be maintainable under Article 226 of the Constitution of India.

28. We, therefore, accept the view of the learned single Judge that the petition, in the present case, had all the trappings of a writ petition made under Article 227 of the Constitution of India. Consequently, no *intra Court* appeal, against the order passed in exercise of power under Article 227 of the Constitution of India, would be amenable in view of Clause 10 of the Letters Patent of Patna High Court. We hold accordingly.

29. Before parting with the appeal, it would be just and proper to notice that pursuant to the observations of this Court to negotiate settlements, the parties made their proposals for settlement.

30. Before, however, we come to the offer, which has been made by the BSFC, and the reactions thereto of the appellant and IFSC, we may further point out that it is an admitted position that apursuant to the order passed by the learned single Judge, a Commission was appointed and a report has been submitted in this regard on 29.05.2006, wherein it has been stated that out of

77.07 acres of land, sold to the appellant, the delivery of possession was of only 27.73 acres.

31. In fact, during the course of hearing of the appeal, even BSFC has filed an affidavit, wherein BSFC has admitted, for the first time, that about 15.70 acres of land, which had been sold to the appellant, could not have been sold by the BSFC as the said land had already been acquired by the Government for Burma Colony and Food Corporation of India. Coupled with this, a piece of land has been sold to Shri Shiv Bachan Singh long before the auction was held. In their affidavit, the BSFC has also admitted that they are willing to reduce the sale consideration by the rate effective on that date.

32. Situated thus, it becomes clear that it is almost 13 years of the institution of the suit by the appellant herein seeking adjustment of the sale consideration, because of the omission to hand over the entire land sold by the BSFC to the appellant, the BSFC admits that about 15.70 acres of the land, sold to the appellant, could not have been sold in the circumstances as indicated above and it is willing to adjust the sale consideration accordingly; whereas throughout the period when the litigation was pending, the stand of the BSFC had been that the appellant was not entitled to any adjustment in

the sale consideration inasmuch as the said property had been sold on '*as is where is basis*'.

33. By no stretch of imagination, the expression '*as is where is basis*' can include a misrepresentation inasmuch as the BSFC had, admittedly, sold to the appellant 15.70 acres of land, which did not belong to BSFC.

34. The BSFC, being an instrumentality of the State, had a duty to be fair even in commercial and contractual transactions. In fact, the action of the BSFC, in making misrepresentation of facts to the appellant and selling the land to the appellant without being the owner of the entire land, amounted to, as is rightly submitted on behalf of the appellant, commission of the offence of cheating.

35. Be that as it may, Mr. Y. V. Giri, learned Senior Counsel, submits that the BSFC has offered a proposal that it is still willing to settle the outstanding issues with the auction purchaser, namely, Sun Biotechnology Limited, on payment of 18.72 crores, at such rate of interest as had been offered by the BSFC at the time of negotiation of OTS.

36. To the submissions so made, no objection has been raised by anyone.

37. In view of the above and in the interest of justice, the parties to this appeal are hereby directed to make, in terms of the settlements arrived at, necessary application seeking a decree of compromise, in Title Suit No. 46 of 2002, so that the litigations come to an end in terms of what is agreeable to all the parties concerned.

L.P.A. No.756 of 2014

38. The appellant herein is the Bihar State Financial Corporation, which has challenged the order, dated 18.11.2013, passed by the learned single Judge in C.W.J.C. No.3578 of 2012 (Katihar Jute Mills Limited vs. Bihar State Financial Corporation & Ors). The writ petition was filed by the original promoter, Katihar Jute Mills Limited (in short 'KJML'), a company incorporated under the provisions of the Companies Act, 1930, praying for quashing the letter, dated 24.1.2011, issued under the signature of respondent No.3 (Annexure-16) superseding *No Dues Certificate*, dated 19.11.2011, issued by him (Annexure-12) as also for a direction to the respondents to hand over the possession of KJML. For clarity of appreciations, the letters, dated 19.1.2011 and 24.1.2011, are quoted hereinbelow:

“ Bihar State Financial Corporation
Zila School Road, Purnea
Date

19.1.2011

TO WHOM IT MAY CONCERN

DUES CLEARANCE CERTIFICATE

This is hereby certified that the original promoter of M/s Katihar Jute Mills (P) Ltd., Katihar has liquidated the total outstanding of Bihar State Financial Corporation under provisions of O.T.S.-2009 and as such there is no dues against this concern as per our record as on date.

Sd/-
(B.K. Singh)
Branch Manager

" Bihar State Financial Corporation
Zila School Road, Purnea

Date

24.1.2011

"NO DUES CERTIFICATE"

In Supersession of earlier "No Dues Certificate" issued vide memo no.PRN/393/2010-11 dated 19-01-2011 this is hereby certified that after sale of mortgage/hypothecated fixed asserts of M/s Katihar Jute Mills Ltd. Katihar the residula account only of original promoters of M/s Katihar Jute Mills Ltd. has been settled in terms of para 5.1 (c0 of BSFC One Time Settlement Scheme-2009.

Sd/-
(B.K. Singh)
Branch Manager"

39. The learned single Judge, by order, dated 18.11.2013, quashed the subsequent letter, dated 24.1.2011 (Annexure-16), holding that *No Dues Certificate*, issued to the petitioner company (KJML) by the Corporation, vide letter, dated 19.11.2011 (Annexure-12), amounts to a final settlement of dues of the petitioners with the Corporation and its

consequences, as per the Scheme, has to follow.

40. It would be relevant to point out that the learned Single Judge, while passing the aforesaid order, noticed that M/s Sun Biotechnology Limited, the appellant in connected L.P.A. No.1517 of 2014, has filed the instant writ petition and as such, the Court has refrained from examining those aspects of the matter, which may be related to their individual cases and claims.

41. The stand of the Corporation was that a sum of Rs.24.15 lacs was sanctioned to the KJML between 1972 to 1974. Besides this, a sum of Rs.33 lacs was sanctioned by the IFCI during the same period. The original promoter defaulted in repaying its loan and declared the lock out in the Mill on 5.7.1982. In order to safe-guard the assets, the Corporation took possession on 13.10.1984, under Section 29 of the State Financial Corporation Act, 1951. The Corporation took initiative to sell the assets to recover its loan; but the same did not materialize as the prices offered were too low. The Corporation, ultimately, finalized sale of some of the mortgaged assets of KJML with M/s S.B. Agro India Limited on consideration of Rs.4.50 Crores, as against the dues of Rs.6.01 crores as on 31.3.1998. The said order was issued on 21.6.2000 in favour of M/s S.B. Agro India



Limited under intimation of KJML and its promoter Director to pay a matching amount within 21 days. The promoters did not respond. The Corporation floated OTS Scheme 2009 giving an opportunity to the promoters of defaulter units to settle their dues by making payment of 110% of principle amount totaling to a sum of Rs.24.85 lacs. The Branch Manager, vide impugned order, dated 24.01.2011, clarified that the residual account only of the original promoters (KJML) has been settled in terms of paragraph 5.1(c) of the BSFC 'One Time Settlement Scheme-2009'. Clarifying its stand, the BSFC, in its letter, dated 19.1.2011, stated that the hypothecated assets of the promoters were sold for consideration of Rs.4.50 crores much below the total balance outstanding on that date and as the unit was not sold on total balance outstanding, the remaining part of the balance outstanding was their liability.

42. From the pleadings of the parties, some of the undisputed facts, which emerge, are as follows:

(i) The original promoter took a loan of Rs.24.15 lacs from Bihar State Financial Corporation apart from Rs.33 lacs from IFCI Limited. The KJML failed to repay the loan and even declared lock out in the year 1982.

(ii) The Corporation took over the possession of



KJML under Section 29 of the State Financial Corporation Act and, finally, entered into a sale deed with Sun Biotechnology Limited, the appellant of L.P.A. No.1517 of 2014, for a consideration of Rs.4.50 crores, though the outstanding dues, on the date, was more than Rs. 6 crores.

(iii) The KJML was informed about the auction sale and was given an offer of making a matching amount for taking possession of its assets. There was no response from the KJML and, as such, sale was finally made in favour of Sun Biotechnology, the appellant of L.P.A. No.1517 of 2014, for a consideration of Rs.4.50 crores.

(iv) The KJML, only in the year 2002, has filed the writ application for directing the respondents to hand over the possession as it had paid the amount of Rs.24.15 lacs under OTS Scheme, which only accounted for the residual dues and nothing more.

43. The KJML, only on the basis of *No Dues Certificate* (Annexure-12), issued by the Branch Manager in the year 2011, cannot undo the auction sale finalized in the year 2001. The No Dues Certificate issued pursuant to payment of OTS amount of Rs.24 lacs in 2011, therefore, could, in no way, entitled the original promoter to recover the assets, which were sold for consideration

of Rs.4.50 crores. As such, we do not find any merit in the appeal. It is accordingly dismissed.

(Samarendra Pratap Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I. A. Ansari, ACJ.)

**Md.Jamaluddin
Khan**

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