

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18765 of 2010

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1. Satish Ranjan Srivastwa S/O Late Jugal Kishore Srivastwa, R/O North Aam Gola, Pawan Pokhar, P.S.- Kazi Mohammadpur, Distt.- Muzaffarpur, Partner Messers Ajanta Foundry Works, Shreenagar Road, Purnea
 2. Sanjiv Ranjan S/O Satish Ranjan Srivastwa, R/O North Aam Gola, Pawan Pokhar, P.S.- Kazi Mohammadpur, Distt.- Muzaffarpur, Partner Messers Ajanta Foundry Works, Shreenagar Road, Purnea

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation through its Managing Director, Fraser Road, P.S.- Kotwali, Distt.- Patna
2. The Managing Director Bihar State Financial Corporation, Fraser Road, P.S.- Kotwali, Distt.- Patna
3. The Branch Manager, Bihar State Financial Corporation, Zila School Road, Jail Chowk P.S.- Kotwali, Distt.- Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Priyadarshi
Mr. Amit Kumar Singh
For the Respondent/s : Mr. Raj Nandan Prasad

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 28-04-2015

Heard the parties.

2. The two petitioners, who were partners of M/s Ajanta Foundry Works, Purnea, have filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to extend the benefits of the “BSFC One Time Settlement Scheme- 2009” floated by the respondent Bihar State Financial Corporation, Patna (In short ‘Corporation’), vide circular dated 17.08.2010, as contained in Annexure-7.

3. It is not in dispute that M/s Ajanta Foundry Works, Purnea was sanctioned a loan of Rs. 2,84,000/- by the respondent Corporation. It is also not in dispute that subsequently M/s Ajanta Foundry Works, Purnea defaulted in making payment of loan amount. According to the respondents the unit in question was taken over by



the respondent Corporation on 18.05.1984 itself, when outstanding dues was calculated to be Rs. 7,95,655.52. Subsequently, mortgaged property was auction sold in the year 1990 in favour of Z.A. Sarar, Managing Partner of M/s Automotive Ispat Udyog and accordingly possession was handed over to all the partners including Smt. Kala Kiran Chaudhary on 20.04.1990 in view of the action taken by the respondent Corporation under Section 29 of The State Financial Corporation Act, 1951. Since the original auction purchasers also defaulted in making payment of the sale amount, therefore, respondent Corporation re-advertised the mortgaged property in the year 2007.

4. Learned counsel appearing on behalf of the petitioners submits that auction purchase of the mortgaged assets was not complete, therefore, the petitioners were entitled to apply for grant of the benefits of One Time Settlement Scheme-2009. According to him, the petitioners requested the respondent Branch Manager to issue demand notice with respect to outstanding dues as on 31.03.2010, but that was not issued. Therefore, the petitioners could not file their application form. Hence, according to him, the respondents may be directed to consider the case of the petitioners for granting benefit of One Time Settlement Scheme- 2009.

5. The matter has been contested by the respondents by filing counter-affidavit as also the supplementary counter-affidavit. In the counter-affidavit filed on behalf of the respondents it has been stated that while process of sale of mortgaged assets was under progress in view of issuance of fresh advertisement by the respondent Corporation, Smt. Kala Kiran Choudhary, one of the partners of original auction purchaser, applied for settlement of dues under the aforesaid One Time Settlement Scheme- 2009. It has been asserted

that she deposited the outstanding dues of Rs. 15.60 lakhs along with the application dated 04.10.2010, which was considered by the respondent Corporation and now, sale has been finally confirmed in favour of the aforesaid Smt. Kala Kiran Choudhary.

6. By filing supplementary counter-affidavit the respondents have stated that grant of benefits of One Time Settlement Scheme-2009 in favour of Mrs. Kala Kiran Chaudhary with respect to mortgaged assets came to be challenged before this Court in C.W.J.C. No. 18899 of 2010 and the aforesaid writ petition was finally dismissed by order dated 31.01.2013 by a Bench of this Court [Coram: Ramesh Kumar Datta,J]. It has further been stated that the order passed by the learned Single Judge was subject matter of challenge in L.P.A. No. 897 of 2013, but that L.P.A. was dismissed by a Division Bench of this Court vide order dated 4.3.2014. Learned counsel appearing on behalf of the respondents submits that admittedly, the petitioners did not file any application for grant of benefits under the aforesaid One Time Settlement Scheme-2009 (Annexure-7). Therefore, they are not entitled to get any relief in the present writ petition.

7. It is well settled that for issuance of a writ of mandamus there must be a demand raised by the aggrieved person before the competent authority and only after refusal or non-consideration of such demand, the aggrieved person may approach the High Court in a proceeding under Article 226 of the Constitution of India for issuance of a writ of mandamus. So far the present case is concerned, indisputably, the petitioners did not file any application, not even a defective application, for grant of benefits of One Time Settlement Scheme-2009. Therefore, there is no question of issuance of any writ of mandamus in favour of the petitioners. Furthermore, the mortgaged

assets has finally been sold in favour of Smt. Kala Kiran Choudhary and she is not a party in the present proceeding. The sale made in favour of Smt. Kala Kiran Choudhary has been affirmed by a co-ordinate Bench of this Court vide order dated 31.1.2013 (Annexure-F), which was finally affirmed by the L.P.A. Court also vide order dated 4.3.2014 (Annexure-G to the supplementary counter- affidavit). In above view of the matter, this Court does not find any good ground to accede to the prayers made on behalf of the petitioners in the present writ petition.

8. In the result, the writ petition has to fail and is, accordingly, dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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