IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2667 of 2009

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1. Hotel J.K.Situated at Narirgir P.S.Ramgarhwa District East Champaran, through the Managing Partner, namely, Md. Zikuralla son of Late Md. Mubarak Hussain.
2. Md. Zikuralla son of Late Md. Mubarak Hussain. RF/o village Narirgir, P.S. Ramgarhwa District East Champaran.

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, through its Board of Directors, Frazer Road, Patna.
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna.
3. The Assistant General Manager, Bihar State Financial Corporation, Frazer Road, Patna.
4. The Branch Manager, Bihar State Financial Corporation, Frazer Road, Patna.
5. Md. Shafiullah son of not known, Resident of village Amodyee, District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamal Nayan Chaubey, Sr. Adv.
Mr. Almbuj Nayan Chaubey, Adv.
Mr. Amit Kumar, Adv
Mr. Vikas Kumar, Adv.

For the Respondent/s Mr. Raju Giri, Adv.
Mr. N.N.Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-02-2015

Shivaji Pandey, J I.A. No. 9252 of 2013 has been filed for making necessary amendment in the writ petition.

In the present case, petitioner has made a prayer for quashing Memo No. 217/2-I/2008-2009 dated 9th January 2009 (Annexure-3).

In the present case, petitioner has taken loan for the purpose of constructing a Hotel, in the name and style of *M/s Motel J.K., Narirgir* for that he had taken loan of Rs.10.06 lacs. Before disbursement of loan, petitioners executed agreement dues with the Corporation on 9th November 1985/20th September 1988 providing the schedule of repayment of loan. As the petitioner has defaulted in repayment of the loan amount, subsequently the Corporation issued legal notice dated 7th December 1989 under Sections 29 and 30 of the State Financial Corporation Act. The Advisory Committee of the Corporation, vide its decision dated 17th November 1992 put the unit on sale. The Corporation vide Memo No. 477 dated 18th October 1994 gave opportunity to the petitioner to clear the dues of the Corporation. Again the Corporation vide letter dated 26th June 2001 asked t he petitioners to settle the dues but the petitioner failed to do so.

The Corporation vide letter dated 15th October 2003 informed the petitioner that since the payments are not being made, the Corporation is compelled to take stringent action under the provisions of the SFC Act. The mortgaged assets was put on sale on 24th August 2007.

The Branch level valuation team made assessment of the valuation of the Unit for Rs.31.73 lacs. It also appears that the Government also valued the Unit at Rs.31.73 lacs somuch so Central Valuation Team of the Corporation valued the assets of Unit at Rs.33.89 lacs(Annexure-5 Series). In view of the valuation made hereinabove, a fresh advertisement was issued by the Corporation dated 24th August 2008(Anneure-2) for better offer from the intending candidates. In pursuance of the advertisement Mr. Shafiullah, Respondent no.5, private respondent made offer of the amount of Rs.34 lacs and accordingly the sale order dated 9th January 2009 was issued in his favour. The same was also sent to the petitioners with an advice to retain the assets within 21 days on matching the terms and conditions.

In stead of taking appropriate steps, petitioners filed Pre-litigation Case No. 45 of 2009 before the Permanent Lok Adalat which was dismissed on the ground of jurisdiction. The Purchaser made payment of the initial consideration amount and thereafter an agreement for sale cum-balance amount was made. In pursuance thereof the Corporation vide order dated 6th June 2009 directed to take over the possession of the mortgaged/hypothecated assets so that it could be handed over to the purchaser after compliance of sale and purchase order and also after preparation of inventory as per the norms of the Corporation.

The petitioners filed the present writ petition with a prayer that the Corporation be directed to make settlement of under OTS scheme. The Branch Manager of Motihari of the respondent Corporation vide order dated 15th May 2009 requested the District Magistrate to depute a Magistrate with necessary Police Force for taking possession of the mortgaged assets whereupon petitioners filed I.A No. 1957 of 2009 with a prayer to stay the sale. This Court vide order dated 5th November 2009 did not accept the prayer of the petitioner and directed the Corporation to hand over the possession of demised premises to the purchaser, if payment has been made by new purchaser in this regard.

In the mean time, the Corporation has floated OTS scheme which is Annexure-1 to the I.A. No. 6864 of 2011. In terms of the scheme, the applicant filed his application on 9th November 2010 along with Bank drafts of 2 lacs 76 thousand as application money vide Draft dated 6th November 2010. It will be relevant to notice Clause 5.3 and 5.8 which are as follows:

Clause 5.3 Modalities for payment under the scheme:

> The entire settlement amount to be paid with the application form 25 per cent of the amount can be paid with the application form and rest 75 per cent within one month from the date of filing of the application.

All payments are to be made by demand draft for the requisite amount drawn on any Scheduled Bank in favour of "BIHAR STATE FINANCIAL CORPORATILON' payable at PATNA.

Clause 5.8 : Withdrawal from the scheme:

If the concern fails to make full payment of entire settlement amount, after application with 25 per cent amount, settlement under the scheme shall be deemed to have been withdrawn without any further communication and original loan amount shall continue."

In terms of OTS scheme, petitioner filed an application with 25 per cent amount within the stipulated period, i.e. 15th November 2010. But it is an admitted fact that in terms of Clause 5.3 of the scheme, petitioner was to deposit the rest amount within one month from the date of filing of the application which was not deposited by him but the amount was deposited vide D.D. dated 30th April 2011.

Counsel for the petitioner submitted that the petitioner had deposited the said amount within one month from the date of confirmation of 25 per cent amount which was received by the Financial Corporation and, a such, it cannot be said that the petitioner has any way violated the terms of the scheme and is entitled to the benefits arising out of the scheme. He has further submitted that he is ready to pay Rs.34 lacs which is the sale amount and the Unit should be handed over to him.

Counsel for the petitioner has further submitted that the letter dated 8th October 2013 does not disclose that his application was rejected on account of depositing the money beyond time prescribed rather the ground has been taken that as the sale had already been effected, his application cannot be entertained. He has submitted that the letter which has been communicated does not disclose the fact which has been mentioned in the affidavit and placed reliance on the judgment in the case of Mohinder Singh Gill v. Chief Election Commissioner, New Delhi reported in AIR 1978 SC 851.

Counsel for the Corporation has disputed the argument of the petitioner and submitted that the petitioner was given a fair chance all the time to keep the Unit with himself but every time he has neglected did not come forward with the offer that was extended to the petitioner. He further submitted that after the sale was effected, he was given offer to retain the Unit on matching term but the petitioner did not respond rather moved before the Lok Adalat and ultimately the petition was dismissed somuch so that under the OTS scheme he was to adhere to the stipulation made therein but the petitioner after depositing 25 per cent did not deposit the rest amount within a period prescribed.

Having considered the contention of the parties, in view of the judgment in the case of Mahesh Chandra, reported in (1993) 2 SCC 279 and later on in the case of Haryana State Financial Corporation v. Jagdamba Oil Mills, reported in State of Haryana reported in (2002)3 SCC 496 where the earlier view taken in Mahesh Chandra. Case has been overruled and the Court has arrived to a conclusion that the person who has taken loan has not acted in terms of the agreement, he cannot claim retaining sale of asset s by extending its offer at a later stage. That view has also been affirmed in Karnataka State Industrial and Development Corporation Ltd. Vs. Calvalet India Ltd. & others, reported in 2005(2) PLJR 202 (SC) where the Court has given the circumstances where this Court in exercise of power under Articled 226 can interfere in the matter.

This Court also has in LPA No. 227 of 2008 taken a view that this

Court should not take very lenient view in favour of loanee and the Corporation runs its business on the basis of its money lending for the establishment of the Industrial Unit.

In the present case, admittedly the Corporation repeatedly asked the petitioner to liquidate the loan amount as well as after the Unit was put to sale he was again given an offer that he may retain the Unit subject to payment of matching amount but all the times, he did not give a positive response so much so that he has not complied and paid the amount in terms of OT S scheme.

As per the Corporation, the outstanding dues is of more than 2.5 crores. The petitioner could have availed the opportunity settling the dues when he was given an offer times without number and he remained a silent expectator, did not move to liquidate the outstanding dues and retain back the Unit.

In view of the judgment as passed by this court, this Court does not feel inclined to interfere in the matter. Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

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