IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17007 of 2010

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1. M/S Gajendra Plastics Pvt.Ltd. A Private Limited Company Having Its Office & Unit At Polytechnic Road, P.O.+P.S.Dhanbad, Distt-Dhanbad Through Its Director Sri Om Prakash Ganeriwal
2. Om Prakash Ganeriwal S/O Late Gridhari Lal Ganeriwal R/O Ganeriwal Niket, Polytechnic Road, P.O.+P.S.Dhanbad, Distt-Dhanbad

.... Petitioner/s

Versus

1. Bihar State Financial Corporation Having Its Head Office At Frazer Road, Patna Through Its Managing Director
2. The Managing Director , Bihar State Financial Corporation Frazer Road, Patna
3. The Branch Manager , Bihar State Financial Corporation City Centre , Behind Jitendra Cinema , Sector -4, P.O.+P.S.Bokaro, Distt-Bokaro(Jharkhand)
4. Sri Dhiraj Kumar Rai S/O Sri Chandreshekhar Rai Azad Sarvodaya Nagar-4, Sector-4, P.O.+P.S.Bokaro, Distt-Bokaro

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

13 07-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

> *"That the present writ petition is being filed for issuance of a writ of mandamus commanding the respondents Bihar State Financial Corporation and its officials to issue requisite form under the "**BSFC One Time Settlement Scheme-2009"** to the petitioners and to consider and extend the benefits of the same as per terms and conditions enumerated there under and for further direction/directions granting appropriate relief/reliefs for which the petitioners may entitle in the fact and circumstances of the case."*

2. When this case was taken up on 06.10.2010, this Court had noted that the mortgage assets of the

petitioners on account of its becoming defaulter have been put on sale and sale order was issued in favour of respondent no. 4, the petitioners had in fact additionally sought to assail the aforesaid sale order dated 02.04.2008, whereafter an interim order was passed by this Court on 06.10.2010, which reads as follows:-

> "*The petitioners are the original promoters of the unit which had taken loan from the respondent- Bihar State Financial Corporation. On default having been committed the said unit was put up for sale and ultimately the sale order dated 2.4.2008 was issued by which the unit has been sold in favour of respondent no. 4 Shri Dhiraj Kumar Rai subject to final approval of the Board of Directors for a consideration of an amount of Rs. 41.25 lacs on the terms and conditions mentioned therein. It is further provided by the sale order that the original promoter may retain the assets on matching terms and conditions but it is submitted by learned counsel for the petitioners that no such communication was received by them with respect to matching offer.*
>
> *It is further the stand of the petitioners that they continue to be in possession of the assets of the unit and the respondent no. 4 has himself become a defaulter as he has not paid any amount apart from 25% of the total consideration amount to be paid initially as a result of which neither the sale deed has been executed in his favour nor possession taken over from the petitioners and handed over to him.*
>
> *The main relief sought by the petitioners is that they are entitled to the benefit of the BSFC One-Time Settlement Scheme, 2009 floated on 17.8.2010 for which applications are to be received up to 15.11.2010. It is alleged that the petitioners approached the respondent-authorities of the BSFC for receiving the demand note and also filing their application but the respondent-authorities have refused to either issue the demand note or accept the application form. It is alleged by learned counsel that the respondent no. 4 does not come in any of the categories as mentioned in the OTS Scheme, whereas the petitioners would be entitled to come within the category of original promoters/Guarantors as mentioned in Clause 5.1(a) of the said Scheme.*
>
> *Issue notice to respondent no.4. Requisites both*

> *under ordinary process and registered cover with A.D. must be filed by 12th October, 2010 failing which the writ petition as against respondent no. 4 shall stand rejected without further reference to a Bench.*
>
> *In the meantime, the authorities of the respondent-BSFC are directed to issue a demand note to the petitioners and also accept the application form that may be submitted by them which shall be considered in accordance with law and shall be subject to the result of the present writ petition.*
>
> *Put up among top ten cases in the main list on 8th November, 2010. "*

3. Thereafter, the petitioners on 08.11.2010 had sought to make payment by producing before this Court three demand drafts to the tune of Rs. 8, 84, 400/- in the name of Bihar State Financial Corporation (B.S.F.C), for availing the benefit of One Time Settlement Scheme of B.S.F.C, which according to them was 25 per cent amount of the 110 per cent P.O.S of its Balance Outstanding (B.O.S) to the tune of Rs. 35, 37, 600/- on the basis of its principal outstanding being Rs, 32, 16, 000/-.

4. Thereafter, respondent no. 4 had appeared before this Court and had filed his counter affidavit claiming that the sale order was in his favour and that he had deposited Rs. 9, 31, 250/- by way of

consideration price for purchase of the mortgage assets of the petitioners. It was also claimed by respondent no. 4 that an agreement for sale cum repayment of balance loan was executed between respondent no. 4 and the B.S.F.C.

5. In addition to aforesaid averments the respondent no. 4, in his counter affidavit, had also taken a plea that the petitioners had moved before the Jharkhand High Court at Ranchi for One Time Settlement and when its writ petition was dismissed, it had filed L.P.A No. 61 of 2009 wherein an interim order was passed on 27.05.2009, which reads as follows:-

> *"Let this appeal be listed on 14.07.2009.*
>
> *In the meantime, the respondent-B.S.F.C. is directed to issue One Time Settlement form of 2008 to the appellant as it is informed that a sum of Rs. 32 lakhs had been advanced to the appellant and as per One Time Settlement, he is liable to pay the principal as also interest @ 10% on the principal amount and the figure thus would be Rs. 82 lakhs. It is further informed by the counsel for the BS.F.C that the unit was put to auction sale and the same was sold at a price of Rs. 41.25 lakhs, which is payable within a period of four weeks by the auction purchaser. Besides this, we have also been informed that a sum of Rs. 10 lakhs only has been advanced by the auction purchaser to the B.S.F.C., but the appellant is still ready to pay the entire amount of Rs. 82 lakhs to the B.S.F.C. within a period of four weeks from the date of receipt of the One Time Settlement form to be issued by the B.S.F.C.*
>
> *We deem it just and appropriate to issue the aforesaid order as we are of the view that the B.S.F.C., in any case would not be a loser and would be receiving a much higher amount than the one which has been offered by the auction purchaser i.e only 41.25 lakhs which is payable within a period of four weeks. Under the circumstance, the balance of convenience lies in favour of the B.S.F.C by accepting the amount under the One*

Time Settlement scheme which is offered by the appellant. It is implied that the auction sale which has taken place shall not be confirmed in favour of the respondent no. 3 until further order."

6. According to respondent no. 4, the said L.P.A. No. 61 of 2009, was however permitted to be withdrawn on the prayer of the petitioners by an order dated 19.11.2009 of Jharkhand High Court. According to respondent no. 4 on account of this inter parte judgment between the petitioners and B.S.F.C, the petitioners were not entitled for reconsideration of their case for grant of One Time Settlement, as prayed for by the petitioners in this writ application.

7. In this case BSFC had also filed its counter affidavit, wherein, it had sought to justify sale in favour of respondent no. 4, by taking the following plea:-

"That the petitioner concern was sanctioned total loan of Rs. 54.00 lakhs in four account by the Corporation and after executing mortgage deeds and other legal documentation the concern availed Rs. 32.11 lakhs.

That the concern failed to make payment of the Corporation's dues and as such the Corporation issued legal notice to the concern and the promoters on 4.1.94 but the concern failed to make any payment. The corporations was thereafter left with no option but to put the assets on sale to recover its dues.

That the mortgaged assets of the unit were advertised for sale on 26.05.1995, 1.9.2002 and 21.09.2007 in the newspaper "Hindustan Times" and on 31.8.02 and 21.9.2007 in "Prabhat Khabar".

That after negotiation for sale on 8.1.08, to attract still better offer the assets were again re-advertised for sale in *the newspapers "Hindustan Times" and "Prabhat Khabar" on 31.1.08, disclosing highest offer of Rs. 41.25 lakhs. In this sale advertisement notice was also published for promoter about sale of their assets.*

That no offer was received pursuant to the advertisement dated 31.1.2008 and as such sale orders were issued on 7.4.2008. Copy of the sale order was also sent by registered post to the concern and both its promoters. The sale order addressed to the promoters was returned undelivered with a note that the "addresse left" and the letter of the concern was returned with the endorsement "Addresse closed".

That after issuance of sale order and after lapse of 21 days time for retaining the unit by the promo0ter as per the sale order, the purchaser deposited 25% initial cash down payment of sale consideration amount as per sale order within the stipulated time of 30 days.

That one Sri Arvind Gopalka filed writ application bearing W.P. no. 2186 of 2008 before the Jharkhand High Court in which he offered Rs. 50 lakhs against 41.25 lakhs reserve price. The writ application was disposed of on 12.5.08 with a direction to the petitioner to file a representation before the Managing Director of the Corporation and the Managing Director of the Corporation was directed to pass orders within four weeks.

That in compliance of the orders of the Hon'ble Jharkhand High Court after receipt on s26.5.08 of the representation dated 19.5.2008 of Sri Arvind Gopalka the corporation gave ample opportunity to Sri Arvind Gopalka to deposit tender form along with bank draft of Rs. 54 lakhs as earnest money for purchase of the present unit as well as M/s Jagarnath Industries. The sale of the unit was also kept in abeyance.

That Sri Arvind Gopalka failed to deposit tender money along with tender form and did not appear for price negotiation on the date fixed. The Managing Director of the Corporation passed order vide Memo no. 330/Z-III/08-09 dated 11.11.2008 and confirmed the sale in favour of Sri Dhiraj Kumar Rai.

That the petitioner concern was adopting delaying tactics on the sale of mortgaged assets through different sources such as Arvind Gopalka a builder or others.

That as the purchaser had already deposited initial cash down payment within stipulated time i.e 25.4.08 as per sale order dated 27.3.08s and Sri Arvind Gopalka did not appear for price negotiation on the fixed date the request of the petitioner concern to issue form of ILRS 2008 to the petitioner concern was not required.

That in compliance of the order dated 27.5.09 of the Hon'ble Jharkhand High Court in LPA NO. 61/09s the form of ILRS-08 was sent to the counsel of the petitioner vide ref. 226 dated 30.07.2009.

That the petitioner concern did not file application

> *under ILRS 2008 and withdrew the LPA on 19.11.2009.*
>
> *That the Corporation has thereafter executed agreement for sale cum repayment of balance amount on 31.03.2010 but a supplementary agreement is yet to be completed.*
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> *That the purchaser thereafter filed an application for revision in repayment schedule which has been allowed by the Managing Director of the Corporation vide his order dated 6.9.2010. The Purchaser is required to repay the balance 75% of the consideration amount in 8 quarterly installments. The first installment is to fall due after completion of two months from the date of issue of the order.*
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> *That in view of the above necessary orders for taking over possession of hypothecated/mortgaged assets of the concern and handing over the same to the purchaser has been issued to the Branch Manager.*
>
> *That it is humbly submitted that the sale process has been delayed by two years due to various litigations at the instance of the petitioner and the petitioner cannot be permitted to take the benefit of the same. Further the conduct of the petitioner also does not deserve any sympathy from this Hon'ble Court as he failed to fulfill the commitments made in other judicial proceedings.*
>
> *That it is humbly submitted that the assets of the concern having been already sold request of the petitioner for settlement of his account cannot be permitted under the clause 5.1 (a) or (b) of the one time settlement scheme."*

8. B.S.F.C has also filed its supplementary counter affidavit, wherein, it has been explained that the petitioners did not comply the order of this Court dated 06.10.2010 and to that extent the explanation of the B.S.F.C, reads as follows:-

> *"That on 6.10.10 the present writ application was heard and the Hon'ble Court was pleased to direct the Corporation to issue a demand note to the petitioners and also accept the application form that may be submitted by them which shall be considered in accordance with law and shall be subject to the result of the present writ application.*
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> *That the petitioner thereafter never went to the office of the Corporation for the demand note. The Corporation after waiting for the petitioner on 10.11.2010 sent the demand note through courier. Taking abundant*

precaution the above was also sent through peon of the Corporation. The peon after twice visiting the place reported that the address could not be found. The peon further went at the factory to serve the letters but the factory was closed.

That had the petitioner been so eager to comply the orders of this Hon'ble Court; he could have visited the office of the Corporation and obtained the demand note and the application form.

That the petitioner has brought on record the photo copy of the demand drafts which was purchased on 8.11.2010. The petitioner should have sent the same to the corporation rather than retaining the same."

9. This Court having heard learned counsel for the petitioners on 05.12.2014, had passed the following order:-

"Having regard to the fact that the petitioners, being the original promoters, want to retain their units, this Court would direct the BSFC to first furnish the amount, on which the One Time Settlement could have been allowed to the petitioners, as per the earlier interim order of this Court dated 06.10.2010 and the balance outstanding as on date against the petitioners on the basis of original calculation as also treating the One Time Settlement amount to be payable as on 06.10.2010.

While disclosing such amount, the Corporation must keep in mind that the Balance Outstanding (BOS) amount against the petitioners as on 31.03.2010 was raised 6.64 crores approximately and, therefore, if the One Time Settlement was to be allowed as per the order of this Court dated 06.10.2010, what could have been the amount of O.T.S. in the month of October 2010 and what would be the amount payable by the petitioners by way of interest over that O.T.S. amount.

Learned counsel for the petitioners will also file an affidavit disclosing as to whether, they are prepared to retain the units on payment of O.T.S. amount as on 06.10.2010, supposing the interest which would accrue from the date 06.10.2010 to the December 2014 and also the amount of deposit made by the purchaser with its interest @ 18% per annum."

10. Thereafter this case has been placed today. Let it be noted that neither the Corporation nor the petitioners has complied the order of this Court dated 05.12.2014, but learned counsel for the petitioners has produced a copy of the order of the BSFC dated 12.11.2014, whereby and whereunder, the sale order of the mortgage assets of the petitioners in favour of respondent no. 4 has been cancelled vide memo no.216/z-III/14-15 dated 12.11.2014, which reads as follows:-

"Bihar State Financial Corporation
FRASER ROAD:PATNA
ORDER

Sub:Cancellation of sale order of M/s Gajendra Plastic (P) Ltd., Polytechnic Road Dhanbad issued vide memo no. 150/Z-III/2008-09 dated 7.4.2008 in Favour of Sri Dhiraj Kumar Rai, Chas, Bokaro.

Order on sale of hypothecated/mortgaged assest of M/s Gajendra Plastic (P) Ltd., Polytechnic Road, Dhanbad was issued at consideration amount of Rs. 41.25 lakh in favour of Shri Dhiraj Kumar Rai, Chas, Bokaro under memo no. 15/Z-III/08-09 dated 7.4.2008. In terms of sale order, the purchaser concern paid initial cash down payment. However, due to litigation, the sale process was kept in abeyance vide memo no. 179 dated 30.7.2008 and the confirmation of sale order was issued under memo no. 330 dated 11.11.2008 subject to the final order of the Court in the relevant court cases. Thereafter Branch Manager was allowed to get sale cum payment of balance loan agreement executed under memo no. 447 dated 12.2.2009. The purchaser concern executed one agreement for sale cum payment of balance loan on 31.3.2010. However, some discrepancy especially with regard to payment of balance loan was observed and vide memo no. 281 dated 6.9.2010 repayment schedule was revised with condition that purchaser has to complete supplementary agreement within 15 days from the date of order. The purchaser concern failed to execute supplementary documents so far.

> *2. Keeping in view of the above, as the purchaser concern has not complied condition of sale order/order on revision of repayment schedule and since much time had lapsed, the issued sale order is hereby cancelled. The Corporation shall refund the amount paid by the purchaser concern after getting request from them.*
>
> *Memo NO. 216/Z-III/14-15 Sd/-12.11.14*
> *(Pradip Kumar)*
> *Managing Director*

11. Learned counsel for the petitioners, has submitted that in view of the aforementioned order the petitioners are not required to press this application.

12. As noted above the petitioners had moved this Court for availing the One Time Settlement scheme of B.S.F.C but then it has now not sought to press the only relief of getting One Time Settlement in view of subsequent development, particularly, the cancellation of the sale order in favour of respondent no. 4.

13. At the same time, it is also apparent that after the petitioners had failed in their prayer to get One Time Settlement before the Jharkhand High Court as also of this Court on 19.11.2009 in view of dismissal of L.P.A., of the petitioners on 05.10.2010, for the same relief of grant of One Time Settlement by B.S.F.C, wherein, it

had conveniently suppressed the fact of its writ petition and appeal before the Jharkhand High Court, had been dismissed. Thus, when the petitioners also did not comply the order of this Court dated 06.10.2010 as well as the order dated 05.12.2014, they would not be entitled for consideration of their prayer made in this writ application. Thus, One Time Settlement under the scheme offered by the BSFC in the year 2008-09 cannot be allowed in favour of the petitioners.

14. Be that as it may when the petitioners are satisfied with mere cancellation of the sale order in favour of respondent no. 4 and do not want to press this application, it is, accordingly, dismissed as not pressed.

(Mihir Kumar Jha, J)

Ranjan/-

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