

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.948 of 2011
IN
Civil Writ Jurisdiction Case No. 5747 of 2005**

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M/s Ambuja Electrocasting Ltd. having its factory located at Nasariganj, P.O.-Bataganj, P.S.-Danapur, Distt.-Patna through its Managing Director, Gopi Krishna Gupta, S/O Sri Durga Prasad Gupta R/O Nasariganj, P.O.-Bataganj, P.S.-Danapur, Distt.-Patna (in the Writ Petition company was represented through Arvind Shrivastava, S/O Rajendra Prakash Shrivastava, R/O Nasariganj, P.O.-Bataganj, P.S.-Danapur, Distt.-Patna

.... Appellant

Versus

1. Bihar State Credit and Investment Corporation Ltd. Indira Bhawan (4th Floor) Ram Charitra Singh Path Patna, through its Managing Director, Bihar State Credit and Investment Corporation Ltd., Patna.
2. Sri Deepak Kumar S/o Not Known R/O Nasariganj, P.O.-Bata Ganj, P.S.-Danapur, Distt. Patna.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Arbind Kumar Jha, Advocate
For the Respondent No. 1	:	Mr. Nirmal Kumar, Advocate
For the Respondent No. 2	:	Mr. Shanti Kumar, Advocate
		Mr. Dhananjay Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 03-09-2015

The appellant, who was the writ petitioner, had mortgaged certain properties to Bihar State Credit and Investment Corporation Limited (in short “BICICO”),

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statutory authority formed under State Financial Corporation Act, 1951 (hereinafter referred to as the “Act”) in exercise of powers under Section 29 of the Act. There being default, it advertised for sale of the properties which were offered as security. Respondent no. 2 namely, Deepak Kumar, bid for the same for about Rs. 34 lacs. The bid was provisionally accepted by BICICO subject to approval by its Board of Directors upon payment of this amount to BICICO. On payment being made, the properties was directly handed over to respondent no. 2 Deepak Kumar. Later the Board of Directors of BICICO refused to approve the same, being of the view that the properties were valued much more i.e. at about 49 lacs. Respondent no. 2 Deepak Kumar, immediately agreed to pay the difference, and in fact, paid the difference. When this was not accepted by BICICO, respondent no. 2 Deepak Kumar independently filed the writ petition for a direction to BICICO to confirm the sale and restraining them from taking back the property. In the meantime, petitioner had already filed the writ petition challenging sale of its properties for such a low consideration. It had also prayed that part of the property could by itself meet the entire liability. This writ petition of the appellant/writ petitioner remained pending. In the



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meantime, the writ petition filed by respondent no. 2 Deepak Kumar, was taken up and virtually dismissed with a direction for handing over property back to BICICO, and the Court refusing to sanctify the proposed sale. When the petitioner's/appellant's writ petition was then taken up, the order passed in the other writ proceeding, which was initiated by respondent no. 2 Deepak Kumar, virtually dismissing the writ petition and refusing to sanctify the said sale, the same was brought on record. The writ court noticing that the sale had not been formalized, disposed of the writ petition of the petitioner/appellant in terms of the order passed in the writ petition filed by Deepak Kumar, respondent no. 2. From this, it is apparent that the writ petitioner/appellant was fully aware of the proceeding in relation to sale of its assets by BICICO and in particular to respondent no. 2 Deepak Kumar.

It appears that Sri Deepak Kumar, respondent no. 2, being aggrieved by its virtual dismissal of writ petition filed Letters Patent Appeal No. 555/2008. This was long before the petitioner's/appellant's writ petition was disposed of.

It may also be noted that this disposing of the writ petitioner's/appellant's writ petition, the pendency of

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LPA being 555/2008 filed by Respondent No. 2 Deepak Kumar, was also noted. This again shows that the petitioner/appellant was fully aware of the sale and the legal proceeding pending in this Court before a Division Bench in respect of its assets.

Now, petitioner being aggrieved by the order of the learned Single Judge preferred this Letters Patent Appeal, because the reliefs, he had sought i.e. for restraining BICICO from selling the entire property for meeting its liability which could have been made by sale of a fraction of those properties. Again, all that was prayed was that the two Letters Patent Appeals be heard together. Petitioner/appellant did not take any effort to intervene in LPA No. 555/2008. He did not take any effort to file any formal application in the said LPA for being impleaded as a party, even though, he was aware that what was in question in that LPA was sale of his properties. He then allowed the other Letter Patent Appeal No. 555/2008 to be heard in his absence and be allowed.

The Division Bench of this Court in Letters Patent Appeal No. 555/2008 set aside the order of the learned Single Judge and issued directions for the sale of properties by BICICO in favour of respondent no. 2, Deepak



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Kumar who was the appellant of that LPA. Thus, a Division Bench of this Court to the knowledge of the petitioner/appellant had passed an order confirming the sale and directing delivery of possession of petitioner's/appellant's property to respondent no. 2, Deepak Kumar. Unfortunately, the petitioner/appellant took no steps to get rid to that order of the Division Bench. Appeal filed by BICICO against that order was dismissed by the Hon'ble Supreme Court of India. Though, we are informed that BICICO has filed a Review Application before the Apex Court and left the matter, as such, pending before the Supreme Court of India. Now, the petitioner/appellant wants us to go into the question of legitimacy of sale by BICICO of properties belonging to the petitioner/appellant, knowing fully well that order of a coordinate Bench being a Division Bench of this Court has already confirmed the sale and directed delivery of possession.

In the facts aforesaid, we are not inclined to interfere, more so, because we cannot interfere with an order of coordinate Bench which has attained finality. Any interference in the matter of sale of petitioner's/appellant's assets by us would give rise to conflicting orders in respect of properties in question. It is neither permissible nor

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desirable for the Court to create such a situation.

In our view, the remedy of petitioner/appellant was to intervene in LPA No. 555/2008 and get himself added as a party or appeal to the Supreme Court of India against the judgment of this Court in LPA No. 555/2008 for getting it set aside having been delivered in his absence, being necessary party to the writ petition, because it was his assets that was being sold. He took neither of those steps and allowed the order of LPA No. 555/2008 become final and binding on this Court. Sitting in Division we cannot interfere with that order in any manner, if that is not permissible, then no relief can be granted to the petitioner/appellant at all in this appeal.

That being so, this appeal lacks merit, and is dismissed, as such.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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