IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1315 of 2014
In
Civil Writ Jurisdiction Case No. 18604 of 2012

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1. M/s Buddha Steel Industries Private Limited, Charewa Sherghati through its Managing Director Namely Bipin Kumar Gupta Son of Late Bindeshwari Prasad Gupta, resident of Mohalla- New Area, Bisar Tank, P.S.- Civil Lines, District- Gaya

.... **Appellant**

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Bihar State Financial Corporation, Patna, through its Chairman null null
3. The Chairman-cum-Managing Director, Bihar State Financial Corporation, Patna
4. The Board of Directors, null The Bihar State Financial Corporation, Patna through its Managing Director
5. The Branch Manager, The Bihar State Financial Corporation, Patna
6. The Manager I/C (Zone IV), The Bihar State Financial Corporation, Patna
7. Sri Upendra Prasad, Ghugritand, New Colony, Dandibagh, Chand Chaura, P.S. Civil Lines, Gaya

.... **Respondents**

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Appearance :
For the Appellant/s : Mr. Prakash Chandra Agrawal, Advocate
For the Respondent/s : Mr. Kumar Manish, SC21

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CORAM: HONOURABLE MR. JUSTICE I.A. ANSARI
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV ORDER

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

7 19-03-2015 The appeal is filed against the order, dated 4.8.2014, passed in C.W.J.C. No.1860 of 2012, dismissing the writ petition. The appellant filed writ application for setting aside the order, dated 15.9.2012, whereby the Managing Director, Bihar State Financial Corporation, had auctioned and sold mortgaged hypothecated assets in

favour of respondent No.7 for consideration of Rs.77 lacs. Prayer was also made for a direction to the respondents to furnish to the writ petitioner-appellant the up-to-date details of the amount to be repaid against a sum of Rs.7.71 lacs disbursed towards total sanctioned loan of Rs.94 lacs. During the hearing of the writ petition, the writ petitioner filed an interlocutory application bearing I.A. No.4919 of 2014 for adding the following prayer to the writ petition,

> *"11. That it is respectfully submitted that the petitioner is ready and willing to deposit the aforesaid amount immediately if the Hon'ble court be pleased to grant some reasonable time enabling him to deposit the aforesaid loan amount".*

2. Before we consider the respective merit of the case, it may be relevant to indicate the facts of the case in short, which run as follows:

3. The appellant applied for loan with the Bihar State Financial Corporation (hereinafter referred to as 'the Corporation') with a view to set up a steel factory in the year 1987. After verification, a loan amount of Rs.45 lacs and Rs.37.15 lacs were sanctioned by the Board of Directors of the Corporation in its meeting held on 24.4.1987. According to the writ petitioner, initially, a sum of Rs.4.2 lacs was released to the appellant company and a total of Rs.7.71 lacs was disbursed between the year 1987 and the year 1992. The petitioner defaulted in making repayment of loan. On 26.8.1994, a notice was issued to the writ petitioner under Section 29 read with Section 30 of the State Financial Corporation Act, 1951, informing the writ petitioner that if the writ petitioner failed to deposit the Corporation's dues within 15 days from the date of service of notice, the latter would be at liberty to take over the mortgaged property and advertise the same for sale. The writ petitioner was also informed by a letter, dated 19.10.1994, that the dues of the Corporation had gone up to Rs.10.98 lacs as on 31.3.1994. By the said letter, one more opportunity was granted to the writ petitioner-appellant to make payment of the outstanding dues within ten days failing which the mortgaged assets would be taken over under Section 29 of the State Financial Corporation Act, 1951. Eventually, the industrial unit was put to auction. However, no tender was received. Again, by letter, dated 28.8.2010, Branch Manager, Bihar State Financial Corporation, Gaya, informed the writ petitioner that it may take advantage of One Time Settlement Scheme (OTS-2009), which was duly advertised. As the writ petitioner failed to avail the OTS Scheme, the property was, again, put to auction sell. In all, five tenders were received. Negotiations were held. Respondent No.7 was the highest bidder with an offer of Rs.77 lacs. The Managing Director, Bihar State Financial Corporation, vide his letter, dated 19.9.2012, informed the writ petitioner that the assets of the appellant company has been auctioned and sold to respondent No.7 for Rs.77 lacs and the writ petitioner had an option to deposit the matching amount, within 21 days if the writ petitioner wanted to save its property.

4. Being aggrieved, the writ petitioner filed C.W.J.C. No. 18604 of 2012 for quashing the letter, dated 15.9.2012, whereby the Managing Director held the auction and sold the mortgaged/hypothecated assets of the appellant company in favour of respondent No.7 as also the communication, dated 15.9.2012, issued by the Manager, Incharge Zone-4, Bihar State Financial Corporation, communicating the decision of the Managing Director. The writ petitioner, in course of hearing of the writ petition, expressed its willingness to deposit the entire amount if the Court granted some reasonable time. Viewing the willingness expressed by the writ petitioner to be *bona fide,* the learned single Judge, vide interim order, dated 3.10.2012, restrained the Corporation from finalizing the deal with the auction purchaser. At the request of the appellant, time was granted, on 11.10.2012, 18.10.2012, 4.1.2013 and 21.10.2013, to enable the appellant to redeem itself of the dues. The petitioner, in the meantime, sought for detailed up to date calculation of dues from the Corporation, which liberty was granted to the appellant company. The learned single Judge, vide order, dated 29.10.2013, directed that representative of the petitioner company may approach the Deputy Manager (Legal) of the Corporation, who would hand over the detailed calculations of up to date dues.

5. However, the writ petitioner disputed the calculation tendered by the Corporation, as according to the writ petitioner, the amount payable would be only Rs.45 lacs.

6. In order to sort out the dispute, the learned Single Judge, vide the order, dated 14.11.2013, directed that it would be in fitness of the situation if the Chartered Accountant of the writ petitioner holds meeting with the Deputy Manager (Legal) of the Corporation or with any other official of the Corporation to arrive at an agreed figure of dues payable on the basis of agreement. Learned counsel, appearing for the petitioner, agreed to the adjournment of the matter for such a meeting and the petitioner was willing to deposit a sum of Rs.20 lacs by 25.11.2013.

7. In view of assurance made on behalf of writ petitioner, the learned Single Judge directed that the Corporation would hold a meeting, on 26.11.2013, with the Chartered Accountant of the writ petitioner. The writ petitioner, however, failed to deposit the amount by 2.12.2013. Further, the writ petitioner took the plea that assurance for payment of Rs.20 lakhs was given by its learned counsel without the consent of the writ petitioner. Since the writ petitioner failed to maintain its commitment, the learned Single Judge, vide order, dated 2.12.2013, while declining to extend the time by further four weeks, observed that *"pendency of the writ petition shall not be treated as staying any action which the respondents may propose to take action against the petitioner".*

8. The order, dated 2.12.2013, was carried in L.P.A. No.82 of 2014, which was withdrawn by order, dated 20.2.2014, with liberty to the appellant to approach this Court with appropriate application/appeal in future.

9. Finding no success in L.P.A. No.82 of 2014, the appellant filed I.A. No.4924 of 2014 dated 10.7.2014, in the writ petition, reiterating its old promise to deposit the auction sale amount of Rs.77 lacs. Learned counsel for the respondents informed the Court that the sale was already finalized in favour of respondent no.7 and the payment of full amount was also received by the Corporation. The learned single Judge, under the impugned order, dated 4.8.2014, dismissed the writ petition and rejected the prayer for any further indulgence as the writ petitioner had, in the past, failed to make payment despite sufficient opportunities having been made available to the writ petitioner at the writ petitioner's own requests.

10. Assailing the impugned order, the appellant submits, in this appeal, that the sale is not yet complete and no title has passed on to purchasers and that the properties, worth more than Rs.1.60 crores, have been auctioned and sold for a meagre value of Rs.77 lacs without determining the real value thereof and it was pious obligation, on the part of the Bihar State Financial Corporation, to secure the best price. Moreover, the appellant's contention is that it is neither required nor essential that there need be allegation of *collusion* to hold the auction sale null and void. In support of these submissions, the appellant has placed reliance upon the decisions rendered in ***Narndas Karsonaas v. S. A. Kamtam and Another (AIR 1977 SC 774); Ram Kishun and Others v. State of Uttar Pradesh & Others,*** *reported in* ***(2012) 11 SCC 511*** *and* ***Diya Manufacturing Co. Pvt. Ltd., Tripati Woollen Mills Shramik Sangharsha Samity and Another v. Union of Bank of***

India and Others, *reported in* ***(2000) 6 SCC 69.***

11. Learned counsel, appearing for the respondents, submits that sufficient opportunities were offered to the writ petitioner since September, 2012, to pay the auction price offered by respondent No.7 and now that respondent No.7 has paid the entire price, no further indulgence should be shown to the appellant, who, in the past, since 2013, has been giving only assurances with no real intention to make payment.

12. We have heard the counsel for the parties. The facts are not in dispute save and except there is variation in amount sanctioned and disbursed.

13. The decision, relied upon in the case of **N. Karsonaas** (supra), would be of no aid in this case as the Supreme Court, in **N. Karsonaas** (supra), was hearing a matter with respect to mortgage and redemption. In the case of **Diya Manufacturing Co**. **Pvt. Ltd.** (supra), the property was auctioned and auction sale was confirmed in favour of the auction purchaser, but before the delivery of possession and execution of sale deed, some parties approached the High Court with a higher offer on the ground that the auction amount was too low in comparison to the value of the property. The Calcutta High Court accepted the plea and quashed the earlier settlement.

However, the Court required the parties to deposit 20% of their offer and also to pay certain amount to the parties, whose bid was accepted. An appeal was carried to the Supreme Court against the order of the High Court setting aside the confirmation of the auction bid in favour of original purchaser. The Supreme Court did not rule that the High Court did not have discretion to intervene and permit parties to make their bids in appropriate cases in the ends of justice and in light of the terms and conditions of the auction sale. However, the Supreme Court observed that the better course would be to direct a fresh sale so that the bid may not be confined to limited bidders.

14. We find that respondent no.7 had offered the best price of Rs.77 lacs and, in the process, has altered its position to generate resources for the bid and auction purchase. The writ petitioner way back, vide letter, dated 19.09.2012, was given an option to offer matching price to save its assets and properties. Even the learned single Judge gave the writ petitioner more than sufficient opportunities to make the matching payment and the matter was adjourned from time to time commencing from 11.10.2012 till 2.12.2013. As the petitioner had failed to keep his promise, the learned single Judge dismissed the writ application declining to grant any further indulgence.

15. The appellant, too, before this Court, as before the learned single Judge, in effect, sought for time to deposit the loan amount. The appellant further raised a grievance that the property worth more than Rs.1.60 Crores has been auctioned sold for a moderate amount of Rs.77 lacs.

16. It may be relevant to point out here that the appellant has not brought any document on record in support of its submissions that the valuation of the property is over Rs.1.60 Crores. Besides this, we find that the respondent Corporation has given adequate opportunity to the appellant to repay the loan. The appellant did not avail the OTS Scheme, 2009, offered to him vide letter, dated 28.8.2010, of the respondent Corporation. The auction sale of the property was duly advertised in the year 2012 under Sections 29 and 30 of the Bihar State Financial Corporation Act, 1951. The Managing Director, Bihar State Financial Corporation, vide its letter, dated 19.9.2012, informed the appellant that the assets of the Company had been auctioned sold to respondent No.7 for Rs.77 lacs and the writ petitioner had an option to deposit the matching amount within 21 days if writ petitioner so wanted in order to save its property. On the request and willingness of the appellant-writ petitioner, the learned single Judge adjourned the case from 11.10.2012 to 21.10.2013 to enable the writ petitioner-appellant to redeem itself of the dues, but the appellant, again, in spite of all the assurances before the Court, did not repay the loan and, as such, the learned Single Judge, finally, dismissed the writ petition by order dated 4.8.2014.

17. We do not find the order of learned single Judge to be unreasonable or unjust. Sufficient opportunity was granted to the appellant Company, both by the Corporation as well as by the learned single Judge to redeem the loan. The approach adopted by the appellant Company merely demonstrates that it was not sincere and had no firm commitment to repay the loan. In this view of the matter, we do not find any reason to differ with the views of the learned single Judge. The appeal is, accordingly, dismissed.

18. No order as to costs.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J. : I agree

(I. A. Ansari, J.)

Md.Jamaluddin Khan

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