IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10113 of 1990
Date of decision:3.3.2015

M/s Jagdamba Rice Mills ....Petitioner

VERSUS

Punjab Financial Corporation and another .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashok Singla, Advocate for the petitioner.

Mr. Vikas Mohan Gupta, Advocate for respondent No.1.

Mr. Anand Chhibbar, Senior Advocate with
Ms. Harpriya Khaneka, Advocate for respondent No.2.

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HEMANT GUPTA, J.

The challenge in the present writ petition is to an order dated 10.08.1989 (Annexure P-1) taking over the unit of the petitioner under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act').

The petitioner availed financial assistance of Rs.3,39,800/- from the respondent-Corporation for setting up of a rice mill against two loan accounts. The petitioner defaulted in making the payment of the installments. The petitioner was served with notice dated 04.08.1989 (Annexure P-3) wherein reference has been made to earlier notice sent under registered post dated 17.07.1989. The notice was that if the petitioner does not make the payment of a sum of Rs.1,05,547.84p in one account and Rs.41,495.66p in the other account, the proceedings under Section 29 of the Act shall be initiated to recover the dues amount. It is thereafter, the impugned order was passed on 10.08.1989 (Annexure P-1).

The petitioner earlier filed a civil suit in the Court of Sub Judge Ist Class, Samana after the auction notice were published in newspapers Punjab Kesri on 25.08.1989 and Daily Ajit on 17.02.1990. In the writ petition itself, the petitioner has averred that it has been decided to withdraw the said civil suit. The said civil suit was withdrawn on 30.07.1990 when the following order was passed:-

> "Taken up today on the application filed by Sh. S.R. Bansal, Advocate for the Plaintiff. He has withdrawn the suit. The suit is accordingly dismissed as withdrawn.
> The papers be consigned to the record room."

Before the withdrawal of the civil suit, the petitioner had invoked the writ jurisdiction of this Court through the present writ petition filed on 28.07.1990. During the pendency of the writ petition, the property was put to sale which was purchased by respondent No.2 who was impleaded on an application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC').

The challenge in the present writ petition is to the issuance of notice under Section 29 of the Act and also the process of sale on the ground that no adequate and due publicity was given. The value of the property is said to be more than Rs.12 lakhs whereas the property is being put to sale for default of petty amount of Rs.1,39,657.69p. It is pleaded that due notice should have been published regarding auction-sale in terms of Order 21 of CPC.

In the replication, the petitioner has pointed out that the total land owned by the petitioner was 38 kanal 3 marla whereas the Rice Sheller exists in the plot measuring 25 kanal 9 marla and remaining land measuring 12 kanal 14 marlas is being used for agricultural purposes. Therefore, the said land should have been put to sale rather than the entire land measuring 38 kanal 3 marla.

In the written statement filed on behalf of respondent No.1, it is averred that before taking possession of the industrial concern on 17.08.1990, the petitioner was served with a notice for the proposed action on 15/17.07.1989. Previously a registered letter dated 15.06.1989 was also served upon the petitioner. The petitioner defaulted in making the payment. The petitioner has paid a sum of Rs.62,000/- and promised to pay the rest of the amount as under:-

15.10.1989	Rs.22,500/-
15.11.1989	Rs.45,000/-
15.12.1989	Rs.45,000/-
15.01.1990	Rs.52,000/-

The petitioner did not make the payments as promised. Therefore, the Corporation was constrained to pass the order of taking over the unit under Section 29 of the Act. The property has been put to sale to respondent No.2 on 17.02.1990 confirmed on 25.07.1990 and the possession has been delivered to the auction purchaser on 26.07.1990. It is pointed out that before taking action under Section 29 of the Act, more than reasonable opportunities were granted to the petitioner to clear the defaulted amount.

We have heard learned counsel for the parties and find no merit in the present writ petition.

The petitioner filed a civil suit after the possession was taken over by the Corporation under Section 29 of the Act in August, 1990, consequent to the notices of sale issued earlier. The petitioner challenged the auction notice before the Civil Court but did not impugn the action of the Corporation in taking over possession under

Section 29 of the Act. The failure to challenge the proceedings under Section 29 of the Act before the Civil Court debars the petitioner in terms of Order 2 Rule 2 of CPC to raise dispute regarding validity of proceedings under Section 29 of the Act.

Learned counsel for the petitioner has vehemently argued that the petitioner has invoked the writ jurisdiction of this Court even before the withdrawal of the civil suit and therefore, it cannot be said that the bar contained in Order 2 Rule 2 of CPC would be applicable. Without going into the question as to whether the bar would be applicable or not, the fact remains that at the initial stages the petitioner has chosen not to impugn the proceedings initiated under Section 29 of the Act and was satisfied to challenge the proceedings of auction only which is evident from para 10 of the writ petition which reads as under:-

> "10. That the petitioner filed a civil suit in the court of Sub Judge, Ist Class, Samana regarding the present loan case against the respondent. When the auction notices were published in Punjab Kesri dated 25.8.89, and Daily Ajit dated 17.2.90, the petitioner filed the above mentioned civil suit. The petitioner has finally decided to withdraw the said civil suit, as he is filing the present petition. That in all probability and circumstances the suit will be withdrawn on 28.7.90 or immediately on the next working day. The petitioner undertakes to withdraw the civil suit."

Having withdrawn the civil suit unconditionally without any permission to continue with the writ petition filed, we find that once the petitioner has invoked the jurisdiction of the Civil Court, therefore the withdrawal of the same unconditionally is a relevant factor to examine as to whether the petitioner can be permitted to dispute the same action before the Writ Court.

Even on merits we find that there is no illegality or irregularity in taking possession under Section 29 of the Act. Admittedly, in spite of various notices, the petitioner has not settled the loan accounts. The petitioner promised to make the payment in installments but again defaulted. Therefore, we find no error in the action of the Corporation in taking possession of the unit of the petitioner under Section 29 of the Act.

In respect of the argument that part of the property should have been put to sale or that there was no adequate and due publicity given, again we do not find any merit. It is not the pleaded case of the petitioner in the writ petition that the property could be demarcated in such a way so as to enable the Corporation to sell part of the same. Such plea has been raised in the rejoinder filed in the month of February, 2015. It is not averred in the writ petition that 12 kanal 14 marla land is a vacant agricultural land and could be put to sale for realization of dues of the Corporation. It is not so represented when the notices under Section 29 of the Act were issued. The entire land was mortgaged by the petitioner in favour of the Corporation and therefore, the Corporation could sell such land which has been mortgaged and not part of it. The bifurcation of the land at the instance of the Corporation was not possible. The petitioner has not raised any plea at any point of time before filing of the rejoinder that part of the property could be put to sale. Therefore, we do not find that such argument raised on the basis of fact pleaded in the rejoinder can be taken into consideration to dispute the sale made in the year 1990.

The allegation that there was no adequate and due publicity is vague. The petitioner has averred even in the civil suit that the notice was published in two newspapers. From the facts on record, it transpires that the Corporation has taken the steps to realize its dues earlier by notices and also giving opportunity to the petitioner to make payment of the due amount in installments but after the failure of the petitioner to make the payment, the Corporation had no option but to sell the property after publication of the advertisement in the newspapers.

We do not find that such process of sale is without giving any adequate and due publicity.

Consequently, we do not find any merit in the present writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

MARCH 3, 2015 **(LISA GILL)**
'D. Gulati' **JUDGE**