

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17043 of 2012

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M/s Krishna Crusher Udyog through its Proprietor Krishn Chand Jaiswal S/O
Late Bhagwan Pd. Choudhary Resident of Mohalla- Sah Patti (Bajaj Patti), P.S.-
Motihari Town, District- East Champaran

.... Petitioner

Versus

1. The Bihar State Financial Corporation, through it's Board of Directors,
Fraser Road, Patna
2. The Chairman-Cum-Managing Director, Bihar State Financial Corporation,
Fraser Road, Patna
3. The Branch Manager, Bihar State Financial Corporation, Bhawanipur Zirat,
Motihari.
4. Smt. Shashi Kala Mishra W/o Arun Prakash Mishra, Mohalla Krishna Nagar,
P.O. Majharia Motihari, District - East Champaran.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. D.K. Sinha, Sr. Advocate
		Mr. Dilip Kumar Tondon, Advocate
For the Respondent s	:	Mr. Partha Sarthy, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-09-2016

Heard learned Senior counsel for the petitioner, learned
counsel for the Corporation as well as learned counsel for the private
respondent no. 4.

2. The present writ petition has been filed for setting aside
the order contained in Memo No. 20/Z-I/12-13 dated 07.08.2012 for
taking possession of the mortgaged assets of the petitioner pursuant to a
sale order dated 07.01.2010 said to have been made in favour of the
respondent no. 4; and for issuance of "No Objection Certificate" in favour
of the petitioner's firm as the petitioner has already paid the 110% of the
principal outstanding amount under the Corporation's One Time
Settlement Scheme, 2009 as required, and the application under O.T.S.
2009 accepted by the respondents on 15.11.2010.

I.A. No. 7222 of 2016

3. This interlocutory application has been filed for quashing the order as contained in Memo No. 37/Z-I/12-13 dated 12.10.2012 by which the application of the petitioner submitted under the O.T.S. 2009 had been rejected.

Having regard to the nature of the prayer, I.A. No. 7222 of 2016 is allowed and the petitioner is permitted to make appropriate amendments in the writ petition in course of the day.

C.W.J.C. No. 17043 of 2012

4. Mr. Devendra Kumar Sinha, learned senior counsel appearing on behalf of the petitioner, makes a short submission in support of his contention that the O.T.S. 2009 application has arbitrarily been rejected. The respondent Corporation has failed to appreciate the background in which the LPA No. 322 of 2010 was permitted to be withdrawn by this Court, namely that the petitioner had been permitted to participate in the O.T.S. Scheme 2009 pursuant to the Court's earlier order dated 27.10.2010 passed in the said LPA. Upon the O.T.S. 2009 application being supplied to the petitioner, the same was filed with the Corporation and the requisite 110% of the principal outstanding amount, i.e., Rs. 2,57,000/-, was paid by demand draft and accepted by the Corporation.

5. Learned counsel for the respondent Corporation as well as the private respondent no. 4 appear and rely on their respective counter affidavits.

6. Having heard the parties and on careful consideration of the materials on record, this Court is of the view that the Corporation ought not to have lost sight of the backdrop of relevant facts in which LPA No. 322 of 2010 had been withdrawn. The order of the learned Single Judge was passed on 08.12.2009 whereas the O.T.S. 2009 Scheme came into operation subsequently on 17.08.2010, in which the petitioner was permitted to participate by order of the Division Bench of this Court dated 27.10.2010 in LPA No. 322 of 2010.

7. Without however going into the detailed merits of the matter and with consent of all the parties, the present writ petition is disposed of with a direction to the respondent Corporation to consider the petitioner's application filed under the O.T.S. Scheme, 2009 and decide the equities between the parties, having regard to Clause 5.1.(c) of the O.T.S. Scheme, 2009. The petitioner as well as respondent no. 4 shall be granted an opportunity of being heard before final orders are passed by the Corporation. Until such orders are passed, the impugned order dated 07.08.2012 (Annexure-6) shall remain in abeyance.

8. The writ petition stands disposed with the aforesaid observations and directions.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.09.2016
Transmission Date	N.A.