IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1884 of 2015

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Sujata Devi Wife of Anil Kumar Resident of Flat No.301,3rd Floor, Peri Hoda Complex, Road no.6A, Rajendra Nagar, P.O & P.S-Rajendra Nagar, Distt.-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Department of Finance, Government of Bihar, Patna.
3. The Bihar State Financial Corporation, Fraser Road, Patna, through its Managing Director at the Office of Bihar State Financial Corporation, Fraser Road, Patna.
4. The Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
5. The Manager In-Charge, Zone-V, Bihar State Financial Corporation, Fraser Road, Patna.
6. The Manager (Co-ordination), Bihar State Financial Corporation, Fraser Road, Patna.
7. The Deputy Manager Zone-V, Bihar State Financial Corporation, Fraser Road, Patna.
8. The Branch Manager, Bihar State Financial Corporation, Fatuha Branch, Fatuha, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. K. Verma & Mr. J. V. Narayan, Advocates.
For the B.S.F.C.	:	Mr. Y. V. Giri, Sr. Addvocate. Mr. Nikhil Kumar Agrawal, Advocate.
For the State	:	Mr. Rakesh Kumar Ranjan, A.C. to G.A. 12.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 16-03-2016

Heard learned counsel for the parties.

The writ application has been filed for quashing the order dated 03.04.2014 passed by the respondent no. 4.

The brief facts of the case are that on 14.11.2008, pursuant to auction sale, the mortgaged assets of M/s Sant Kabir Cold Storage Pvt. Ltd., Govindpur, Dariyapur, Fatuha was sold to the petitioner under Memo No. 249. The petitioner not having complied with the terms and conditions of the sale order, the respondent no. 3 i.e., the Bihar State Financial Corporation (hereinafter referred to as the 'Corporation') did not go ahead with the transfer of the property. The petitioner thus approached the Court in C.W.J.C. No. 10843 of 2009 for a direction to the concerned respondent to allow her to pay the due amount as per the original sale order and transfer the property and also hand over possession. The same was disposed off by order dated 25.11.2013 with liberty to the petitioner to file an appropriate representation before the concerned authorities of the Corporation with her proposal in clear cut terms which was to be decided by the authorities. The petitioner then had approached the Corporation and filed a representation on 09.12.2013 which was resubmitted on 05.03.2014 and 10.03.2014 and finally the impugned order dated 03.04.3014 as contained in Memo No. 3 dated 09.04.2014 was passed by the respondent no. 4.

Learned counsel for the petitioner submits that the petitioner, due to financial constraint, could not deposit the sale amount to the Corporation and thus the Corporation had not executed the deed of transfer and also not handed over the possession and pursuant to the remand by the High Court, the impugned order has been passed asking the petitioner to enhance her offer which is arbitrary. It is submitted that the petitioner is ready to abide by the offer made to her on 06.04.2009 and thus to that extent her claim should have been allowed and even today she is ready to comply with the same including paying of interest at the rate of 16% per annum. Learned counsel submits that even the earnest money of Rs. 8.90 lakhs which has been forfeited remains with the Corporation. Learned counsel further submits that the unit is lying unattended and there is loss of machinery and thus the value has gone down and in fact the Corporation shall benefit as the petitioner is ready to pay 16% interest which is quite high and thus no loss shall be caused to the Corporation.

Learned counsel for the Corporation submits that the offer made by the writ petitioner is quite low since as of today the property is worth more than Rs. 5 crores and in view of the fact that the outstanding dues of the original borrower as on 03.04.2014 was more than six and a half crores, the property in question cannot be now sold to the petitioner on a consideration amount of Rs. 34.25 lakhs only, which is far below the current value and also much less than the balance outstanding of the original borrower. It is submitted that the petitioner twice having been given indulgence, once under the original sale letter and thereafter on 06.04.2009 to clear the dues based on the original consideration amount of Rs. 34.25 lakhs and not having availed of the same, the Corporation now has a right to go for resale so that it fetches the maximum market value and the loss to public exchequer on the ground of outstanding balance of the original borrower is minimized. It is submitted that even the Hon'ble Supreme Court in the case of **Karnataka State Industrial Investment and Development Corporation Ltd. vs. Cavalet India Ltd.** reported in **2005(2) PLJR (SC) 202**, the relevant being at paragraph-19, has clearly laid down the conditions where the

Court under writ jurisdiction may interfere in financial matters and in the present case no such ground having been made out, the writ petition is fit to be dismissed.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, once it is an admitted position that the petitioner had defaulted in making payment as per the schedule of the original sale order dated 14.11.2008, even the ground of financial constraint pleaded by her cannot be accepted for she was under a legal obligation to satisfy the demand from whatever sources were available as only on that premise the sale was allowed and finalized in her favour and further the subsequent conduct of the petitioner of taking back the part amount which she had deposited lateron from the Corporation on her own asking under letter dated 10.06.2009, which fact has not been denied by the writ petitioner, the Court is not persuaded to interfere in the matter.

The sale in favour of the petitioner being in lieu of the dues of the original borrower and the same also being far less than the outstanding amount owed by the original borrower to the Corporation and even that amount not being paid by the petitioner to the Corporation in accordance with the terms of the sale order, and now the value of the property having escalated and there being fair chances of the Corporation recovering much more than what it has got in the year 2008, the Court does not find any infirmity in the stand of the Corporation.

Accordingly, the writ petition stands dismissed.

However, in view of the fact that the petitioner was the successful bidder initially and her earnest money has been forfeited, if after the fresh auction, the amount offered by the highest bidder is accepted to the petitioner and she is ready to pay the amount as per the terms of the auction bid, the petitioner shall be given the offer to accept the same terms and make the payment, in which case the earnest money forfeited shall be adjusted in the final payment to be made by her.

For the ends of justice and in the largest public interest, the Corporation is directed to ensure that the exercise of auction sale of the property in question is held within six months from today. The offer by the successful highest bidder shall be communicated to the petitioner within one week and if the petitioner gives an undertaking within two weeks thereafter to the Corporation that she is ready to the proposal and the amount of the highest bidder is acceptable to her the Corporation shall act in accordance with the directions given hereinabove. Upon her complying with the terms and conditions within the fixed time period, the property shall be sold to her, failing which the sale shall be finalized with the highest bidder in accordance with law by the Corporation.

(Ahsanuddin Amanullah, J.)

P. Kumar

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