IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 6053 of 2007

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Vijay Kumar, son of late Gupteshwar Prasad, resident of Nokha, P.O. & P.S. Nokha, District – Rohtas.

.... Petitioner

Versus

1. Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director.
2. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. Shri D.K. Pathak, Manager I/C (Zone-V), Bihar State Financial Corporation, Fraser Road, Patna.
4. Branch Manager, Bihar State Financial Corporation, Shahabad Branch, B/s Bharat Modern Rice Mill Campus, Singhi Balihar (Satpahari), Arrah-Ekawna Road, Arrah, District Bhojpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Manik Ved Sen, Adv.
Mr. Subhash Chandra Bose, Adv.

For the Respondents : Mr. Raju Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV JUDGMENT

Date: 20-06-2016

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of writ of certiorari or any other writ for quashing of an order issued, vide Memo No. 19 dated 19-04-2007 (**Annexure – 7** to the writ petition), whereby the petitioner was directed to pay Rs. 5,44,900/- (five lacs forty four thousand & nine hundred) as balance payment of settlement amount in respect of One Time Settlement under the scheme announced by the Bihar State Financial Corporation (hereinafter referred to as 'Corporation'). The petitioner has also prayed for directing the respondents to refund the amount already paid by the petitioner in excess of OTS amount.

2. The petitioner, as per writ petition, is the son of one late Gupteshwar Prasad, one of the partners of Partnership firm in the name and style of M/s Shree Ganeshjee Rice and Oil Mill, Nokha, Rohtas (hereinafter referred to as the 'firm'). The firm was set up on the basis of the loan sanctioned by the Corporation in the year 1981. Rs. 7,35,000/- (seven lacs & thirty five thousand) was sanctioned and additional amount of Rs. 2,90,000/- (two lacs & ninety thousand) was further sanctioned in the year 1984. Out of the sanctioned amount, the petitioner firm was paid Rs. 8,16,000/- (eight lacs & sixteen thousand).

3. The petitioner has pleaded that the unit commenced but it could not achieve production due to shortage of working capital. The petitioner firm had deposited total Rs. 4,18,974.37 (four lacs eighteen thousand nine hundred seventy four & paise thirty seven) in installments on various dates.

4. As per the writ petition, the petitioner came across an advertisement issued on 21-09-2006, whereby the Corporation introduced One Time Settlement Scheme (hereinafter referred to as 'OTS Scheme'). The petitioner thereafter approached the Branch Manager for settlement of the dues under the said scheme and on

deposit of Rs. 500/- obtained prescribed application form from the branch office on 27-09-2006. It has been pleaded that the petitioner was informed by the Branch Manager of the Bihar State Financial Corporation, Shahabad Branch/respondent no. 4, vide its letter dated 07-11-2006, that the figures mentioned in the application form was not correct and gave option either to return the form and take back the money or obtain revised application form. The petitioner since was eager to settle the loan amount and avail the OTS facility, which was valid upto 02-12-2006, approached the respondent no. 4 with reference to his letter dated 07-11-2006. He was asked to deposit Rs. 9,95,000/- (nine lacs & ninety five thousand) for availing facility of settlement of dues under OTS Scheme 2006.

5. It has been pleaded by the petitioner that the petitioner deposited three bank drafts for Rs. 4,10,000/- (four lacs & ten thousand), Rs. 3,35,000/- (three lacs & thirty five thousand) and Rs. 2,50,000/- (two lacs & fifty thousand) respectively. The Corporation thereafter issued two money receipts both dated 02-12-2006, one for Rs. 5,85,000/- (five lacs & eighty five thousand), which was treated as retention money and other for Rs. 4,10,000/- (four lacs & ten thousand) on account of application money.

6. The petitioner has further pleaded that subsequently he came to know that the Corporation had interpreted its own

Circular no. 05/06-07 dated 15-09-2006 and accordingly, a rider was put in the circular prohibiting settlement of dues under OTS Scheme, 2006 by such units, loanees, guarantors where in the past sale order of the mortgaged assets were issued and sale did not materialize even on failure of loanees to stall sale by making payment of cash component of sale consideration with matching offer for retention of the unit. The petitioner, as claimed, further came to know that the Corporation reviewed the circular dated 15-09-2006 vis-a-vis its interpretation by the officials of the Corporation prohibiting a small section of loanees to avail facility only on the ground of issue of sale order in the past, even though, it did not materialize and decided to allow the facility to such loanees subject to their first paying the cash component of the sale order issued in past, which at that time, he was required to pay to retain the unit and this was called retention money. The said notification was notified by Circular No. 07/06-07 dated 04-11-2006.

7. As per the pleading, the clause pertaining to pre-deposit of retention money to qualify for participation in the OTS Scheme 2006 and its notification was under-challenge by the similarly situated loanees and this Court by a common order dated 12-02-2007 passed in C.W.J.C. No. 13297 of 2006 and other connected writ petitions quashed Clause f (i) of the modified OTS Scheme 2006

being unfair and unreasonable. The order of this Court passed in C.W.J.C. No. 13297 of 2006 & other connected writ petitions has been brought on record by way of filing rejoinder to the counter affidavit and supplementary counter affidavit (**Annexure - 9**), which was filed on 12th August, 2015 on behalf of the petitioner. Thereafter, the petitioner filed a detailed representation dated 20-04-2007 for adjustment of the retention money against the balance OTS amount. After filing of the representation, the petitioner received settlement order issued vide Memo no. 19 dated 19-04-2007 whereby he was asked to pay further amount of Rs. 5,44,900/- (five lacs forty four thousand & nine hundred) without adjustment of retention money. The Memo no. 19 dated 19-04-2007 (**Annexure – 7** to the writ petition) has been challenged in the present writ petition, with a further prayer to refund or adjust the retention amount.

8. Sri Manik Ved Sen, learned counsel, who was assisted by Sri Subhas Chandra Bose, learned counsel for the petitioner has emphatically argued that once Clause 3 (f) (i) of the Circular No. 07/06-07 dated 04-11-2006 (**Annexure – 5** to the writ petition) whereby modification in BSFC OTS Scheme 2006 was quashed by this Court, in any event, the respondents were not authorised to ask the petitioner to deposit the retention money and if the retention money was deposited, the respondent/Corporation

was required to refund the said retention money or adjust the same against outstanding amount of the petitioner firm. He has argued that since the said provision was set aside by this Court on 12-02-2007 in C.W.J.C. No. 13297 of 2006 and other connected writ petitions, rejection of the claim of the petitioner, vide **Annexure – 7** to the writ petition, which was issued on 19-04-2007, was unjust and illegal. He further submits that after the order passed by the Single Bench on 12-02-2007 in C.W.J.C. No. 13297 of 2006 & other connected writ petitions (**Annexure – 9** to the rejoinder), the Corporation i.e. Bihar State Financial Corporation preferred an appeal, vide L.P.A. No. 232 of 2007 and other connected appeals, however; by a detailed judgment, the Division Bench dismissed the appeals filed by the Corporation. The said case has been reported in **A.I.R. 2008 PATNA 105 (The Bihar State Financial Corporation –vs.- Parmanand Kumar)**. He further submits that the Corporation thereafter preferred an appeal before the Supreme Court, however; the Supreme Court also did not interfere with the order of the L.P.A. Court. In sum and substance, it has been emphasized by Sri Manik Ved Sen, learned counsel for the petitioner that in view of setting aside Clause 3 (f) (i) of the modified circular i.e. **Annexure – 5** to the writ petition, in any event, the retention amount deposited by the petitioner was either to be refunded or to be adjusted from the outstanding amount in respect of petitioner's firm.

9. Sri Raju Giri, learned counsel for the respondent/Bihar State Financial Corporation at the very outset submits that the present writ petition is required to be rejected on the ground that contention of the petitioner is misconceived and it is required to be rejected outrightly. Sri Giri by way of referring to averments made in the counter affidavit and supplementary counter affidavit has argued that the provision contained in Annexure – 5 was set aside by this Court on 12-02-2007. The petitioner in view of modified circular i.e. Annexure – 5 had filed an application on 02-12-2006 wherein the petitioner had requested to accept the payment of retention money and condone the delay of payment in this regard. He submits that the petitioner firm was sanctioned two loans amounting to Rs. 7.35 lacs and 2.90 lacs long back on 16-03-1981 and 10-12-1984 respectively, however; out of the said total sanctioned amount, Rs. 8,16,210/- (eight lacs sixteen thousand two hundred & ten) was disbursed. As on the date the total balance outstanding against the petitioner was Rs. 1,74,41,073.19 (one crore seventy four lacs forty one thousand seventy three & paise nineteen). Since the petitioner had not cleared the outstanding amount, the Corporation invoked the provision of Section 30 & 29 of the State Financial Corporation Act and on 25-07-2003 itself took

over the possession of the mortgaged assets in compliance of the order passed by the Managing Director under Memo no. 653 dated 21-12-2002 and since then the physical possession of the mortgaged assets was lying with the Corporation. Thereafter, while floating the BSFC OTS Scheme 2006, the Corporation incorporated certain terms and conditions in respect of the unit where the sale order was issued and one of the term was as follows:-

> ***"Where sale order was issued in past and promoters failed to retain the Unit and purchaser also did not purchase the Unit, thus rendering a sale order ineffective and the Unit could not be handed over the sold thereafter, promoter of such Units may be allowed to avail the facility of OTS under any appropriate eligible plan but they must now deposit the initial money specified in the sale order for retention before applying for OTS. The delay in time for deposit initial retention money will be deemed condoned."***

10. Sri Giri by way of referring to statement made in paragraph – 5 of the Supplementary counter affidavit submits that the petitioner namely Sri Vijay Kumar, legal heir of one of the deceased partner namely Late Gupteshwar Prasad and two others namely Mrs. Kalawati Kumar and Mrs. Sona Kumar, the other legal heirs submitted an application on 02-12-2006 to the Branch Manager, B.S.F.C., Shahabad Branch stating therein that they are making payment of retention amount as per terms of the BSFC OTS Scheme 2006 amounting to Rs. 5,85,000/- and requested to issue application

form under Plan "A" of the scheme. Sri Giri has emphasized that on the petitioner's request, after accepting the retention amount, the Branch Manager issued an application under the Scheme on the same day incorporating therein the total principal dues as on 31-08-2006 and accordingly, the petitioner was advised to make payment of Rs. 4,08,076.73 as 50% of the principal outstanding amount as initial money for settlement of dues. Thereafter, the petitioner deposited Rs. 4,10,000/-, vide draft dated 02-12-2006. After due deliberation, the Corporation issued Settlement Order dated 19-04-2007 asking the petitioner to make payment of balance amount of Rs. 5,44,900/- only as against the settlement amount of Rs. 9,54,900/- after adjustment of Rs. 4,10,000/- paid by the petitioner earlier. The petitioner has also made payment of the said amount i.e. Rs. 5,44,900/- on 19-05-2007 and only thereafter, the Corporation issued 'No Dues Certificate' in favour of M/s Shree Ganesh Jee Rice Mill and handed over the physical possession of the mortgaged assets on 16-07-2007.

11. Learned counsel for the Corporation has further argued that it is true that provision i.e. contained in Clause 3 (f) (i) of modified circular i.e. **Annexure – 5** to the writ petition was quashed by a Single Bench of this Court, which was approved by the Division Bench, however; the order of the Division Bench was challenged by

the Corporation by filing S.L.P. No. 1559 of 2008 and other appeals before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 29-11-2012 though did not interfere with the order passed by the High Court, dismissed the appeals with observation that ***the Petitioner/Corporation shall not be liable to refund any amount, which may have been paid by the Respondent towards retention money***.

12. Sri Giri submits that since the petitioner had already deposited the retention amount i.e. Rs. 5,85,000/- long back, in view of order of the Apex Court, the Corporation is not at all entitled to refund the said amount. According to Sri Giri, the writ petition has got no merit and is liable to be rejected.

13. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that long back in the year 1981 and 1984 the petitioner firm namely M/s Shree Ganesh Jee Rice and Oil Mill was provided total loan amount of Rs. 8.16 lacs. However, since loan amount was not liquidated by the petitioner, it appears that total outstanding amount against the petitioner firm had come to Rs. 1,74,41,073.19, as stated in paragraph – 5 of the counter affidavit filed on 25th July, 2007. It is also not in dispute that the loan amount was not liquidated by the petitioner firm and as per averment made in the

counter affidavit itself that due to non-payment of the loan amount, the Corporation had taken possession over the mill in question in the year 2003 itself. As per the averment made in the counter affidavit, which has not been disputed that the Corporation had taken step for sale of the said unit, however; it was not finalized though possession of the mill in question was continuing with the Corporation. Finally, in the year 2006, OTS Scheme was introduced by the Corporation, which was subsequently modified to the extent that in case of a unit in which sale/auction process was initiated and failed and if the promoter proposes to retain the same, for that very purpose, in view of Clause 3 (f) (i) of the modified circular (Annexure – 5), the petitioner was to deposit retention amount. In this context, it would be appropriate to quote Clause 3 (f) (i) of Circular No. 07/06-07, which is as follows:-

"BIHAR STATE FINANCIAL CORPORATION
FRASER ROAD, PATAN 800001.
CIRCULAR NO. 07/06-07
Re: Modification in 'BSFC OTS Scheme – 2006'

3 (f) (i) – Where sale order was issued in past and promoter failed to retain the unit and purchaser also did not purchase the unit thus rendering sale order ineffective, and the unit could not be handed over and sold thereafter, promoters of such unit may be allowed to avail the facilities of OTS under any appropriate eligible Plan but they must now deposit the initial money specified in the sale order for retention before applying for OTS. The delay in time for deposit of initial retention money will be deemed condoned."

14. It is evident that petitioner firm itself voluntarily deposited the retention amount, vide its application dated 02-12-2006, which has been brought on record as **Annexure – C** to the supplementary counter affidavit. At this juncture, it would be appropriate to incorporate the application of petitioner dated 02-12-2006, which is as follows (running page 68):-

"From,

Mrs. Sona Kumar,
W/o Late Dhenuki Sah
2. Mrs. Kalwati Kumar,
W/o Late Gupteshwar Pd.
3. Vijay Kumar,
S/o Late Guupteshwar Pd.
Partner M/s Ganeshji Rice & Oil Mill,
At & P.O. Nokha, Rohtas.

To,

The Branch Manager,
Bihar State Financial Corporation,
Shahabad Branch, Ara

Dear Sir,

Re: Your order vide Memo No. 260 dt. 25.9.03 for sale of our mortgaged assets & settlement of dues under BSFC OTS Scheme 2006.

Kindly refer to your H.O. order No. 260 dt. 25.9.03 through which our mortgaged assets were sold in favour of one Sri Prabhaker Prasad of Nokha, Rohtas which was not materlised. Recently your Corporation has announced settlement of dues under BSFC's OTS Scheme '06 and we are now became eligible to settle our dues after depositing the retention money as mentioned in the above sale order.

Accordingly we are depositing a sum of Rs 5,85,000/- (Rs. Five lakhs eighty five thousand) only by way D/D No. 162876 dt. 25.11.06, 162905 dt. 29.11.06 for Rs. 3,35,000/- and Rs. 2,50,000/- drawn on Bank of

Baroda and payable at Patna.

We request you to kindly accept our payment of retention money and condone the delay of payment in this regard.

Further kindly issue us revised application form under Plan A of BSFC OTS Scheme 2006 so that we can settle our dues under above scheme.

Yours faithfully"

15. The fact that petitioner had deposited the retention amount voluntarily is also evident from **Annexure – 3** (at running page 18) i.e. receiving given by the Corporation to the petitioner firm whereby the fact regarding the deposit of demand draft for Rs. 5,85,000/- (five lacs & eighty five thousand) as retention money was given to the petitioner. It would also be appropriate to reproduce the receipt, which is as follows:-

"Bihar State Financial Corporation

H.O. : Fraser Road, Patna

No. 29210 B.O. – Arrah.

Date 2.12.06

Received from M/s Shree Ganeshjee Rice & Oil mill, Nokha, Rohtas the sum of Rs. = 5,85,000/- (Rupees Five lakh eighty five thousand only) by Draft No. D.D. No. 162876 & 162905 dated 25.11.06 & 29.11.06 drawn on Bank of Baroda, Patna on account of Retention money.

Rs. 5,85,000/-

Sd/-

Autorised Signatory

Note: This Receipt is valid subject to realisation of the Cheque/D.D./P.O."

16. It is also evident that subsequent to deposit of the retention money i.e. Rs. 5.85 lacs and rest amount i.e. Rs. 4.10 lacs the petitioner in view of settlement order had already deposited Rs. 4,44,900/- on 19-05-2007 and the petitioner firm i.e. M/s Shree Ganesh Jee Rice and Oil Mill was already given 'No Dues Certificate' and thereafter, physical possession of mortgaged assets was handed over to petitioner on 16-07-2007. On going through the aforesaid material on record, it is evident that the petitioner had already deposited retention money, in view of modified OTS Scheme on 02-12-2006, whereas the petitioner filed the present writ petition on 08-05-2007. After the petitioner was asked by the Corporation by its letter dated 19-04-2007 to deposit Rs. 5,44,900/- for issuance of order of settlement and the petitioner had already deposited the said amount i.e. Rs. 5,44,900/- on 19-05-2007 itself and he got 'No Objection Certificate' and also got possession over the mortgaged assets on 16-07-2007.

17. So far as plea of the learned counsel for the petitioner that after the condition for deposit of the retention amount, in view of Clause 3 (f) (i) of modified circular (**Annexure – 5**), which was quashed by this Court, the petitioner was entitled to get said benefit is concerned, the Court is of the opinion that said order was given effect from prospective effect. The order dated

12-02-2007 passed in C.W.J.C. No. 13297of 2006 by the Single Bench, which has been brought on record as **Annexure – 9** to the rejoinder filed by the petitioner does not say that after setting aside the said provision, the benefit will be given to all concerned with retrospective effect. Moreover, the order of the Single Bench, which was affirmed by the Division Bench was assailed by the Corporation before the Hon'ble Supreme Court. It is true that Hon'ble Supreme Court did not interfere with the order of the Division Bench and dismissed the appeal of the Corporation dated 29-11-2012, vide Special Leave to Appeal (Civil) No. 15559/2008 & other connected appeals and the Hon'ble Supreme Court had given specific direction that the Corporation shall not be liable to refund any amount, which may have been paid by the respondents towards the retention money, in terms of the Scheme promulgated by the Corporation, vide Circular no. 05/06-07 dated 15th September, 2006. The order of the Supreme Court passed in S.L.P. (C) No. 15559/2008 & other connected appeals is reproduced here-in-below:-

> **"Upon hearing counsel the Court made the following**
>
> **O R D E R**
>
> **Having heard learned counsel appearing for the petitioners for some time, we are of the opinion that no ground is made out for our interference with the well-reasoned impugned judgment. Accordingly, the special leave petitions are dismissed. However, we direct that the petitioners shall not be liable to refund any amount, which may have been paid by the respondents towards the retention money, in terms of the Scheme promulgated by the Corporation vide Circular No. 05/06-07 dated 15th September,**

2006."

18. Now once the Hon'ble Supreme Court, even after dismissal of the appeals preferred by the petitioner/Corporation, directed in specific term not to refund the said amount, obviously the petitioner may not be entitled to claim for refund or adjust of the retention amount.

19. Accordingly, in view of aforesaid facts and circumstances, the Court is satisfied that the writ petition is misconceived and deserves to be rejected.

20. Accordingly, the writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	10-02-2016
Uploading Date	20-06-2016
Transmission Date	N/A