

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.854 of 2016
In
Civil Writ Jurisdiction Case No.9032 of 2009

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M/s Bihar Metal Casting Corporation, B-1, Phase-I, Industrial Area, Fathua-803201, through its Proprietor Rajeshwar Prasad son of Late Dukhi Prasad, resident of Village- Ahiyapur, P.O. Gopalbad, P.S.- Sarmera District- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna- 800001.
3. The Manager Accounts (Zon-V), Bihar State Financial Corporation, Frazer Road, Patna- 800001.
4. The Branch Manager, Bihar State Financial Corporation, Industrial Area, Fatuha- 803201.
5. The Development Officer, Bihar Industrial Area Development Authority (Biada), First Floor, Industry Bhawan, East Gandhi Maidan, Patna- 800004.
6. Managing Director, Bihar Industrial Development Authority, First Floor, Industry Bhawan East Gandhi Maidan, Patna 800004.
7. M/S Raj Lakshmi Udhog, The then Possession to auction by Biada/Resp. no.5 to 6 Bearing Tin No. 1013137021 Details of address to be disclosed by BIADA
8. M/S Shubham Enterprise Pvt. Ltd. through its Proprietor, Anil Kumar, NH-30 Village Hidayat P.O. Manjhauli, P.S. Bakhtiyarpur, Distt- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Chandra Shekher Prasad, Advocate Mr. R. K. Ranjan, Advocate
For the BSFC	:	Mr. Partha Sarthy, Advocate Mr. Utsav Kumar, Advocate
For the Respondent No. 5-6:		Mr. Lalit Kishore AG Ms. Binita Singh Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 18-12-2017

Heard learned counsel for the appellant as well as counsel representing the Bihar State Financial Corporation and the State.

2. The appellant being aggrieved by order, dated 18.03.2016, passed in C.W.J.C. No. 9032 of 2009, has preferred this Appeal under Letters Patent of the High Court of Judicature at Patna.

3. By the impugned order, the Learned Single Judge of this Court having discussed materials available on the record and the judicial pronouncements placed before His Lordship dismissed the writ application, holding that it is not a case where the petitioner has demonstrated any violation of the legal provisions in taking the impugned action by the Bihar State Financial Corporation (in short “the Corporation”) in the matter of sale of the hypothecated properties in terms of Section 29 and 30 of the State Financial Corporation Act, 1951 (for short “the Act”).

4. Learned counsel for the appellant submits that the petitioner-appellant has challenged the mode and manner by which the sale has been conducted in the present case. He has relied upon the judgments of the Hon'ble Supreme Court in the case of *M/s*



Swastic Automobiles versus Bihar State Financial Corporation and others, reported in AIR 1989 SC 1551; Kerela Financial Corporation versus Vincent Paul, reported in AIR 2011 SC 1388; and on the judgement rendered by the Hon'ble Apex Court in the case of M/S L. K. Trust Versus EDC Ltd., reported in AIR 2011 SC 2060. On the strength of these judgments, the learned counsel, representing the appellant submits that the sale conducted by the Corporation in the present case is vitiated, because it has not been done in accordance with the guidelines laid down by the Hon'ble Supreme Court in the above-mentioned cases as there was no proper valuation of the assets.

5. On the other hand, learned counsel representing the Corporation submits that this is a chronic case of default. As the petitioner-appellant in the present case having obtained a financial assistance as far back as on 19.09.1975 for a term loan of Rs. 2.93 lacs, out of which Rs. 2.74 lacs approximately was disbursed to him between the year 1977 to 1978, failed to pay the installments, the petitioner became liable to be proceeded against under Section 29 and 30 of “the Act”. It has also been brought to our notice that in fact the petitioner had despite having failed to pay the installments against the loan disbursed applied for a soft loan of Rs. 3.04 lacs, which too was sanctioned on 17.11.1989, which was initially not utilized by the petitioner, but later on the same was re-



validated and promoter was allowed time till 1991 to complete the documentation, which was also done in the year 1991. Despite all these, the petitioner continued with default in payment of loan.

6. It has further been brought to our notice that as a result of the default, an advertisement for the first time was issued in the year 1995 for sale of the mortgaged property and the valuation was done. The Valuation Team valued land, building etc. at Rs. 5.65 lacs, which was approved by the Central Valuation Team. For one reason or the other, the negotiation continued to fail and the unit remained in possession of the petitioner – appellant. But during all these periods, he was unable to make the default a good by regularizing the account. The assets of the petitioner – company was re-advertised in the daily newspaper, the highest offer for purchase was Rs. 7 lacs. The said offer was approved on 28.04.2009 and communicated vide Memo No. 22 with copy to the petitioner – appellant on 04.05.2009 (Annexure - 1).

7. It is asserted on behalf of the Corporation that a copy of the sale order was communicated to the petitioner, giving him option to have the unit retain on deposit of the amount of auction-sale. But despite that the borrower / petitioner did not come forward to deposit the amount within the prescribed 21 days period to retain the assets.



8. Learned counsel for the Corporation informs us that on receipt of full payment from the purchaser of the unit the respondent- Corporation issued order handing over physical possession of the assets to the purchaser and the same has been handed over to the purchaser on 27.10.2011. In this factual background it is submitted on behalf of the Corporation that the petitioner – appellant is not entitled to any relief either in law or in equity.

9. We have heard learned counsel for the parties and perused the records. In course of arguments learned counsel for the appellant has failed to show that any challenge to the Valuation Report in respect of this unit was ever thrown to the BSFC, prior to sale of the assets. In fact, at this stage, learned counsel for the appellant submits that because the petitioner was not a party to the preparation of the said valuation report, no challenge was made to the said report.

10. We are afraid this plea cannot be allowed to be taken on behalf of the petitioner at this stage, as it is well settled that a Valuation Report whenever prepared by a Secured Creditor, when the same is made basis for sale of the assets, the advertisement for sale contains the value of the property. And once the sale order is issued and a copy thereof is served to the borrower, giving him an



opportunity to pay the amount within a period of 21 days, to make good the default, he definitely comes to know about the valuation of the property and at the stage of sale itself he gets an opportunity to challenge the valuation, if he is so willing. At this stage by filing a writ application, the petitioner cannot be allowed to take a plea as regards valuation of the property, if he has not taken it prior to conduct of sale, despite sale order served on him. The judgments cited on behalf of the appellant would not come to his rescue, inasmuch as on facts we find that the propositions of law, as laid down by the Hon'ble Supreme Court in the above-mentioned cases, cannot be applied here. In the case of M/s Swastic Automobiles (supra), the Hon'ble Supreme Court took note of the fact that the secured assets, which was put to auction-sale, was worth over Rs. 20 lacs and there was a challenge to the valuation in the said case. The sale was also made at a paltry amount, which was much below the actual valuation of the property. We have already held hereinabove that in the present case there was no challenge to the valuation by the borrower-appellant.

11. Similarly, in the case of Kerala Financial Corporation (supra) in paragraph 12, on which the reliance has been placed, the Hon'ble Supreme Court has dealt with a case arising out of a decree for specific performance of contract granted by the High



Court in favour of Vincent Paul. On the basis of what was found from the decree for specific performance granted by the High Court, the Hon'ble Apex Court was of the view that the same cannot be sustained for the reasons mentioned in various sub-paragraphs, i.e., sub-paragraphs (i) to (viii). The Hon'ble Supreme Court in the facts of the said case had issued direction to KFC to adhere to those directions for sale of the properties. We are unable to appreciate that how this judgement of the year 2011 can be applied in the facts of the present case, where sale took place in the year 2009 when that is a case arising out the finding in the decree granted by the Hon'ble High Court in the said case.

12. Reliance placed by the appellant on yet another judgement of the Hon'ble Supreme Court in the case of M/s L. K. Trust (supra) again seems to be misconcieved. The appellant has placed reliance on paragraph 23 of the said judgement. A bare perusal of the said paragraph and the background in which the same was observed by the Hon'ble Supreme Court would show that there was a case arising out of a mortgage, where the right of an owner relating to redemption of a mortgage was in question and the Hon'ble Supreme Court has considered the right of redemption in the background of the fact of that particular case.



13. We have noticed that this is a case in which the appellant has taken loan as far back as in the year 1978 and finally the possession of the unit has been transferred to the purchaser in the year 2011 only. During all these period, attempts were being made right from the year 1995 to auction sale the assets, but for one reason or the other, the same was not taking place. This was a good time for the petitioner – appellant to make good the account by offering payments either through regularizing the account or by way of one time settlement. But the petitioner – appellant did not do that even though he was served Memo No. 22, dated 04.05.2009 (Annexure - 1). At this stage the kind of plea which is being taken by the petitioner – appellant is only a futile exercise on his part.

14. We are of the view that the contention of the learned counsel representing the Corporation that the petitioner – appellant has no case either in law or in equity is fit to be accepted.

15. We do not find any error in the impugned order, passed by the Learned Single Judge.

16. Appeal has no merit, it is, accordingly, dismissed.

17. After dismissal of the Letters Patent Appeal, learned counsel for the appellant has made an oral prayer to grant a



certificate for appeal to the Hon'ble Supreme Court as provided under Article 134-A of the Constitution of India.

We do not find any question of law, much less any substantial question of law and / or an issue relating to interpretation of the Constitution involved in the present case and, therefore, we decline to issue a certificate under Article 134-A of the Constitution of India.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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