IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3618 of 2015

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Sri Chandra Shekhar Rai Azad, Son of Late Ram Ballabh Rai, resident of Kadamtalla, Sarvodaya Nagar - 4, Sector 4, P.O. + P.S. Bokaro, District - Bokaro (Jharkhand)

.... Petitioner

Versus

1. The Bihar State Financial Corporation having its head office at Frazer Road, Patna through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna.
3. The Branch Manager, Bihar State Financial Corporation, City Centre, Behind Jitendra Cinema, Sector - 4, P.O. + P.S. Bokaro, District – Bokaro.
4. M/s Jagnnath Industries, a Partnership firm having its office at Polytechnic Road, P.O. + P.S. Dhanbad, District - Dhanbad through one of its Partner Sri Krishan Kumar Ganeriwal
5. Krishan Kumar Ganeriwal, son of Late Gridhari Lal Ganeriwal, resident of Polytechnic Road, P.O. + P.S. Dhanbad, District - Dhanbad

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 3909 of 2015

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Sri Dhiraj Kumar Rai son of Chandra Shekhar Rai Azad, resident of Plot No. 586, Kadamtalla, Sarvodaya Nagar -4 , Sector -4, P.O.+P.S. - Bokaro , District-Bokaro (Jharkhand).

.... Petitioner

Versus

1. The Bihar State Financial Corporation having its head office at Frazer Road, Patna through its Managing Director.
2. The Managing Director, Bihar State Financial Corporation, Frazer Road , Patna.
3. The Branch Manager , Bihar State Financial Corporation , City Centre, Behind Jitendra Cinema , Sector-4, P.O.+ P.S. Bokaro , District- Bokaro.
4. M/S Gajendra Plastics Private , a Private Limited Company having its office & unit at Polytechnic Road , P.O.+ P.S. - Dhanbad , District - Dhanbad through

one of its partner Sri Om Prakash Ganeriwal.

5. Om Prakash Ganeriwal , son of Late Gridhari Lal Ganeriwal, resident of Polytechnic Road , P.O.+ P.S.- Dhanbad , District- Dhanbad.

.... Respondents

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Appearance:

(In CWJC No. 3618 of 2015)

For the Petitioner/s : Mr. Arvind Kumar, Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Mr. Ashish Giri, Adv.

(In CWJC No. 3909 of 2015)

For the Petitioner/s : Mr. Arvind Kumar, Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Mr. Ashish Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 20-02-2017

Heard learned counsel for the petitioners and learned counsel for the Bihar State Financial Corporation.

2. In both the cases, identical issue has been raised and as such, by this common judgment both the cases are being disposed of. For convenience, the facts mentioned in C.W.J.C. No.3618 of 2015 are taken into consideration.

3. In the present case, the petitioner is challenging the Memo No.217 dated 12.11.2014 passed by the Managing Director, Bihar State Financial Corporation, whereby and whereunder he has repudiated/cancelled the Sale Order vide Memo No.322 dated

30.10.2008, which was made in favour of the writ petitioner with respect to hypothecated/ mortgaged assets of the private respondents on the consideration amount of Rs.41.25 lakh.

4. Filtering the unnecessary facts, the property, in question, situated at village Hirapur, Thana No.07, Khata No.77, Plot No.101, area 27 decimals, was put to mortgage in the year 1985-86 in favour of Bihar State Financial Corporation (for short "*the Corporation*") for a loan amount, but after availing the loan facility the borrower defaulted in payment of the loan. A sale notice was published in different newspapers from time to time.

5. In pursuance thereof, the petitioner has submitted his offer on 28.09.2007 with the required Security Deposit of Rs.1,00,000/- vide Draft No.187939 dated 24.09.2007. As the petitioner was found the highest bidder was called for negotiation in the Office of the Corporation and after negotiation, the consideration amount was settled for Rs.41.25 lakh and in follow up action the Corporation has issued the sale letter vide letter containing Memo No. 15 dated 07.04.2008 and directed the petitioner to deposit 25% of the agreed consideration amount for execution of the agreement for sale. Accordingly, he had deposited Rs.9,31,250/- on 25.04.2008 within the time prescribed by the

Corporation i.e. after 21 days of notice but before completion of 30 days.

6. In the meantime, at the instance of the original promoters, one Arvind Gopalka approached the Jharkhand High Court by filing W.P. No. 2186 of 2008 and offered Rs.50 lakh against the proposal of Rs.41.25 lakh. The said writ petition was disposed of vide order 12.05.2008 with a direction to file a representation before the Managing Director of the Corporation, who was directed to consider the offer of Arvind Gopalka and take decision within four week, but Arvind Gopalka failed in his commitment what he has offered before the Jharkhand High Court. Finally, the reasoned order dated 30.10.2008 was passed, confirming the sale in favour of the petitioner and subsequently an Agreement to Sale was executed on 30.03.2010. But, the matter did not end there as the original promoter/private respondent approached the Jharkhand High Court by filing W.P. No.4870 of 2008 and there he obtained the stay order by giving wrong undertaking before the Jharkhand High Court with respect to deposit of the defaulted amount with the Corporation. But, he did not comply the aforesaid order and filed L.P.A. No.60 of 2009 and again given a wrong undertaking that he is ready to deposit the defaulted amount, but ultimately the said L.P.A. itself was withdrawn.

7. After the end of the litigation in Jharkhand High Court, the original promoter approached this Court in C.W.J.C. No.17088 of 2010, where he has made an offer that he wants to retain the property and ready to pay the amount under the O.T.S. Scheme and the case was directed to be heard along with C.W.J.C. No.17007 of 2010 as the issue raised in both the cases are identical, but ultimately he withdrew the writ petition itself.

8. As per the claim of the petitioner he had no knowledge about the repudiation of the Agreement to Sale. For the first time, he could know this fact through the private respondent of C.W.J.C. No.17088 of 2010 as it has been claimed that the order of repudiation vide Memo No.217 dated 12.11.2014 was passed during the pendency of the writ application. It has been submitted that the ground which has been taken for repudiation is not sustainable as the same is completely flimsy ground and made a prayer that he is ready to deposit the rest consideration amount and the authorities be directed to execute the Sale Deed in his favour.

9. The Bihar State Financial Corporation has appeared and taken a plea that the petitioner has not acted in terms of the order issued by the Financial Corporation, thereby certain direction was given for payment of the rest consideration amount as one of the conditions attached that the purchaser is to complete the supplementary agreement within 15 days from the date of issue of the order, failing which, this order shall be treated as withdrawn.

10. It will be useful to quote relevant part of the order, which read as under:-

> *"In view of foregoing developments leading to inordinate delay in concluding sale in terms of sale order which were beyond control of either purchaser or Corporation, the delay in the process of execution of sale document/agreement is hereby condoned in partial modification of condition no.15 and further, undernoted terms and conditions of sale order issued under Memo No.820/Z-III/08-09 dated 27.03.2008 are hereby partially modified as under to give effect thereto:-*
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> > *(1) The condition no.3 of the said order is modified to the extent that the remaining Balance Consideration amount of sale amounting to Rs.30,93,750.00 (Rupees Thirty Lakhs ninety three thousand seven hundred fifty) only shall be paid in two years by 8 (eight) quarterly installments of Rs.3,86,718.75 (Rupees Three*

lakhs eighty six thousand seven hundred eighteen and paise seventy five) only each besides payment of interest on due date. The first installment will fall due after completion of two months from the date of issue of this order.

(2) the condition no.15 of sale order is modified to the extent that the handing over the mortgaged/hypothecated assets is allowed to be completed within a period of 1 (one) month from the date of this order.

(3) The purchaser has to complete supplementary agreement within 15 (fifteen) days from the date of issue of this order failing which this order shall be treated as withdrawn.

(4) Others terms and conditions of the sale order issued vide memo no.820/Z-III/08-09 dated 27.03.2008 will remain unchanged."

11. The only question remains whether this Court should give direction for execution of the Sale Deed in favour of the present petitioner or payment of rest consideration amount. Few facts are admitted; the petitioner has deposited 25% of the consideration amount as agreed between the parties and the rest consideration amount has been treated to be a loan amount, which the petitioner was required to pay. Admittedly, after the deposit of 25% of the consideration amount, the petitioner has not deposited any farthing and rest consideration amount remained unpaid either by way of return of the loan amount or the consideration amount. It is also a fact that the agreement was executed on 31.03.2010, in which one of the terms of agreement is on payment of remaining amount of consideration for the assets mentioned in the schedule, the possession of which will be handed over to the borrower after completion of the sale agreement. So it is clear that the petitioner has not deposited the rest consideration amount nor he was ever put to possession. The writ of *mandamus* can be exercised in favour of petitioner only when he can show legal right. Sale cannot be said to complete unless entire consideration amount is passed to seller.

12. The writ in the nature of specific performance of contract cannot be adjudicated in the present proceeding. It can only be adjudicated before the competent Civil Court, but instead of relegating the matter to the Civil Court, it will be equitable to hold that the Corporation cannot be directed to execute the Sale Deed in favour of the present petitioner to that extent the writ petition is dismissed, but admittedly, the petitioner has deposited 25% of the consideration amount as well as the Earnest Money, the same should be returned by the Corporation along with interest. Hence, the Corporation is directed to return entire amount which has been deposited as well as the Earnest Money, which the petitioner has deposited, alongwith interest at the rate of 9% per annum within a period of three months from today. In failure to pay the amount within a period of three months from today, the Corporation will be required to pay the interest at the rate of 15% per annum.

13. With the aforesaid observations and directions, both these writ applications are disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.02.2017
Transmission Date	N/A