

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2791 of 2015

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1. M/s Shree Bharat Refractories through Smt. Rajkishori Jaiswal, Partner, At. Maithan Road, Kumardubi, P.S. Chirkunda, District Dhanbad
2. Smt. Raj Kishori Jaiswal, W/o Late Subhash Prasad Jaiswal, R.O. Sheobali Bari, P.O. Kumardubi, P.S. Chirkunda, District- Dhanbad

.... Petitioners

Versus

1. Managing Director, Bihar State Financial Corporation, Frazer Road, Patna-800001
2. M/s Mrs. Santosh Agrawal, At. Kumardubi, Station Road, P.O. - Kumardubi, P.S. Chirkunda, District Dhanbad
3. Bihar State Financial Corporation through Managing Director, Frazer Road, Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Arbind Kumar Jha, Advocate

For the Respondents : Mr. Y.V. Giri, Sr. Advocate

Mr. Nikhil Kr. Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-11-2017

The present writ petition has been filed for a direction to the respondent Corporation to proceed against the mortgaged properties of the petitioner no. 1 firm and not against the properties of the sureties mortgaged to the Corporation to the extent of their shares; and for connected reliefs.

2. The relevant facts of the case in brief according to the petitioners are that the petitioner no. 1 is a partnership firm and was constituted on 14.01.1995 in terms of an agreement among Smt. Raj Kishori Jaiswal (petitioner no. 2), Sri Kailash C. Bhatt and Sri Muneshwar Sharma (since deceased) on 21.06.1995. The respondent- Bihar State Financial Corporation (for short, "the Corporation") sanctioned a term loan of Rs. 18.30 lakhs to the petitioner no. 1 for



setting up an industrial unit for manufacturing of refractories, bricks, etc. The petitioner no. 2 mortgaged her share of property which she inherited upon death of her husband, Subhash Prasad Jaiswal, on 03.12.1989, in order to secure the debt. The said property also devolved upon the other heirs of late Subhash Prasad Jaiswal aforesaid who are not the partners of the petitioner-firm.

3. Mr. Arbind Kumar Jha, learned counsel appearing on behalf of the petitioners, submits that the respondent-Corporation is acting illegally in invoking the property which has been mortgaged by the legal heirs of the said Late Subhash Prasad Jaiswal and not by the partnership firm, petitioner no. 1. It is submitted that a property can be mortgaged only by the title holder and in the instant case, an equitable mortgage dated 07.01.1998 has been made by the legal heirs aforesaid (Annexure-E to the counter affidavit) after they inherited the property upon the death of its owner, late Subhash Prasad Jaiswal, as evident from the recitals therein. The partnership firm was not the title holder of the property and was incapable of creating the mortgage. It is therefore submitted that the respondent-Corporation is illegally proceeding against the property of the legal heirs under Section 29 of the State Financial Corporation Act which can be resorted only in respect of property mortgaged by an industrial concern.

4. Mr. Nikhil Kumar Agrawal, learned counsel for the respondent-Corporation, on the other hand, vehemently resists the writ petition, submitting that the equitable mortgage by the legal heirs



had been entered into out of abundant caution so that objection may not be raised in future against the mortgage made by the partnership firm. The said document also narrates that after the death of late Subhash Prasad Jaiswal, the property was mutated in the name of Smt. Raj Kishori Jaiswal, petitioner no. 2. It is pointed out that the present writ petition has been filed by the partnership firm and the said Smt. Raj Kishori Jaiswal, rather than by the other legal heirs who have not raised any objection against the action of the respondents.

5. Attention is invited to the agreement dated 07.01.1998 between the partnership firm (petitioner no. 1) and the respondent-Corporation to submit that the transaction between the firm and the Corporation was clearly one of mortgage as evident from Clause 15 of the agreement and other recitals contained therein. More significantly, reliance is placed on Annexure-D/1 of the counter affidavit which is a letter written by the firm as well as the legal heirs of late Subhash Prasad Jaiswal, confirming the deposit of title deeds to the property and specifically stating as follows —

“We further undertake that the aforesaid assets mortgaged to you are free from all mortgage, charges, encumbrances, all types of liens or any sort whatsoever charges or any distress and *are the absolute properties of the concern with all right, title and interest therein* which we can and do hereby give you as security in respect of the loan of Rs.18.30 lacs (Rupees Eighteen lacs thirty thousand) only to be lent and advanced to the concern by you and shall remain as such securities till the entire amount together with all interest and other



charges and cost incidental there are fully repaid to you by the concern.”

6. Moreover, an affidavit (Annexure-D/2 to the counter affidavit) dated 13.01.1998 was affirmed by the partners of the petitioner-firm categorically stating as follows –

“That we are partners of M/s Shree Bharat Refractories, Maithan Road, P.O. Kumardhubi, Distt. Dhanbad and the lands measuring 1.73 ½ Acres described in schedule below *belongs to the concern.*”

7. It is therefore submitted that on the strength of the averments made by the petitioner-firm and the legal heirs, in specific terms of the aforesaid letter and the affidavit confirming that the property belonged to the concern, the Corporation acted and disbursed the loan to the firm. As such the petitioners cannot be permitted to resile from such stand after almost two decades when the loan amount is being sought to be recovered.

8. Having heard the parties and on careful consideration of the materials available on record, this Court is not inclined to interfere in the matter. The main ground raised by the petitioners for objecting to the action taken under Section 29 of the State Financial Corporations Act is that the property mortgaged by the industrial concern alone can be invoked for the purpose of recovery of the loan. If the property of any person has to be invoked, the Corporation would have to take steps under Sections 31 and 32 of the said Act which, in the instant case, has not been done. By letter dated 07.01.1998



(Annexure-D/1) referred to above, the partnership firm as well as the legal heirs have jointly stated in one voice that the property in question was the property of the concern. An affidavit was also furnished by the partners of the firm to the effect that the property belonged to the concern.

9. In view of the rival claims of the parties, whether or not the subject properties belong to the firm remains a disputed question of fact which this Court is not inclined to enter into in exercise of its extraordinary writ jurisdiction. The writ petition stands dismissed.

(Vikash Jain, J)

B.T/Chandran

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

