

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14061 of 2013

=====

S.K.Enterprises, a proprietorship concern having its office at Suprabhat Building, CEAT Compound, Exhibition Road, P.O. GPO, P.S. Kotwali, District Patna through its proprietor Santosh Kumar Mandolia, Son Of Late Mulchand Mandolia, Resident of 32, Krishna Kunj Apartment, Sahdeo Mahto Marg, P.O. Boring Road, P.S. S.K. Puri, District - Patna

... .. Petitioner/s

Versus

Bihar State Financial Corporation Ltd. through its Managing Director, Bihar, Patna having its office at Fraser Road, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sadashiv Tiwary, Adv.
For the Respondent/s : Mr.Parth Sarthy, GA 4

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 05-02-2019 It is well settled in law that a Court cannot create a contract and choose the terms and conditions for the parties howsoever good it may be.

The petitioner in the present case is aggrieved by the order dated 04.07.2013 as contained in Annexure ‘6’ to the writ application by which the Managing Director of the Bihar State Financial Corporation Ltd. has taken a decision to cancel the sale order in respect of mortgaged/ hypothecated assets of M/s Kwaliti Papers (P) Ltd., Industrial Area, Fatwa in favour of the petitioner. The reason for which the said decision has been taken is duly reflected in the order itself which reads as under:-

*“Sale order on sale of
mortgaged/hypothecated assets of M/s Kwaliti*



Paper (P) Ltd., Industrial Area, Fatwah issued in favour of M/s S.K.Enterprises, Suprabhat Building, Ceat Compound, Exhibition Road, Patna vide memo no. 19 dated 25.04.2013 is hereby cancelled since, the purchaser concern has failed to make of initial cash down payment in terms of aforesaid sale order within stipulated period.”

Learned counsel for the petitioner has drawn the attention of this Court towards the sale order as contained in Annexure ‘3’ to the writ application. In Clause 2 of the sale order it is provided that the purchaser shall make an initial cash down payment of an amount equivalent to 25% of the total consideration price i.e., Rs.50.00 lakhs only (including earnest money of Rs.1.00 lakh). Admittedly the petitioner has failed to abide by the terms and conditions of the sale order and in these conditions the sale order has been cancelled.

In course of argument, learned counsel for the petitioner is unable to demonstrate any discrimination or arbitrariness on the part of the Managing Director of the Corporation in the matter of cancellation of sale order.

Learned counsel for the Bihar State Financial Corporation Ltd. is present and has opposed the writ application on the grounds inter-alia that the Court sitting in its writ jurisdiction under Article 226 of the Constitution of India may



not endeavor to re-write the terms and conditions of the agreement between the parties.

In the opinion of this Court, this writ application is wholly misconceived. In the admitted facts of the case, where one of the terms and conditions of the sale order has not been complied with by the petitioner, this Court cannot direct the another party to the contract to extend the period for such payments. It would amount to creating a contract between the parties which they have not chosen for themselves.

This writ application has not merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

U			
---	--	--	--

