

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.7744 of 2010

1. Manish Kumar Saraf S/o Shri Santosh Kumar Saraf, Aged About 39 Years R/o B-2, Harshit Nagar, Near Vishwakarma Mandir, Heerapur Road, Mahoba Bazar, Raipur, Chhattisgarh
 2. Smt. Manju Devi Saraf, W/o Shri Santosh Kumar Saraf, Aged About 62 Years R/o B-2, Harshit Nagar, Near Vishwakarma Mandir, Heerapur Road, Mahoba Bazar, Raipur, Chhattisgarh
 3. Santosh Kumar Saraf, S/o Shri Gowardhan Saraf, Aged About 64 Years R/o B-2, Harshit Nagar, Near Vishwakarma Mandir, Heerapur Road, Mahoba Bazar, Raipur, Chhattisgarh
- Petitioners**

Versus

1. Chhattisgarh State Industrial Development Corporation, Pandri Raipur Chhattisgarh Through Its Managing Director, Chhattisgarh
 2. Shri Hanif Umrani, S/o Late Shri Ismail Bhai Umrani, Union Oil Company, Ganjpara, Raipur, Chhattisgarh
 3. Smt. Roma Raheja, W/o Shri Harish Kumar Raheja, R/o Gali No.1, Fafadih, Raipur, Chhattisgarh
 4. Shri Harish Kumar Raheja, S/o Shri Bhagumal Raheja, R/o Gali No.1, Fafadih, Raipur, Chhattisgarh
- Respondents**

For Petitioners	:	Mr. S.S. Rajput, Advocate
For Respondent No.1	:	Mr. Ayaz Naved, Advocate
For Respondent No.2	:	Mr. Raja Sharma, Advocate
For Respondents No.3 & 4	:	Mr. Raghvendra Pradhan, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

05/12/2019

Heard.

1. This petition, under Article 226 of the Constitution of India, is preferred against inaction on the part of the respondent Corporation whereby the property which was mortgaged as collateral security in the capacity as guarantor by the petitioner, has been sold out and possession handed over to successful purchaser in auction.

2. One Smt. Sarita Saraf, wife of Shri Manish Kumar Saraf, petitioner No.1, had obtained loan to the tune of Rs.9,50,000/- in the year 1999 from Madhya Pradesh Financial Corporation (Predecessor of respondent No.1/Chhattisgarh State Industrial Development Corporation). In order to secure repayment of loan, the petitioner stood as a guarantor and executed a deed of guarantee on 06.10.1999, thereby, furnishing collateral security in favour of Madhya Pradesh State Financial Corporation vide deed of guarantee dated 06.10.1990.

3. Admittedly, the debtor failed to pay loan advanced which led to initiation of proceeding under Section 29 of the Financial Corporation Act. The properties which were mortgaged were attached and later on, proceedings of sale were initiated, for which purpose, the Corporation issued public notices and property was put to auction and sold to successful bidders. These proceedings were initiated in the year 2002. The last publication of auction notice towards auctioning of prime security was issued in the daily newspaper on 26.01.2008. The proceedings of sale by way of auction of collateral security properties were brought to logical end by issuance of sale letter and also execution of sale deed.

4. This petition was filed by the petitioners in the year 2010 challenging legality and validity of all those proceedings of auction and sale of mortgaged property.

5. Though learned counsel for the petitioners vehemently submitted to convince this Court that the proceeding of auction are in violation of the provision of Section 29 and another provision of the State Financial Corporations Act, this Court finds that the petition has been filed after inordinate delay which could hardly be explained by the petitioners. Apparently, as per the averment contained in the petition and the return filed by Corporation, the possession of the property was taken away back in the year 2001 by the Corporation when the debtor failed to repay the debt taken by none other than the wife of petitioner No.1. Not only this, auction proceedings were initiated in the year 2002 and on number of occasions, publications were made, offers were invited and highest bidders were offered sale of the property. Although this period, the petitioners sat over the matter. Though it has been urged by learned counsel for the petitioners, referring to averments made in para 8.12 of the writ petition that the petitioners were not in notice and knowledge of the auction which were being made in the year 2002 and

2008, the said stand of the petitioners appears to be fully unacceptable. It is not a case of clandestine sale transaction between the Corporation and successful bidders. The sale of the mortgaged property preceded various auctions initiated by way of public auction, which is clear from the return and the document filed by the respondent Corporation. The petitioners do not dispute that they are resident of Raipur. According to them, their local address was changed. However, the city of residence did not change. The petitioners are not rustic villagers. Moreover, the pleadings of para 8.12 are blissfully vague. Though, the petition has been filed by as many as three petitioners, it is only the petitioner No.1, who claims to have remained out of the city for a long period. The averment that he had gone to Varanasi and there he suffered from illness and advised bad rest and finally he could come back only in March, 2008, to say the least, appears to be a cock and bull story. The other two petitioners have not averred anything with regard to their absence. Apparently, the petitioners have come out with an afterthought grounds to somehow wriggle out of initiation of proceeding of auction and sale made long before the writ petition was filed.

6. It is well settled legal position that the Writ Court would not come to the aid in exercise of its extra-judicial remedy, under Article 226 of the Constitution of India and it could not be invoked, by those who are indolent and had remained indifferent and negligent towards endorsement of their rights. Wife of petitioner No.1 admittedly was a borrower and had taken loan from the Bank. The fact that the loan could not be repaid has not been disputed. This Court also does not find any document on record to show that the petitioner, at any point of time, offered to repay the whole amount of loan after having come to know about the auction. Therefore, the only inference which could be drawn is that the petitioners who were fully aware of various auction proceedings, chose not to challenge those auction proceedings and subsequent sale for a long time until the writ petition was filed in the year 2010.

7. In view of the above, irrespective of merits of the case, this petition is liable to be dismissed only on the ground of delay and laches and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge