

IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

O.J.C. No.14284 of 2001

In the matter of an application under Article 226 & 227 of the Constitution of India.

Annapurna Chitra Mandir ... Petitioner

Versus

State of Odisha & Ors. ... Opposite Parties

For Petitioner ... Mr.G.Mukherji, Sr. Advocate,
S.Patnaik, A.C.Panda, A.Pradhan.
P.Mukherji.
For Opposite Parties ... Mr. S.P.Panda, Additional Govt.
Advocate.
Mr.P.K.Mohanty & A.K.Das.
(For.O.P.No.3)

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 08.09.2022

Biswanath Rath, J. The contesting opposite party no.3 as appears, has appeared through P.K. Mohanty & A.K. Das. Even after filing of counter affidavit on their appearance, the Opposite Parties remained unrepresented for which this Court finds difficulty in disposal of the proceeding. While recording non-appearance of the opposite party no.3 on 8.02.2016 this Court again by order dated

19.11.2019 directed the petitioner to take out notice on opposite party no.3 by registered post with A.D. asking the petitioner to file requisites by 22.11.2019. Office note indicates A.D. received from the opposite party no.3 after valid service. This Court observes in spite of repeated notice, neither the earlier set of counsel appears nor there is fresh appearance on behalf of the opposite party no.3. This Court is constrained to decide the matter only hearing the counsel for the petitioner but however also taking into consideration the counter averments made available from the counter affidavit of opposite party no.3.

2. This writ petition involves the following relief:

“It is respectfully prayed that this Hon’ble Court be pleased to admit this writ petition, issue notice to the Opp. Parties calling upon them to show cause as to why this writ petition shall not be allowed by quashing Annexure-9 & the certificate cases No.1/98 & 2/98 and if the Opp. Parties fail to show cause or show insufficient cause, the rule be made absolute by quashing Annexure-9 & the 2 certificate cases No.1/98 & 2/98 & issue appropriate writs as circumstances justify with a further direction to the Opp. Party No.3 to release the mortgaged documents and may pass any other order(s) as circumstances justify.

And for this act of kindness the Petitioner will as in duty bound ever pray.”

3. Factual background involved herein is that on 22.07.1980, a sum of Rs.4,66,000/- was sanctioned as loan by the N.D.F.C. for construction of Cinema Hall while observing Orissa Film Development Corporation Limited as a guarantee. As a consequence working capital loan was availed from Canara Bank. There appears, there is some delay in sanctioning as well as construction of flyover in the vicinity resulting delay in commissioning of the hall and the petitioner in the meantime applied for further sanction of Rs.7.5 lakhs appears to be not materialized. The hall involved could not be completed and became sick from its inception. Parties entered in a Arbitration Proceeding

resulted in an award whereby O.F.D.C. paid Rs.5,01,590-70 to N.D.F.C. in satisfaction of the award. In the meantime, O.F.D.C. started Certificate Case Nos.1 & 2 of 1998 appear to be pending as of now. In the meantime, it appears, on 20.12.1998 Canara Bank accepted the O.T.S. proposal and closed the loan account on receiving payment of Rs.7,29,000/- from the Central Bank of India. In the meantime, petitioner applied for O.T.S. to the O.F.D.C. Pursuant to the resolution of Board at Annexure-2, decision was taken on 8.08.2000 vide Annexure-1 to accept the O.T.S. calling upon the Petitioner to pay lump sum of Rs.6,86,829 within two months as find place at Annexure-1. From Annexure-4 it appears, the receipt establishes the Petitioner to have already paid the final sum of O.T.S Rs.6,86,829 by D.D. Consequent upon clearing the O.T.S amount the Petitioner approached the O.F.D.C for releasing of mortgaged assets. In the meantime on 24.01.2001 the Government in Industries Department wrote the Director of Industries, Orissa recording therein that the O.T.S amount has already been paid by the Petitioner and thereby also recommended the sanction of soft loan of Rs.4,00,000/- in favour of the petitioner. It is claimed that in spite of Board resolution settling the claim by way O.T.S and receipt of the whole O.T.S amount vide Annexure-4, there is neither release of the mortgaged documents nor closure of the certificate proceedings.

4. Mr. Mukherji, learned Senior Advocate taking this Court to the provision at Section 179 of the Companies Act, 2013, which was also the position standing under the Old Companies Act without change in the provision dealing with the powers of the Board and further reading through the scope under Article 127 of

the Articles of Association of the Odisha Film Development Corporation Limited. Submitted that Board is supreme and its decision cannot be nullified by anybody except there is Court order. Mr. Mukherji, learned Senior Advocate in the circumstance contended that the claim if any against the Petitioner ought to have been treated as closed and thus contended that there is no impediment in releasing the mortgaged documents and withholding of the same after payment of the entire O.T.S amount becomes unlawful. Mr. Mukherji, learned Senior Advocate also contended that for the settlement of the dispute between the O.F.D.C and the Petitioner by way of O.T.S after the payment is made vide Annexure-4, no dispute is surviving requiring continuance of the certificate proceedings involved. Thus a request is made for allowing the writ petition with a direction to the O.F.D.C for releasing the mortgaged documents in favour of the Petitioner forthwith while also directing the authorized officer to treat the certificate proceeding nos.1/98 & 2/98 to have been closed for having no further cause of action and the same may be treated as closed.

5. This Court finds nobody is appearing on behalf of the contesting Opposite Party No.3 but however from the records this Court finds, there is a counter affidavit of Opposite Party No.3 filed in March, 2002. The main thrust of the Opposite Party No.3 through the counter affidavit appearing to be their stand in paragraph nos.20 & 28 which reads as follows:

“20. That be that as it may, though it is a fact that the Board of Directors of OFDC had considered the proposal for one time settlement submitted by the petitioner, and had decided to waive the entire interest such decision was improper unreasonable and highly detrimental to the interest of the corporation apart from being discriminatory. In a

complicated matter involving financial discipline, the Board appears to have over stepped its limits and power.”

28. That from the facts stated and submitted in the foregoing paragraphs, it is evident that the earlier action of the Board of Directors in waiving 100% interest was illegal and an act without jurisdiction. The audit had raised several valid objections questioning the decision taken by the Board of Directors. There is no manner of doubt that concession had been given to the petitioner which was beyond the competency of the Board. Therefore, on receipt of the audit objection the matter was discussed in the 68th meeting of the Board of Directors held on 14.6.2000, after careful consideration of all the relevant aspects. The aforesaid decision of the Board is not available to be interfered with by this Hon’ble Court in exercise of the extraordinary powers conferred under Article 226 of the Constitution of India.”

6. It is keeping in view the objection of the Opposite party no.3 through paragraph no.28, this Court while recording that there is no dispute through the counter affidavit as to the settlement of the dispute between the parties by way of O.T.S by virtue of a resolution of the Board available at Annexure-2 at page- 11 of the brief and materialized by giving suitable direction to the Petitioner indicating the O.T.S settlement amount vide Anneure-1, this Court here again finds from Annexure-4 for the entire amount having been paid by way of demand draft, the receipt for the same being granted there remain no dispute on the entitlement, if any, with the O.F.D.C. It is here keeping in view the objection of the Opposite party No.3 through paragraph nos.20 & 28 this Court takes note of the power of the Board involving the Company an Institution guided under the Companies Act. Reading through the protection of the acts of the Directors or the committees of the companies through the Article 127 of the Articles of Association of O.F.D.C this Court finds, in the circumstance there is no room for agitating any complain involving the decision of the Board of the Directors and finding no force in the submission of Opposite Party No.3 in their objection through paragraph 20 & 28 quoted

hereinabove. Provision referred to herein supports the case of the petitioner on the finality of resolution of Board of Directors.

7. In the circumstance this Court while approving the resolution of the Board of the Directors vide Annexure-2 recording the establishment of the Petitioner of payment of the settled amount vide Annexure-4 finds, there is already closure of the dispute between the O.F.D.C and the Petitioner. In absence of any outstanding the O.F.D.C is found to be wrong in withholding the mortgaged documents of the Petitioner for a single day even after the final payment is made. Thus while issuing a mandamus to the O.F.D.C-O.P.3 to release the mortgaged documents of the Petitioner involving the transaction involved herein at least within a period of fifteen days from the date of receipt of copy of this judgment, permits the Petitioner to bring the judgment of this Court to the notice of the competent authority undertaking the exercise involving the Certificate Proceeding Nos.1/98 & 2/98 respectively at least within a period of fifteen days by way of denying liability application and thereby requesting the competent authority to close the proceeding. In the event of such exercise the competent authority shall close both the certificate proceedings keeping the judgment of this Court in the Writ Petition in view.

8. In the result the Writ Petition succeeds. However, there is no order as to the costs.

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Biswanath Rath, J.

*Orissa High Court, Cuttack.
Dated the 8th September, 2022/SKS*