

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19883 of 2022
(Through Hybrid mode)

Pragati Milk Products Pvt. Ltd.,
Cuttack

Petitioner

Mr. A. P. Bose, Advocate

-versus-

IDCO, BBSR and others

Opposite Parties

Mr. A. Das, Advocate

Mr. R. Kalla, Advocate
Mr. A. K. Budhia, Advocate

Mr. P. K. Mohanty, Senior Advocate

CORAM:

JUSTICE ARINDAM SINHA
JUSTICE SANJAY KUMAR MISHRA

ORDER
25.09.2023

I.A. nos.9023 of 2023

Order No.
07.

1. Mr. Kalla, learned advocate appears on behalf of applicant, who seeks recall of order dated 19th December, 2022 disposing of WP(C) no.19883 of 2022.
2. Mr. Bose, learned advocate, appears on behalf of writ petitioner while Mr. Mohanty, learned senior advocate appears on behalf of Odisha

Industrial Infrastructure Development Corporation (IDCO) and Mr. Das, learned advocate, for Odisha State Financial Corporation Limited (OSFC).

3. We have heard learned counsel for the parties. It appears writ petitioner was successful auction purchaser. By the writ petition it had prayed for direction on having purchased interest in the land that was under occupation of applicant, as borrower from OSFC. Direction made in paragraph 4 of said order dated 19th December, 2022, disposing of the writ petition, is reproduced below.

“4. Opposite party no.1 is directed to consider and deal with petitioner’s representation dated 20th June, 2022 and inform petitioner the requisites for allotment, in its name, of the lease hold rights in the plots. The requisites should be informed to petitioner within four weeks of communication”

Applicant was not party in the writ petition.

4. On discovery of said order dated 19th December, 2022 made, applicant moved this Court for recall thereon. It said it was affected by such order, obtained by writ petitioner suppressing material fact. On exchange of pleadings it transpires, applicant had filed **COPET no.22 of 2007 [(M/s. Sri Konark Food Products (Pvt.) Ltd. vs. Orissa State Financial Corporation and others)]**. On moving the company petition

there was interim order made by the learned Company Judge on 5th October, 2007. Text of the order is reproduced below.

“Issue notice.

Since the learned AGA has put in appearance for opposite parties 2 and 3, no notice need be issued. Two extra copies of the writ petition be served on him. Requisites for issue of notice by Registered Post with AD to opposite parties 1, 4 and 5 shall be filed within three days.

Accept one set of process fee.

Put up this matter after ensuing puja vacation.

Till next listing, no coercive action shall be taken against the petitioner. However, the assets of the company shall not be removed by the petitioner also.

Issue urgent certified copy as per rules.”

(emphasis supplied)

5. On 11th October, 2022 applicant had approached the learned single Judge, who is party to this Division Bench (Arindam Sinha, J) and obtained order dated 11th October, 2022 in exercise of contempt jurisdiction. Reliance was placed on paragraphs 2 and 4 of said order. They are reproduced below.

“2. Ms. Pradhan, learned advocate appears on behalf of alleged contemner no.1 and prays for adjournment to obtain instruction and submit. Mr. Pattnaik, learned advocate appears on behalf of OSFC and submits, the interim order could not have been made under sections 390 or 391. His client duly proceeded for recovery.

4. Contempt jurisdiction does not require adjudication on whether or not the order violated is a good order. In event of the financial corporation having found the order was not good, it had remedy to seek correction. However, it did not have licence to violate the order.”

We have ascertained from applicant, the COPET and CONTC remain pending. Hence, applicant's contention that auction of his client's interest in the land was coercive action taken in violation of order dated 5th October, 2007. This fact could not be brought to notice of the Bench, when the writ petition was disposed of on order dated 19th December, 2022. It is a fit case, therefore, for the order being recalled and the writ petition restored to file for adjudication upon hearing applicant.

6. Contention of OSFC on the other hand is that the interim order in the COPET lapsed on 20th April, 2018. The company petition was called and order recorded on that day and thereafter on 11th May, 2018 and 6th July, 2018 but the interim order was not continued, nor revived. In the circumstances, there was no impediment by the lapsed interim order for holding the auction. Furthermore, it was pointed out on behalf of OSFC that holding of the auction was to knowledge of co-ordinate Bench on 22nd February, 2022, when it was clarified that mere pendency of the writ petition would constitute no legal impediment for the corporation to proceed in accordance with law. The Writ petition was WP(C) no.2802 of

2022 (applicant's own case). There stands disclosed in the objection filed by OSFC of order dated 12th May, 2023, whereby said writ petition was disposed of as infructuous. On behalf of IDCO contention is applicant was neither necessary nor proper party regarding adjudication and disposal of the writ petition [(WP(C) no.19883 of 2022)].

7. We have perused order dated 11th October, 2022 made in contempt jurisdiction. There was no direction made therein apart from granting adjournment and for the matter to be listed on 3rd November, 2022 along with the COPET. Purpose of our query regarding pendency of the COPET and the CONTC was also to ascertain whether applicant thereafter took steps to prosecute either or both matters. None of them was said as had been mentioned for listing before the single Bench.

8. Paragraph 4 in order dated 11th October, 2022 relates to exercise of contempt jurisdiction. If there was subsisting an order on a date and there was violation, it is for the contempt Court to take or not take cognizance in contempt. Lapse of the interim order and thereupon the auction conducted, on notice of co-ordinate Bench in applicant's own writ petition militates against same being undone by reason of pendency of the contempt application.

9. On behalf of applicant there was reliance on **order dated 22nd July, 2019** made by the Supreme Court in **I.A. no.27524 of 2019 in Civil**

Appeal no.6088 of 2011(Fazalullah Khan vs. M. Akbar Contractor (D) by LRS. and others). Submission was, said Court by the order has diluted application of its earlier judgments in **Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation**, reported, inter alia, in **(2018) 16 SCC 299**. The order has no application to the facts and circumstances of this case because said initial interim order dated 5th October, 2007 was made in the COPET, as limited by time. It was subsequently extended from time to time and but lapsed on 20th April, 2018.

10. The application is found to be without merit and it is dismissed. The interim order is vacated.

(Arindam Sinha)
Judge

(S. K. Mishra)
Judge

Signature Not Verified

Prasant
Digitally Signed
Signed by: PRASANT KUMAR SAHOO
Reason: Authentication
Location: OHC
Date: 25-Sep-2023 18:03:01