IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.248 of 2019

In

Civil Writ Jurisdiction Case No.4187 of 2008

==

1. M/S K.K. Glass factory Pvt. Ltd. through Managing Director,Virendra Kumar Singh, S/O- Late Jagarnath Singh,Resident of Vilage Kuerpur, P.O., P.S. Pipra Kothi, District- East Champaran.
2. Virendra Kumar Singh s/o- Late Jagarnath Singh, Resident of Vilage Kuerpur, P.O., P.S. Pipra Kothi, District- East Champa East Champaran

... ... Appellant/s

Versus

1. The Bihar State Financial Corporation Having its office at Mazeherul Haque path(Frazer Road), Patna Represented through its Managing Director, B.S.F.C., Mazeherul Haque Path(Fraser Road), Patna
2. The Managing Director B.S.F.C.-Cum- Specified Authority under Section 32 G, of S.F.C.S.. Act, Mazeherul Haque Path(Fraser Road), Patna
3. The Branch Manager Bihar State Financial Corporation, Branch Office-1st lane Agrawa, Mothihari, East Champaran
4. The State Bank of India having its central office at Madankama Road, Nariman Point, Mumbai Represented through its Branch Manager, State Bank of India, Bara Chakia Branch, P.o,p.s-Chakia, East Champaran
5. The Debt Recovery Tribunal , Bihar, Patna Having its office at east boring canal road,Patna Represented through its Recovery Officer, Debt Recovery Tribunal, Bihar, Patna
6. The District Magistrate-cum- Collector, East Champaran, Motihari
7. The Certificate Officer, Motihari, East Champaran
8. The State of Bihar

9(A) Rajeev Ranjan

9(B) Sanjeev Ranjan

Both are sons of Late Chandrashekhar Dwivedi (Respondent No.9) R/o- Chandrasheel Bhawan, Banarpur, Airport, P.O-and P.S- Motihari, East Champaran

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Ms. Namrata Mishra, Adv.
		Mr. Apurva Kumar, Adv.
		Mr. Santosh Bharti, Adv.
For the State	:	Mr.Rohitabh Das, AC to AAG-13
For the Corporation	:	Mr. Raj Nandan Prasad, Adv.

==

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR

WEB COPY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 29-03-2023

Heard Ms. Namrata Mishra, learned advocate for the appellants assisted by Mr. Apurva Kumar and Mr. Santosh Bharti, learned advocates, Mr. Raj Nandan Prasad for the respondent B.S.F.C and Mr. Rohitabh Das for the State.

The appellants have challenged the Judgment dated 15.01.2019 passed by learned Single Judge of this Court in CWJC NO. 4187 of 2008 whereby the claim of the appellants that the valuation of the mortgaged property was done in the hasty manner and that it was undervalued was not accepted and the writ petition preferred by the appellants was dismissed.

It appears from the records that the appellants had obtained a loan under two accounts but not the whole of the loan amount was availed of by the appellants. For failure of the appellants to pay back the loan, a proceeding was initiated and the mortgaged

WEB COPY

property was taken-over by the Bihar State Financial Corporation.

Though the appellants had preferred a writ petition challenging the entire process of assumption of the property by the Bihar State Financial Corporation and its sale to respondent no.9, but, the writ petition was contested only on the issue of undervaluation of the mortgaged assets.

It was the contention of the appellants before the Writ Court that the sale of the mortgaged assets was effected at an abysmally low price if compared with the minimum value of the land in question in terms of Bihar Stamp (Prevention of Under Valuation Instruments) Rules, 1995 and amendments to this Rule in 2006. The total area of the land mortgaged with the Corporation was 150 decimals which roughly approximated to One Bigha and three Kathas and the same has been sold at 76.50 Lakhs. The regular market price of such property at the time of sale, according to the appellants, could not

WEB COPY

have been lesser than two crores. No inventory was prepared and without going through the valuation of the land determined by the District Administration, the sale was effected.

The Branch Manager of the Corporation, it was brought to the notice of the Writ Court, had also instituted a false and scandalous case against the appellants with respect to removal of the mortgaged assets on 03.02.2011 and a case vide Piprakothi P.S. Case No. 26 of 2011 had been registered against them. However, on investigation, the case was found to be false and the report of the police was accepted by the concerned Chief Judicial Magistrate.

The learned Single Judge, on going through the records of this case, found that the entire proceeding of Case No. 63 of 2002 was not amenable to challenge in view of Section 32 (G) of the B.S.F.C Act, 1951. The mortgaged property was taken-over on 26.03.1995 and thereafter the same was advertised in the same year.

WEB COPY

However, such advertisement attracted no customer/purchaser and a second advertisement had to be issued in the year 2007.

The learned Single Judge concluded from the records that there has not been any challenge to the second advertisement. Ultimately, one of the offerers (respondent no.9) came forward and offered an amount of Rs. 76.50 lakhs on which the sale was effected. The learned Single Judge also noted that there were not a single offerers/purchasers for the last 15 years and the price obtained for the mortgaged property was also not undervalued.

We have noted the findings of the learned Single Judge that the mortgaged assets of the appellants was evaluated by B.L.V.T. at Rs. 66.76 Lakhs. It was again evaluated by an external valuer M/s Mulyankan at Rs.67.11 Lakhs. The third evaluation was at Rs.76 Lakhs. The offer of respondent no.9 of Rs.76 Lakhs therefore was accepted but, before that, in order to find

WEB COPY

a better offer, it was again advertised in a daily newspaper "*Hindustan*" in 2010, attracting no fresh offer. It was only thereafter that sale order was issued vide Memo dated 22.09.2010.

An offer was given to the appellants to retain the assets on matching terms and conditions of the sale order, which offer was never utilized by the appellants. On the other hand, respondent no.9 made payment of 25% of the consideration amount and executed the sale as well as agreement for payment of balance loan amount. It was thereafter that the mortgaged assets were handed over to the purchaser in the month of April 2011 in which one of the representatives of the appellants was a witness.

Ms. Namrata Mishra, learned advocate for the appellants, has submitted that the process of attracting offerer was to tender an advertisement in the age of digitization. In fact, there should have been e-tender for attracting better price. While advancing arguments

WEB COPY

regarding under valuation of the property, it was urged by Ms. Mishra that the valuation report was not brought on record and that after 1995, when the first advertisement was issued, the other advertisement was issued only in 2007 without any explicable reason. No measures were adopted by the Bank for really attracting good offers and they slept over the matter purposely.

Both the arguments have been noted only to be rejected for the reason that there are two valuation reports which have never been questioned and that the process for attracting offers also was undertaken by the bank. The bank would have otherwise not benefited by keeping the mortgaged property with it.

We fail to understand as to how, when the appellants have lost all chances to redeem the mortgaged assets, would question the correctness of the valuation of the property in question. Otherwise also, the allegation of the property having been sold on extreme undervaluation appears *prima facie* to be incorrect.

WEB COPY

We do not find any good reason to interfere with the judgment and order of the learned Single Judge and perforce, we dismiss this appeal but without any order as to costs.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2023
Transmission Date	

WEB COPY