

Bihar State Financial Corporation Through Its Managing Director

v.

S Nagina Singh

(Supreme Court Of India)

Civil Appeal No. 65 Of 1990 | 09-01-1990

(1) Special leave is granted.

(2) This appeal is directed against the judgment of the Patna High court allowing the Writ petition C. W. J. C. No-2964 of 1989 filed by the respondents.

(3) The appellant Corporation advanced a loan to the respondents against a mortgage in respect of the properties which are the subject-matter of the present dispute. In view of the order we are proposing to pass, it is not necessary to give all the facts leading to the present appeal and it will be sufficient to state that according to the case of the appellant-corporation, there was default in payment of the loan which entitled it to take steps under s. 29 of the Bihar State Financial Corporation Act, 1951. Accordingly a notice dated 21/2/1989 was issued under the said S. and a further notice dated 73. 1989 was published inviting tenders in respect of the proposed sale of the mortgaged assets. The notices were challenged by the debtor-respondents before the High court by the aforesaid writ petition which was allowed by the impugned judgment.

(4) According, to the case of the respondents, Nagina Singh, respondent No. 1, is the sole owner of the mortgage properties as well as of the small scale industry for the benefit of which the loan had been taken. The second respondent is his son. Before the High court the respondents offered to pay the entire dues if they were permitted to sell portion of the mortgaged properties. The High court permitted them to sell certain lands on the condition that they paid a sum of Rs. 2,00,000. 00 to the Corporation within a week of the order which was actually paid. The appellant Corporation has challenged the judgment before this court on several grounds. After the case was heard for sometime, it was indicated by the learned counsel for the parties that the entire

dispute might be amicably settled if the case was adjourned and the respondents were permitted to negotiate with intending purchasers for the sale of the disputed property. We, therefore, adjourned the case for 8 weeks on 25. 9. 1989 after passing an interim order. The case was later heard on 18/12/1989 when it was stated by the learned counsel for the respondents that a proposed transaction of sale with respect to a portion of the property in question had been approved by the appellant Corporation in accordance with the interim order and that the entire dues of the Corporation would be paid off if the case was further adjourned till after the Christmas holidays. Learned counsel for the parties. also mentioned certain details in that regard. The case was, therefore, again adjourned for the 8th of January, 1990. When the case was taken up yesterday for further hearing, it was stated that according to the agreement between the parties a sum of Rs. 12,61,000. 00 would be paid to the Corporation through its learned counsel in court and thereupon the mortgaged property would be released for being sold. Mr. A. K. Sen the learned counsel for the Corporation, however stated that the total dues of the Corporation exceeded the aforesaid amount by several lakhs; on the other hand. Dr. L. M. Singhvi, the learned counsel appearing for the respondents, asserted that the Corporation was not entitled even to realise Rs. 12,61,000. 00. According to the respondents' case, on a proper accounting the sum payable to the Corporation was a smaller amount. Mr. Sen further contended that initially the respondents were required to pay interest only at 8%, but in view of the undue delay in making the payment they I are liable to pay higher rate of interest for a period of about 10 years. We do not propose to decide this dispute at this stage. It was suggested by the learned counsel for the parties, that the aforesaid controversy may be left for decision by the High court and the present appeal be allowed permitting the respondents to pay to the learned counsel for the Corporation the said amount of Rs. 12,61,000. 00 and allowing the respondents to file a bank guarantee in the High court for an additional sum of Rs. 3,00,000. 00 to be handed over to the appellant Corporation for realisation of any additional amount found by the High court to be payable by the respondents to the appellant on account of the controversy mentioned above; and on such payment being made and the bank guarantee filed, the respondents be allowed to deal with the hypothecated properties in any manner they like. We think the joint suggestion is reasonable.

(5) With our permission the learned counsel for the respondents handed over a sum of Rs. 12,61,000. 00 in the form of 33 bank drafts to Sri M. P. Jha, the learned counsel for the appellant Corporation in court. We further permit the respondents to file a bank guarantee for a sum of Rs. 3,00,000. 00 in the Patna

High court within a period of one month from today to cover any additional amount which, according to the High court, may be payable by the respondents to the Corporation over and above the aforesaid amount of Rs. 12,61,000. 00. Within a period of one week of the filing of the bank guarantee the Corporation shall return to the respondents the title deeds of the hypothecated properties so that they may be able to deal with them in any manner they wish to.

(6) The question as to what is the exact amount that the Corporation is entitled to realise from the respondents shall be decided by the High court after hearing the parties, and our judgment shall not be treated to have decided that issue. It will be open to the respondents to claim before the High court that the actual amount is even less than Rs. 12,61,000. 00, which has already been paid. The present arrangement is without prejudice to the rights of the parties which will be finally decided by the High court.

(7) Dr. Singhvi suggested that the respondents should be permitted to negotiate and sell at least some of the properties in question immediately that is even before the bank guarantee for Rs. 3,00,000. 00 is filed in the High court. After considering all the circumstances, we permit the respondents to deal with the plot nos - 424, 432 and 455, mentioned in the impugned judgment of the High court, without waiting for the filing of the bank guarantee.

(8) The appeal is disposed of in the above terms.

(9)The impugned judgment of the High court is set aside and the case is remitted to it for fresh decision in accordance with the observations made above.

(10) There will be no order as to costs.