

Orissa State Financial Corporation and Another

Vs

Hotel Jogendra

Civil Appeal No. 7740 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

18.04.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. This appeal by special leave arises from the order of the Division Bench of the High Court of Orissa dated 5-3-1990 made in OJC No. 500 of 1990. Admittedly, the respondent had taken a loan of a principal sum of Rs. 14.68 lakhs for construction of the hotel which was payable in 18 yearly instalments between 10-7-1984 and 10-1-1993. The respondent committed default in payment of the loan as contracted. Pursuant to the request, a rephasing was done in November 1989 directing them to pay the amount in 9 half-yearly instalments starting from January 1993 to January 1997 with interest on arrears defaulted amounting to Rs. 10.64 lakhs which was to be paid according to the schedule mentioned below :

#March 1989 Rs. 1.30 lakhs March 1990 Rs. 2.00 lakhs March 1991 Rs. 2.84 lakhs March 1992 Rs. 3.00 lakhs March 1993 Rs. 1.50 lakhs##

4. In addition, current interest was also to be paid with half-yearly rests. Since the respondent Hotel did not comply with the conditions, notice was given to it under Section 30 of the State Financial Corporations Act, 1951 on 1-2-1990. Calling that notice in question, the respondent filed the above writ petition in the High Court. The High Court has directed the respondent to calculate the entire loan amount with interest including the additional loan sanctioned to treat the said amount as principal for the purpose of rephasing of the same for repayment with interest.

5. It would appear that subsequently action was taken by the appellant, but the respondent seems to have not complied with the directions. Accordingly, notice was issued under Section 29. The respondent instead of complying with the same, approached the High Court by Miscellaneous Case No. 1677 of 1990 which was disposed of by the High Court on 9-4-1991 directing the respondent to be personally present with the appellants on 13-4-1991 for consideration of the rephasing of the proposal as ordered in the impugned judgment. It would appear that the respondent again did not appear before the authorities on 13-4-1991. The first appellant was, therefore, free to exercise its statutory powers under Section 29 in terms of the order passed by the High Court as order in the miscellaneous case on 13-4-1991 requesting seven days' time for submitting the proposal he sent a letter on the last date. Even thereafter, the respondent did not submit any proposal to rephase the amount payable as per the provisions contained in Section 29 of the Act.

6. Therefore, the Corporation again issued a letter on 8-5-1991 stating that since the respondent had not furnished the rephasing proposal as per the orders of the High Court, the appellant was free to take action as per law. Calling that order in question again, the respondent had filed OJC No. 2747 of 1991 seeking further directions to rephase the loan. The High Court by interim order dated 5-6-1991 directed the appellant not to take any coercive action against the respondent, but ultimately the writ petition came to be dismissed on 25-1-1994 with the following holding :

"The present dues of the Corporation are around Rs. 32,24,753.00. From the facts, it appears that the petitioner has become a persistent defaulter and the Corporation is only taking steps available to it under the Act to recover the loan. On facts, we do not consider it to be a fit case for our interference. The writ petition hence is dismissed."

7. Thereafter, the appellants had issued notice on 17-2-1994 calling upon the respondent to pay the entire amount due as on 31-1-1994 amounting to Rs. 35,32,058.43 by 28-2-1994. Instead of making payment, the respondent again went to the civil court and filed Title Suit No. 88 of 1994 in the Court of Civil Judge, Senior Division, Cuttack and obtained status quo order in Miscellaneous Case No. 115 of 1994 on 28-2-1994.

8. It would, thus, be seen that the respondent is only interested in delaying the repayment of the dues and has abused the process of the court taking indulgence of the court's direction. Under these circumstances, we find that no indulgence would be shown to such a recalcitrant defaulter in repayment of the loan. Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. Court would protect only honest and sincere litigants.

9. The appeal is accordingly allowed with exemplary costs of Rs. 10,000. The Corporation is at liberty to take action against the respondent as required under Section 29 of the Act, irrespective of the orders passed by any court.