Anurag Sharma Vs Haryana Financial Corporation and Another

Civil Writ Petition No. 1715 of 2000 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 13, 2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10#State Financial Corporations Act, 1951 â€" Section 29

Citation: (2003) 1 BC 320 : (2003) 1 ILR (P&H) 287 : (2003) 1 RCR(Civil) 451

Hon'ble Judges: J.S. Narang, J

Bench: Single Bench

Advocate: Pardeep Bhandari and J.K. Sibal and Kumar Sethi, in C.M, for the Appellant; Kamal Shegal and Ramesh Sharma, for the Respondent

Final Decision: Dismissed

Judgement

J.S. Narang, J.
This judgment would dispose of CWP No. 1715 of 2000 and CWP No. 12115 of 2001, as the facts stated in both the

petitions are somewhat similar and that the relief claimed is dependent upon ascertainment and decision upon the facts averred and claimed in the

petitions. However, the facts are being taken from C.W.P. No.1715 of 2000.

2. A company under the name and style of M/s Salwan Packages Private Limited, is stated to have been floated for setting up a unit for

manufacturing of trays for the purpose of holding eggs and apples. The unit was set up at Garhi, Tehsil Naraingarh Distt. Ambala (now District

Panchkula, Haryana). The company took loan of Rs.26.94 lacs and for the safeguard of the return of the loan a mortgage deed dated June 27,

1998 had been executed by the petitioner. It is admitted by the respondent-Haryana Financial Corporation (hereinafter referred to as ""HFC"") that

after the disbursement of the loan, only Rs.8.10 lacs has been repaid by the petitioner. The petitioner had not been regular in the repayment of the

instalments and has, therefore, become a chronic defaulter and that in fact committed default in repayment of the first instalment. The re-payment

schedule was not adhered to despite the re-schdulement in respect of re-payment of the loan granted by the HFC.

3. Since the petitioner became a chronic defaulter, proceedings were initiated under the provisions of State Financial Corporation Act and

resultantly in pursuant to section 29 of the Act, the management and possession of the unit was taken over on 3.9.1997. The HFC made efforts in

the first instance for auctioning the unit and that a letter dated 24.2.1998 was sent to the petitioner with categoric direction that he should appear

before the HFC on March 6, 1998. The petitioner offered that he can get a customer for purchasing the unit for a sum of Rs.35 lacs. Despite the

opportunity granted, the petitioner was not able to bring any customer for purchasing the unit. In fact, an offer was received for Rs.26 lacs from

one Shri Sarabjit Kumar who had addressed a communication dated 11.3.1988. He was advised to deposit the balance amount as per terms of

the sale. In the first instance a cheque of Rs.1.35 lacs was deposited as earnest money. However, the said cheque was dishonoured and that the

said alleged auction purchaser did not show up thereafter. Thus, the unit along with collateral security was again advertised for sale by inviting

tenders for November 17, 1998 and {hat the petitioner was in- formed vide letter dated November 27, 1998. No response was received. Re-

advertisement was made and the petitioner was again informed on May 6, 1999. However, on 7.6.1999, MFC received an offer of Rs.10.5 lacs

from one Shri Vikram Singla along with pay order of Rs.1.05 lacs. The re-advertisement was made and in pursuant thereto some of the bidders sat

across the table for negotiations. The company was represented through Shri Anurag Sharma who was present at that time. The borrower was

also advised to locate better buyer if possible and that if he failed to do so the MFC shall dispose of the property at the best available price. It may

be noticed that the offer of Rs.10.05 lacs was rejected. Subsequently, during negotiations, the highest offer of Rs. 15.30 lacs was made by one

Shri Het Ram against the assessed value of both the primary security and collateral security amount to Rs. 10.50 lacs. The offer was accepted and

that the balance amount was agreed to be received by way of ""deferred payment"". However, the petitioner had been given again an opportunity to

locate a better buyer and that the offer should be at least 10% over and above the offer initiated by HFC. Despite the opportunity granted, the

petitioner did not bring any buyer within the stipulated period instead the present petition has been filed.

4. The petitioner has placed reliance upon the dicta of the apex court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and

others, . It has been averred that no adequate opportunity had been granted to the petitioner despite the fact that it had been offered that a buyer

of the value of Rs.35 lacs shall be brought by the petitioner and that in this regard he should be allowed to make requisite advertisement in the

news-papers. No adequate opportunity had been given and that the unit has been sold at a throwaway price and that the value of the unit is much

higher as the sophisticated machinery has been installed. It is also averred that in fact the unit has been sold for a sum of Rs.26 lacs and now it is

sought to be sold at Rs.15.30 lacs. It is obvious that no serious effort has been made for selling the unit at appropriate price. Since the petitioner is

a guarantor, the effort was being made that the property should not be sold at a low price of Rs.15.30 lacs especially when an offer has been

received earlier for Rs.26 lacs. However, the petitioner has not been able to show from any document that he had been able to arrange or bring a

customer over and above the value for which the offer had been received by the HFC. The petition has been filed with a purpose and object to

stall the proceedings of the HFC. A very heavy reliance has been placed upon the judgment of the apex Court in Mahesh Chandra''s case (supra).

It shall be apposite to notice that the heading of the petition starts with the dicta of Mahesh Chandra''s case and it ends with the reference made to

Mahesh Chandra''s case.

5. On the other hand, learned counsel for HFC has brought to my notice a judgment rendered by the apex Court in Re: Haryana Financial

Corporation and another v. Jagdamba Oil Mills and Anr.2 Civil Appeal No.607 of 2002 decided on 28.01.2002. The Hon''ble Supreme Court

has categorically overruled the dicta of Mahesh Chandra''s case. In this regard, it shall be apposite to notice the observations made by the apex

Court which read as under:-

18. The subsequent decisions of this Court in Gem Cap''s (supra), Naini Oxygen (supra) and Micro Cast Rubber (supra) run counter to the view

expressed in Mahesh Chandra''s case. In our opinion, the issuance of the said guidelines in Mahesh Chandra''s case are contrary to the letter and

the intent of Section 29. In our view, the said observations in Mahesh Chandra''s case do not lay down the correct law and the said decision is

overruled.

6. Thus, in view of the judgment of the apex Court in re: Jagdamba Oil Mills case (supra), nothing survives so far as the petitioner is concerned. He

has made a miserable effort to scuttle the offer received by the HFC. It shall be apposite to notice that 25% of the amount had been received by

the corporation on 29.12.1999, and that the balance amount on 27.12.2000. The possession of the unit had been delivered immediately on receipt

of 25% of the amount of the bid money i.e. on 3.9.1997, Mr. Kamal Sehgal, Advocate, appearing on behalf of HFC has very fairly, stated that the

balance amount had been received on 27.12.2000 but due to the order dated 9.11.2000, passed by this Court, the sale deed could not be

executed in favour of the auction purchaser. In the first instance, the interim order had been granted vide order dated 9.2.2000, which reads as

under:-

Notice of motion for 9.3.2000.

Notice re: stay.

In the meantime, confirmation of sale is stayed only for month.

Dasti on payment of usual charges.

7. Subsequently, the HFC informed this Court that the interim order had lapsed on April 6, 2000, therefore, the sale had been confirmed in favour

of the highest bidder for Rs. 15.30 lacs and that the possession has also been handed over to the auction purchaser. Resultantly an order dated

November 9, 2000 was passed by the Division Bench that the sale deed if not already executed shall not be executed till further orders. The order

dated November 9, 2000 reads as under :-

Counsel for the respondent informs us that since the stay order granted by this Court lapsed on 6.4.2000, the Corporation has confirmed the

highest bid of Rs. 15.30 lacs in favour of one Met Ram. Even the possession is stated to have been handed over to the auction purchaser.

In view of the statement made by the counsel for the respondent, we direct that the sale deed, if not already executed, shall not be executed till

further orders. Civil Misc. stands disposed of as above.

8. The petition was admitted vide order dated March 19, 2001.

9. The Corporation has returned 75% of the bid money received recently and that the schedule provided for accepting deffered payment has been

adhered to and the amount due and payable on the date of return of the money has been deducted accordingly along with interest.

10. C.M. No.24206 of 2001, has been filed by one Shri Rajinder Parshad Aggarwal for being impleaded as respondent. The plea taken in the

applications that some amount had been advanced to the auction purchaser i.e. Shri Met Ram and Shri Amrish Bhagat for the purchase of the unit

along with the collateral security given by way of mortgaging the land in favour of HFC. It is averred that a sum of Rs. 11.85 lacs was advanced in

pursuant to an agreement executed between the parties and that the said money was paid directly by way of cheque drawn in favour of HFC. It is

averred that the cheque was issued by the applicant.

11. Mr. J.K. Sibal, Senior Advocate, learned counsel appearing on behalf of the applicant has contended that the amount which has been

advanced by the applicant to the auction purchaser had been advanced on the premises that the sale deed shall be executed and that the collateral

security rendered by way of mortgaging the land in favour of the HFC would be sold and that his money would be returned with interest. It is

further argued that the HFC knew that an interim order has been passed by this Court on 9.2.2000 but despite this the total money has been

received by the HFC and that the facts have been misstated by a public organisation. The Government organizations are not expected to mislead

anyone much less when the disclosures are made in the Court. It has been further argued that the interest of the applicant gets automatically

evolved on account of the amount having been paid by the applicant to the Corporation, which fact stands corroborated from the cheques which

have been encashed and that the agreement which had been executed by the applicant with the auction purchaser.

12. I am afraid this argument is not sustainable. The third party interest has not been brought into the right of the auction purchaser as HFC was

never a party to the said agreement. It is their internal arrangement that some amount has been advanced by the applicant to the auction purchaser

and that he is obligated to repay the same with interest or any other arrangement. The HFC was not made aware of the fact as to form where the

money has come. Admittedly, the money was handed over by the auction puncher to the HFC. The fact that the possession of the unit along with

collateral security was delivered to the auction purchaser after 6.4.2000 and before 9.11.2002 and that after taking the possession, the auction

purchaser was well within his rights to restart the unit. Admittedly, it has been noticed by the motion Bench that the interim order granted by the

motion Bench had lapsed on 6.4.2000. Resultantly, the HFC had correctly accepted the bid and had received 25% of the bid money while

delivering the possession of the property in question and that the balance amount was also received. The motion Bench injuncted the HFC from

executing the sale deed which admittedly has not been executed till date. However, the HFC was not expected to return any portion of the 75%

payment of the balance amount and that out of its own wisdom the amount has been returned after deducting the instalment spelt out by way of

deferred payment due and payable along with interest. HFC is not justified in retracing its steps and making the auction purchaser to adhere to the

payment by way of deferred payment in pursuant to the option available with the auction purchaser. The auction purchaser had definitely exercised

his right by way of depositing the 75% of the bid money in one go so that he does not suffer the rigour of interest as has been spelt out by the HFC

in terms of the agreement under which the sale has taken place. HFC is not justified in acting unilaterally and the manner in which it has acted. It

shall be appropriate that the HFC may receive back the amount refunded to the auction purchaser, as full and final payment which has been paid in

pursuant to the agreement of sale making it equivalent to Rs. 15.30 lacs.

13. In view of the judgment of the apex Court in Jagdamba Oil Mills case (supra), the petition does not survive. Therefore, the same deserves to

be dismissed. The petitioner has not been able to show his bona fides so far as the acceptance of the bid money is concerned. Even in Court, he

has not been able to bring higher offer but the only argument has been that the time should be given to him for bringing the higher offer. I am afraid

this argument is not at all sustainable. From the perusal of the pleadings of the parties, it is clearly discernible that ample and enough opportunity

had been granted to the petitioner for bringing a purchaser with higher bid money but despite the opportunity granted the petitioner failed to bring

any such purchaser. I do not find any infirmity in the procedure and process followed by HFC in selling the unit. In view of the above, this petition

is without merit and the same is dismissed with no order as to costs.

14. So far as application filed by the applicant under Order 1 rule 10 C.P.C. is concerned, he has not been able to justify his locus standi to be

impleaded as respondent because he has never ever been a party to the bid or had ever been accepted as a person with any right whatsoever in

respect of the demised property. Resultantly, I find no merit in that application and the same is dismissed.

15. So far as CWP No. 12115 of 2001 (Het Ram Chauhan v. State of Haryana and Ors.), is concerned, the facts which have been referred here

above are commonly involved in this petition as well. The petitioner in the above petition is the auction purchaser. Admittedly, he had taken

possession of the demised property. So far as receipt of the balance amount is concerned, no infirmity can be found in view of the order dated

9.2.2000, referred to above, wherein it has been categorically admitted that the interim order dated 9.11.2000 lapsed on 6.4.2000, which was to

the knowledge of the petitioner and everyone. However, by virtue of the aforesaid order dated 9.11.2000, the execution of the sale deed had been

deferred but this did not jeopardise the right of the petitioner in restarting the unit. It has been argued by the learned counsel for the petitioner that

he was not apprised of the liabilities upon the unit and that when he had sought reconnection of the electricity connection the board had required

the petitioner to deposit the previous liability which is approximately Rs.2,00,000/-. It has also been argued that the corporation was not justified in

returning the balance of 75% after deduction of the amount in accordance with the schedule for ""deferred payment"" and also by deducting interest

thereon. The petitioner had categorically exercised his option for paying 75% of the balance amount in lump sum and that thereby he saved himself

from the rigour of interest liable to be charged if the payment had been agreed to be paid byway of adopting the method of ""deferred payment"". It

has been further argued that so far as the other liabilities such as excise etc. none had been disclosed by the HFC. Therefore, the same were

deducible from the bid money.

16. On the other hand, the learned counsel for HFC has categorically pointed out the publication made by the HFC in the news paper dated

13.12.1999 Annex, P4/A, in CWP No. 1715 of 2000 wherein it has been categorically spelt out that the unit along with collateral security is being

auctioned on ""as is where is basis"". The said information reads as under:-

14 MONDAY, DECEMBER 13, 1999 HARYANA FINANCIAL

CORPORATION SCO 17-19, SECTOR 17-A, Chandigarh. T. 702755-57, Fax

0172-702666 CLOSED/SICK UNITS FOR SALE

Sr. No. Name of Land area with Line of Re. Price

the concern Bldg. & Mach. manufacture. Rs. in lacs)

DISTT. PANCHKULA (SCF 72, 1ST FLOOR SECTOR 6, PANCHKULA

PHONE NO. 0172-562442-571683

43. XXX XXX XXX XXX

44. Salwan 12K 9M Engg/Apple 5.25 tray

Packages

Pvt. Ltd.

Vill. Garhi

Distt.

Panchkula.

45. -do- Vill Garhi 57K 8M Collateral Security TERMS AND CONDITIONS

FOR THE SALE OF PROPERTY:

1. XXX XXX XXX XXX

2. XXX XXX XXX XXX

3. Terms of Payment

XXX XXX XXX

4. The properties mortgaged to the corporation are offered for sale on ""As is where is basis"". The tenderer/bidder may quote separately for I) land

and building, ii) Plant and Machinery also. In case of poultry units offer can be given only for purchase of birds only but preference wilt be given to

the tenderer/bidder who opts for the purchase of compact unit. The offers for purchaser of machinery/birds alone shall be considered subject to

payment of balance amount within 30 days from the date of acceptance of offer by the corporation.

5. XXX XXXX XXXX XXX"".

17. Thus, it was absolutely made clear that whatever the status, whatever the situation is, has to be adhered to by the auction purchaser. The HFC

had not concealed anything. It was incumbent upon the auction purchaser to have found out as to what are the other liabilities upon the unit and

that in fact he did not take a wrong decision while making this offer because he was aware of the fact that the unit is being sold on ""as is where is

basis"".

18. After hearing the learned counsel for the parties, I am of the view that the Corporation has given substantial information so far as the unit is

concerned and so also so far as the collateral security is concerned. The bid has been given by the auction purchaser consciously and

conscientiously as he was aware of the status relating to the unit. However, the corporation was admittedly not justified in returning any portion of

the money after having received the balance 75% as the option has been exercised by the auction purchaser and resultantly he had deposited the

total bid money which had been duly received by the MFC. The HFC is not entitled to re-write the acceptance of the offer defining it to be

deferred payment"". Resultantly, the HFC is directed to receive back the balance amount which has been returned to the auction purchaser and

resultantly, execute the sale deed in favour of the apiarian purchaser in accordance with the provisions of law and at best within a period of Three

months from today. On all other counts, the petition fails and the same is dismissed subject to the observations indicated above.