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Export Metals Vs U.P. Financial Corporation

None

Court: Allahabad High Court

Date of Decision: Oct. 9, 2006

Acts Referred:
State Financial Corporations Act, 1951 â€" Section 29

Citation: (2006) 10 ADJ 682 : (2007) 1 AWC 969

Hon'ble Judges: Shishir Kumar, J; R.P. Misra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

R.P. Misra and Shishir Kumar, JJ.
The present writ petition has been filed for issuing a writ of certiorari quashing the proceeding for sale

of the factory M/S Export Metals, Aligarh as mentioned in the advertisement published in Hindi ""Dainik Jagaran"" dated 29.9.2006. Further prayer

is for issuing a writ of mandamus directing the respondents not to take any step for the sale of the factory of the petitioner.

2. The facts arising out of the writ petition are that the petitioner was granted loan by the respondents in the year 1984. The petitioner has stated in

the writ petition that the earlier writ petition filed by the petitioner (No. 41164 of 2000) was listed for hearing on 4.9.2006 and as the counsel for

the petitioner i.e. Sri V.K. Barman had no information, as such the matter was decided finally by this Court dismissing the writ petition on the

ground that as the petitioner is availing the alternative remedy by way of filing a suit, therefore, the writ petition is hereby dismissed. It has further

been stated that Suit No. 212 of 1988 pending before the Civil Judge was dismissed for default on 30.3.1992. The application for restoration is

pending. In the mean time the Financial Corporation took the possession of the factory. The restoration application was allowed in the year 1995

on payment of Rs. 50,000/- as costs. At the time of taking possession of the factory, an inventory of machines had been prepared and after

restoration of the suit, the possession was handed over to the petitioner but the machineries were not handed over to the petitioner. The

machineries were assessed to the tune worth Rs. 9 lacs. It has further been mentioned that Suit No. 246 of 2003, Mukesh Kumar and Ors. v.

U.P. Financial Corporation has also been dismissed for default on 14.1.2004. Suit No. 246 of 2003 was in respect of some land only and not

relating to factory about M/S Export Metals. It has also been stated that in the absence of the counsel who had filed the writ petition and due to the

incomplete instructions on the date, the writ petition was dismissed. Now the respondents have made an advertisement in the newspaper ""Dainik

Jagaran"" on 29.9.2006 for sale of the factory of the petitioner. As such the petitioner has approached this Court.

3. It has been submitted by Sri V.K. Barman, Senior Advocate that as he has filed the writ petition, therefore, without permission, another counsel

cannot be engaged and cannot argue the matter and there was no permission by the counsel who had argued the matter. Under such circumstances

the petitioner submits that as he has already deposited Rs. 1 lac, he may be permitted to make an application to the respondents for one time

settlement and till the settlement is arrived, the factory of the petitioner may not be sold in auction.

4. On the other hand, Sri Atiq Ahamad Khan who appears for respondent U.P. Financial Corporation has submitted that the present case has a

long history and admittedly the petitioner had taken a loan of Rs. 10 lacs from the U.P. Financial Corporation, which was sanctioned in favour of

the petitioner on 7.5.1984. A sum of Rs. 9,71,6000/- was paid to the petitioner in the year 1984. The petitioner defaulted in repayment of the

aforesaid loan. In spite of the repeated requests and reminders, no payment was made. Then the Corporation decided to proceed u/s 29 of the

State Financial Corporation Act. A notice to that effect was given in the month of January 1988 to the petitioner. The petitioner filed suit on

18.3.1988 as Suit No. 212 of 1988 in the Court of Civil Judge, Aligarh for the following reliefs:

(A) That by means of a permanent injunction the defendants No. 1 and its employees including defendants No. 2, 3 and 4 be restrained from

taking over physical possession over the factory building of the plaintiff situated in Mukundpur, Pargana and Tehsil Koil, Aligarh from taking over

any action for the transfer of the assets of the Unit mortgaged with the defendant No. 1 in any manner, whatsoever with a direction that the

recovery of the money be made from the future earning of the fixed assets.

(B) Any the relief to which the plaintiff may be found entitled may also be given.

(C) Cost of the suit be also awarded to the plaintiff from the defendants.

5. An injunction application was filed and the same was granted in favour of the petitioner. The written statement was filed taking a plea that the

suit is barred under the provisions of the State Financial Corporation Act, U.P. Public Money Recovery of Dues Act and U.P. Zamindari Abolition

and Land Reforms Act. The petitioner permitted the suit to be dismissed in default on 15.1.1992. After the dismissal of the suit, the Corporation

on 31.1.1992 took the possession of the unit. An application for restoration was filed and the said application was allowed on 27.5.1994 and in

compliance with the order passed by the trial court; the unit was handed over to the petitioner on 1.6.1994. Then the petitioner filed an application,

which was numbered as Application No. 90 Ga. The trial court allowed the said application on 13.1.1995 and following directions were given to

the respondent - Corporation:

(i) The defendant should return the entire goods to the plaintiff within 20 days, which they have taken at the time of taking possession.

(ii) In case of not returning the goods the defendant should pay Rs. 9 lacs within 20 days being the value of the goods returned short to the plaintiff.

(iii) In case the defendant may not pay the aforesaid amount to the plaintiff the defendant are directed to adjust the aforesaid amount of Rs. 9 lacs

in the loan account of the plaintiff.

(iv) The defendant should also sanction a new loan of theaforesaid amount of Rs. 9 lacs to the plaintiff so that they may run their factory.

Aggrieved by the aforesaid order and directions the Corporation filed Civil Revision No. 381 of 1995. The revision was allowed and the order

passed by the trial court dated 31.5.1995 was set aside- vide its judgment and order dated 24.9.97 and the court below was directed to decide

first Issue No. 6. A SLP No. 1844 of 1998 was filed against the order-dated 24.9.1997. The said special leave to appeal was dismissed by the

Apex Court by order-dated 9.2.1998. On the basis of the order of this Court dated 24.9.1997 the trial court had passed an order in Suit No. 212

of 1998 that the suit is barred by Section 3(3) of the U.P. Public Money Recovery of Dues Act and Issue No. 6 was decided in favour of the

Corporation. A review application was filed and the same was also dismissed. After the aforesaid proceedings the Corporation published an

advertisement for sale of the unit on 7.9.2000 in the newspaper and the Corporation has also received an offer of Rs. 14,58,000/- for the

purchase of the unit of the petitioner. In compliance with the judgment passed in Mahesh Chandra''s case a notice was sent to the petitioner on

6.9.2000 calling upon the petitioner to purchase the unit for the said amount mentioned above or to arrange for a buyer who can purchase the said

unit for a higher price.

6. The petitioner instead of complying the aforesaid notice has filed Writ Petition No. 41164 of 2000 and has obtained an interim order restraining

the Corporation from selling the unit. The respondents have brought to the notice of the Court the amount Rs. 1,64,77,865.78 which was due

against the petitioner on 20.6.2004. The petitioner has paid only Rs. 95,825/-. The said amount has been adjusted in the interest amount from time

to time. As the petitioner has obtained an interim order in his favour, and the counter affidavit and rejoinder affidavit were exchanged and the

aforesaid writ petition was listed before this Court on several occasions, but it was adjourned several times on the request of the counsel for the

petitioner. The case was dismissed for default on 2.2.2006. Then on an application made by the petitioner, the same was restored on 2.3.2006.

On 9.3.2006 the case was passed over on the request made by the petitioner"s counsel. When the case was listed on 28.8.2006 Sri Bhupeshwar

Dayal Advocate has filed his Vakalatnama on behalf of the petitioner and has requested that the matter be listed in the next cause list and the

interim order was also directed to remain operative till the next date of listing. The case was taken up in the revised list on 4.9.2006 and Sri

Bhupeshwar Dayal, learned Counsel for the petitioner who has already filed his Vakalatnama was heard for the petitioner and Sri Atiq Ahamad

was heard for the respondent-Corporation. The writ petition was dismissed on the ground that the petitioner has already filed a suit in the year

1988 and obtained an injunction order in his favour. After dismissal of the suit as not maintainable when the notice u/s 29 of the U.P. Financial

Corporation Act was issued, the Writ Petition No. 41164 of 2000 was filed and the petitioner has obtained the interim order.

7. It is also clear from the record that on Mahesh Kumar who was one of the partners of the firm has filed Original suit No. 246 of2003, which is

still pending. The writ petition was dismissed on the ground that as the petitioner is availing alternative remedy, therefore, the writ petition was

dismissed.

8. The petitioner is not able to place anything before this Court that the petitioner at any point of time was ready to deposit or had paid the amount

of the loan taken by the petitioner. Admittedly the loan was taken in the year 1984. Now again when the notice for auction of the factory of the

petitioner has been published in the newspaper, the petitioner has again come to this Court with a prayer that the petitioner wants to settle the

matter as one time settlement.

9. Learned Counsel for the respondents submit that from 1984 up till date the petitioner either by way of filing the suit obtained temporary

injunction in his favour and after dismissal of the suit as not maintainable in the year 1998, when admittedly after issuance of the notice u/s 29 has

filed Writ petition before this Court and obtained an interim order. Admittedly from the conduct of the petitioner the petitioner has not shown any

intention to pay the amount. He always by any means avoided the payment. Now again when Writ Petition No. 41164 of 2000 was dismissed on

4.9.2006, the petitioner has filed the present writ petition, as such the present writ petition is liable to be dismissed as the petitioner is not

approaching this Court with clean hands, therefore, is not entitled for any relief and the writ petition is liable to be dismissed with heavy costs.

10. We have heard the learned Counsel Sri V.K. Barman on behalf of the petitioner and Sri Atiq Ahamad Khan for the respondent-Corporation

and perused the record. The allegations made in the writ petition and the argument of Sri Barman are that as he has filed the writ petition, therefore,

the subsequent counsel has got no right to appear on behalf of the petitioner and as he can not argue the petition, therefore, the order dated

4.9.2006 is not correct and cannot be taken into consideration. Admittedly Sri Bhupeshwar Dayal has filed his Vakalatnama on behalf of the

petitioner. The petitioner has authorized him to argue the case. It is the total prerogative of a client to engage any counsel at any stage. If Mr.

Barman has got any grievance regarding the engagement of Sri Bhupeshwar Dayal in view of the provisions of the Advocates Act and High Court

Rules, ""regarding taking of consent from the earlier counsel Mr. Barman can proceed by making such application before the authorities provided

under the rules. This Court cannot take into consideration the aforesaid submission made on behalf of the petitioner in the present writ petition.

11. The argument of Sri Barman that he has already deposited Rs. 1 lac and as such, the one-time settlement may be done by the respondents and

the property of the petitioner may not be sold, is not acceptable to this Court at this stage. The conduct of the petitioner is such that by means of

filing the suit, obtaining the interim order, the matter was kept pending before the trial court from 1988 to 1998 about 10 years. During this period

the petitioner has not made any effort or showed any intention to make the payment of the dues, which were outstanding against the petitioner.

When the notice u/s 29 was given to the petitioner in the year 2000, instead of giving reply to the Corporation either to pay the amount due against

the petitioner or to bring any buyer who should have been ready to pay the higher amount, filed the writ petition and obtained the interim order to

the effect that the petitioner"s factory shall not be auctioned or sold.

12. It is also to be noted that from 2000 till 2006 till the disposal of the writ petition on 4.9.2006, the petitioner has not shown any interest or

intention or paid any amount to the corporation. When the auction notice was published in the newspaper, the petitioner has deposited a sum of

Rs. 1 lac and only after depositing Rs. 1 lac has approached this Court for directing the respondents for one time settlement. Though generally this

Court when an offer is made by the petitioner or by the respondent for one time settlement, gives an opportunity to the respondent or the petitioner

to approach the relevant authority for one time settlement to settle the controversy. But as in the present case admittedly the loan was taken in the

year 1984 and the conduct of the petitioner clearly shows that the petitioner has no intention to pay the amount taken by the petitioner by obtaining

the interim orders from different courts, the matter has been delayed by the petitioner himself to accrue the huge amount against the petitioner.

13. We are of clear opinion that such types of litigants are not entitled for any relief from the court of law. It is also to be noted that one Mukesh

Kumar who is one of the partners of the unit has filed Suit No. 264 of 2003 against the Corporation for a relief restraining the Corporation by-way

of injunction from interfering in the peaceful possession of the plaintiff over the disputed property detailed at the foot of the plaint. This also clearly

shows that one of the partners who is also responsible for payment of loan granted in their favour has filed a suit which is still pending.

14. In such situation we are of opinion that the petitioner is not entitled for any relief and as the petitioner has not approached this Court with clean

hands and is deliberately avoiding the payment to the Corporation from 1984. The writ petition is liable to be dismissed.

15. In the result, the writ petition is dismissed imposing a cost of Rs. 10,000/- upon the petitioner payable to the Legal Aki Committee, High

Court, Allahabad within a period of two months. In case the payment of cost is not made, the District Magistrate, Aligarh is directed to recover the

said amount from the petitioner as arrears of land revenue to be deposited in the Legal Aid Committee High Court, Allahabad.