

(2001) 04 JH CK 0013
Jharkhand High Court
Case No: CWJC No. 1136 of 1999 (R)

Automobile Ancillary Industries,
Jamshedpur

APPELLANT

Vs

Bihar State Financial Corporation
and Others

RESPONDENT

Date of Decision: April 13, 2001

Citation: (2001) 2 LLN 1087 : (2001) 0 LIC 1330 : (2001) 1 JLR(Jhar) 259 : AIR 2001 Jhar 41

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: M.S. Mittal, for the Appellant; Ritu Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the demand raised by the respondents vide letter dated 5.3.1999 for a sum of Rs. 18,68,983.22 paise and further for a direction to the respondents to settle the accounts of the petitioner taking into consideration the interest payable at the rate of 10% p.a. with rebate of 1% p.a. for timely payment and also to return the documents submitted by the petitioner.

2. Petitioner's case is that the respondents Bihar State Financial Corporation (shortly "the Corporation") sanctioned amount of Rs. 5,20,000/- as loan in 1972 and out of the sanctioned amount a sum of Rs. 4.15 lacs was disbursed and an agreement to that effect was entered into by and between the petitioner and the Corporation whereby it was agreed, inter alio, that the loan amount will be repaid with interest at the rate of 10% p.a. with rebate of 1% p.a. for timely payment. A mortgage deed was also executed for payment of loan amount with interest at the aforesaid rate. Petitioner's further case is that it paid the instalments in time and on 19.10.1984 the

balance dues of Rs. 87,524,72 paise have also been paid as full and final payment. Petitioner's case is that against the total amount of loan disbursed, that is, rupees 4.15 lacs the petitioner paid a sum of Rs. 8,86,400.41 paise, It is stated that in 1985 the Corporation vide letter dated 9.3.1985 asked the petitioner to pay a sum of Rs. 21,225.94 paise. The petitioner immediately replied to the said letter stating that nothing is due and payable to the Corporation. Thereafter, several correspondents have been made between the Branch Manager and the higher officials of the Corporation and finally the impugned demand letter dated 5.3.1999 was issued demanding Rs. 18,86,983.22 paise.

3. A counter-affidavit has been filed by the Corporation stating, inter alia that the rate of interest charged from the petitioner was 9% alongwith 1% rebate for timely payment as the petitioner was regular in payment of the dues but from 15.1.1974 he became defaulter. It is stated that the system of charging interest was revised with effect from 27.2.1974 in terms of lending rate 10% after 2% for timely payment but since the petitioner became defaulter, the respondent-Corporation started charging interest at the rate of 10% p.a. with 2% penal. interest as per the prevailing norms of the Corporation. It is further stated that the demand raised by the Corporation showing the outstanding dues as on 28.2.1999 is subject to revision as per circular No. 1716 dated 12.9.1997 which clearly states of charging current rate of interest after expiry of schedule of re- payment. 4. Mr. Mittal, learned counsel for the petitioner, during the course of argument. has drawn my attention to various correspondences made between the officers of the respondent-Corporation. From perusal of Annexure 3 to the writ application it appears that on 19.10,1984 the petitioner paid a sum of Rs. 87,524-72 paise. However, by letter dated 9.3.1985 the Corporation asked the petitioner to pay a sum of Rs.21,225.94 paise being the interest due upto 30.9.1984. The petitioner immediately replied to the said demand stating that the entire dues have been paid and no further amount is payable, From perusal of Annexure 10 which is a letter dated 15.1.1986 written by the Branch Manager of the Corporation to the Managing Director of the Corporation requesting to send the necessary documents for solving the old dispute, it appears that there was dispute with regard to settlement of accounts. For better appreciation the letter dated 15.1.1986 is quoted hereinbelow :--

The Managing Director,
Bihar State Financial Corporation,
Praser Road.
PATNA-1.

Dear Sir,

Ref: Settlement of dispute of accounts of M/s. Automobile Ancillary Industries

With reference to this branch letter No. 823 dt. 27th July, 1985 addressed to the Manager (Finance) and copy to the then M.D. we solicit that the extract of loan

ledger since beginning, copy of sanction letter dt. 20.7.1972 and certified copy of mortgage deed of the above concern may kindly be sent to us so that attempt to solve the old dispute may be made at an early date.

Thanking You.

Yours faith fully

Sd/-

(A. Jha)

.....Branch Manager

Memo No.....

Date 15.1.1986.

Copy forwarded to the Manager (Finance). BSFC, Patna for information and necessary action.

Sd/-

(A. Jha)

Branch Manager

MemoNo.2198

Dated: 15.1.1986.

Copy forwarded to M/s. Automobile Ancillary Inds., Industrial Area, Adityapur. Jamshedpur with reference to their letter dt. 28.9.1985 and 15.11.1985 and 1.1.1986 for information. You are request to wait till he reconciliation of the accounts.

Sd/-

(A. Jha)

Branch Manager."

5. From perusal of Annexure 12 it appears that the Manager of the Corporation wrote a letter to Branch Manager on 4.12.1989 stating that the petitioner has disputed over charging of interest at the rate of 12% and claims to have liquidated the dues in October. 1984. The Manager admitted that there is dispute in the rate of interest and, accordingly the Branch Manager was directed to look into the matter personally and inform the petitioner under intimation to the undersigned. Annexure 13 is another letter written by the Branch Manager to the Assistant General Manager of the Corporation at Patna informing him that the Branch office is not having any record for the settlement of the claim made by the petitioner. Again by letter dated 5.8.1992 the Manager of the Corporation directed the petition to contact the Branch Manger for needful action as Sr. Branch Manager was advised to get the loan account reconciled with the loan ledger of the Corporation on priority basis and resolve the matter at their end. From perusal of annexure which is a letter dated 16.12.1993 issued by the Branch Manager raising a demand for payment, it appears that the principal over-dues was Rs. 3,25,695.40 paise and interest over

dues was Rs. 5,02,649.58 paise. The petitioner again raised serious objection to the demand and requested the Managing Director of the Corporation to prepare the account on the basis of 10% interest. Instead of preparing and re-calculating the accounts the impugned demand was raised 5.3.1999 for payment of Rs. 18,68,983.22 paise.

6. It has not been disputed by the respondent-Corporation that against the disbursed loan of Rs. 4.15 the petitioner has already paid Rs. 8,86,400/-. From the letters referred to above it is evident that the petitioner paid a sum of Rs. 87524.72 paise on 19.10.1984 and claimed that the entire dues have been liquidated. When the Corporation issued demand on 19.3.1985 of Rs. 21.225-94 paise towards interest, the petitioner immediately replied to the said letter of demand stating that nothing is due and payable by the petitioner.

7. As noticed above, the Corporation itself was not sure as to what amount was still due and payable by the petitioner and that is why correspondences were made by and between the Branch Manager and the higher officials of the Corporation whereby they have decided to resolve the old dispute by re-calculating the interest. I am, therefore, of the opinion that when the petitioner has already paid a sum of Rs. 18,86,400-41 paise against the loan of Rs. 4.15 lacs, the demand of interest amounting to Rs. 18,68,983-22 paise is wholly illegal, arbitrary and unjustified particularly when the officers of the Corporation themselves were not aware as to whether any further amount was recoverable from the petitioner. The Corporation does not appear to have behaved in a proper manner.

8. In the case of [Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others](#), the Apex Court while considering a similar question held as under :--

"Corporations deal with public money for public benefit. The approach has to be public oriented, helpful to the loanee, without loss to "the Corporation. Section 24 of the Act itself required the Board "to discharge its function on business principles, due regard being had to the interest of industry, commerce and general public". "Business" is a word of wide import. It has no definite meaning. Its perceptions differ from private to public sector or from institutional to commercial banking. The financial corporations under the Act were visualised not as a profit earning concerns but an extended arm of a welfare State to harness business potential of the country to benefit the common man."

9. In the case of U.P. Financial Corporation, v. Gen. Cap. (India) Pvt. Ltd. AIR 1993 SC 1435, the Apex Court again reiterated that the Corporation is not like an ordinary money lender or Bank which lends money. The Corporation has to act fairly and not whimsically.

10. As noticed above, since, 1984 the petitioner has been insisting that the entire loan amount has been liquidated in 1984 but the Corporation was not in a position to give the correct details and calculations of the amount due rather, by inter-office

or responses they were trying to resolve the dispute by regularising the loan ledger and the accounts and all on a sudden the impugned demand of Rs. 18,68,983.22 paise has been raised. The said demand, in my view, is not Justified,

11. For the reasons aforesaid this writ application is allowed and the impugned demand raised by the Corporation is set aside. The Corporation is directed to settle the accounts of the petitioner after taking into consideration the rate of interest at the rate of 10% p.a. with rebate of 1% p.a. for timely payment in terms of the sanction letter, loan agreement and the mortgage deed executed by the petitioner.

12. Application allowed.