

(2003) 11 JH CK 0022

Jharkhand High Court

Case No: CWJC No. 2998 of 1996

Virendra Kumar Sinha and
Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Nov. 13, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 3 BC 129 : (2004) 1 JCR 195

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

Bench: Single Bench

Advocate: Binod Poddar and A.K. Mehta, P.K. Shahi and Sunil Kr. Sinha, for the Appellant; G.P.I. and Sarvendra Kr., J.C. to G.P.I., Kameshwar Pd., Rajesh Kumar and Deepak Bharti for Respondent No. 5, Sunil Kumar, P.K. Prasad, V.K. Prasad and P. Kumar, for the Respondent

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

Heard Mr. Binod Poddar, learned counsel for the petitioners, Mr. Kameshwar Prasad, learned Sr. counsel appearing for the respondent-State Bank of India and Mr. P.K. Shahi, learned counsel appearing for the Bihar State Financial Corporation and Mr. Sunil Kumar Sinha for respondent No. 6.

2. The petitioner have filed this writ petition praying, inter alia, for quashing the entire certificate proceeding being Certificate Case No. 3/85-86 pending before the District Certificate Officer, Palamau and further for a direction to the respondent-State Bank of India, Chandwa Branch to release and debit the amount involved in the certificate case from respondent No. 6.

3. Brief fact of the petitioners' case is that they constituted a partnership firm in the name and style of Chandwa Wood Products in the year 1979 for manufacturing of

katha and other allied products. The said firm was sanctioned loan by the Bihar State Financial Corporation (in short the "Corporation"). The firm was also availing the loan facility from the State Bank of India, Chandwa branch (in short "the Bank"). In the year 1985 the firm was reconstituted by inducting new partners and finally the firm was changed to that of M/s. Shree Katha & Chemicals Pvt. Ltd. It is contended that the partners agreed to dissolve the partnership firm and a new company in the name of respondent No. 6 shall be incorporated. Further a rehabilitation proposal was said to have been submitted by the Company and additional loan was sought for from the Corporation. The Company took a resolution that out of the additional facility that would be provided to the Company, a sum of Rs. 3.50 lacs will be paid to the Bank for liquidation of the dues existing in the name of the firm. It is contended that the Corporation issued a draft in favour of State Bank of India, Chandwa Branch, A/c Chandwa Wood Product but the same has not been credited in the account and it was misappropriated by the Company. It is alleged that the Bank officials, in conspiracy with the Director of the Company, instead of crediting the said amount in favour of the firm, permitted its withdrawal by opening a separate account in the name of the Company. It is contended by the petitioners that in the meantime the Bank who is the certificate holder in the Certificate Proceedings prayed to the District Certificate Officer to recover the balance amount from the petitioners who are the partners of the firm. Petitioners' case is that notice was sent by them to the Certificate Officer regarding the remittance of the amount in favour of the Company instead of the firm and as such the petitioners were fully discharged from the entire liability and the Certificate Proceeding is liable to be quashed.

4. Admittedly, the petitioners, as partners of the firm, were advanced loan by the respondent-Bank much before 1985 and on the account of non-payment of the loan amount a Certificate Proceeding was initiated by the Bank for the recovery of the outstanding dues. It is also the admitted fact that some development took place in 1987 and firm was dissolved and a new Company came into existence. According to the petitioners sum of Rs. 3.50 lacs was disbursed by the Corporation in favour of State Bank of India for the liquidation of the dues of the firm whereas the respondents' case is that no such draft in the name of the firm was never issued by the Corporation for the liquidation of the dues. Besides the above serious disputed questions of fact have been raised by the parties in this writ petition.

5. Admittedly the certificate proceeding was initiated much before 1985 for the recovery of the dues of the firm. In my opinion therefore, whether the certificate proceeding is liable to be dropped on the full satisfaction is a matter to be considered by the Certificate Court. This Court cannot go into the questions raised by the petitioners in this writ petition. No case much less prima facie case has been made out by the petitioners warranting interference by this Court.

6. For the aforesaid reasons no relief can be granted to the petitioners. This writ application is accordingly dismissed.