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(2011) 11 PAT CK 0133

Patna High Court

Case No: LPA No"s. 739 and 819 of 2004; in CWJC No.11220 of 2002

Bihar State Financial Corporation	APPELLANT
Vs	
Smt Madhuri Pandey	RESPONDENT

Date of Decision: Nov. 21, 2011

Citation: (2012) 2 PLJR 466

Hon'ble Judges: Vikash Jain, J; T. Meena Kumari, J

Bench: Division Bench

Advocate: Y.V. Giri, Chitranjan Sinha, Raju Giri amd Amit Prakash, for the Appellant; Manik Veda Sen Subhash Chandra Bosh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The present Appeal has been filed against the order dated 23.7.2004 passed in C.W.J.C. Noi 11220 of 2002 questioning the sale order dated 5.10.2001 (Annexure-4) of mortgaged/hypothecated assets of M/s Shree Ram Ultra Modern Rice Mills, Konar, Rohtas to son of one of its partners, and the case of the respondents seems to be that sale order has been passed in collusion with the Bihar State Financial Corporation as the son has taken an advantage of one of the partnership and the property of the partnership firm has been diverted to purchase the said: unit. It has further been argued before learned Single Judge that the unit has been sold at lower price and hence there was the collusion between the Bihar State Financial Corporation and the appellant herein.

2. It is the case of the Corporation that after the offer has come from the mother of the respondent Smt. Indira pandey property was readvertised on 19.11.2000 in the daily newspaper "Hindustan Times". Accordingly when the son has offered for purchase of the property before issuance of the sale order on 5,10.2001 an offer was made before finalising sale order on 5.10.2001 to purchase the unit, but however as he did not turn up the unit has been finalized to one son of the partner and an agreement was entered into

between the parties on 7.1.2011 from which date he was in possession and running the unit by investing selling amount.

3. Learned Senior Counsel contended that even though an offer was made to the respondents to purchase unit on 5.10.2001 but as he did not turn up, action was taken by the Corporation to finalise the matter in favour of son of one of the partner on, 7.11.2001 and from the date on which the agreement was entered into he is in physical possession of the same without any hindrance.

4. Learned counsel for the respondents has submitted that even though the offer was made in his favour but in collusion between the parties the matters was finalized on a lower price.

5. We go through the order of the learned Single Judge and the material annexed to the writ petition. We are of the opinion that the respondent was given an offer to purchase the unit on 5.10.2001 but he has not turn up and therefore the Corporation has advertised the same in the newspaper "Hindustan Times" and have followed the procedure as required under law and finalized the sale deed in favour of son of one of the partner and on agreement he was given possession on 7.11.2001 and from that date he was in possession. We are of the opinion that the party who has not been able to take the benefit of the said offer cannot question the sale order on the ground that he cannot purchase the property due to the lack of fund and thereafter there is no question of any collusion, In absence of any material available to prove that there was collusion between the Financial Corporation and the appellant, we are of the opinion that this Court cannot go into such question as the party cannot be defaulter in giving the offer and it cannot make a ground to success in the writ petition. Under the above circumstances, we set aside the order passed by the learned Single Judge and accordingly this L.P.A. stands allowed.