



2024 INSC 256

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 743-744 OF 2017

THE ORISSA STATE FINANCIAL APPELLANT(S)
CORPORATION & ANR.

VERSUS

SMT. SUKANTI MOHAPATRA & ORS. RESPONDENT(S)

O R D E R

Having heard learned counsel for the parties at length, we are of the view that the impugned judgment passed by the Division Bench of the High Court, allowing Writ Petition (Civil) nos. 7220/2007 and 8405/2007 filed by respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra, is unsustainable, both on facts and in law.

2. The appellant before us - Orissa State Financial Corporation¹ had granted a loan of Rs.3,26,258.78 (Rupees three lakhs twenty six thousand two hundred fifty eight and seventy eight paisa only) to respondent no. 2 - Prasanta Kumar Mohapatra. The loan was payable in 24 monthly installments commencing from 31.01.1997 and ending on 31.12.1998.

3. It is an undisputed and accepted position that respondent no.

1 "Corporation", for short

1 - Sukanti Mohapatra had mortgaged a plot bearing no. 359/5975 having area of Ac 0.20 decimals, situated at Mouza-Dhenkanal, Odisha², as a security for the said loan.

4. The loan remained unpaid in spite of several demand notices issued by the appellant - Corporation. The loan was finally recalled on 08.11.2002 with Rs.10,91,673.07 (Rupees ten lakhs ninety one thousand six hundred seventy three and seven paise only) remaining due as on 30.06.2002.

5. It is the case of the appellant - Corporation that the loan was granted in respect of a vehicle, which had become untraceable.

6. The appellant - Corporation took steps and seized the mortgaged immovable property in terms of and as per the provisions of Section 29 of the State Financial Corporations Act, 1951³.

7. At the same time, respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra were given opportunity to pay the loan amount and/or to settle the dues. At their request, the sale of the property was deferred.

8. On 06.01.2004, respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra made a request for one time settlement under the One Time Settlement⁴ Scheme-2003⁵. The total amount due and payable by respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra, at that time, was Rs.12,20,000/- (Rupees

2 "the mortgaged immovable property", for short

3 "the Act", for short

4 "OTS", for short

5 "first OTS proposal", for short

twelve lakhs twenty thousand only). The OTS application was rejected on account of failure of respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra to deposit the upfront fee.

9. Respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra submitted another OTS proposal under OTS Scheme-2004 on 08.09.2004⁶ along with an interim deposit of Rs.16,400/- (Rupees sixteen thousand four hundred only). However, this OTS proposal was rejected on the grounds of willful default, and as the vehicle had been clandestinely sold and transferred.

10. However, on the representation of respondent no. 2 - Prasanta Kumar Mohapatra, the appellant - Corporation made an OTS proposal under the OTS Scheme-2004 for settlement of dues on payment of Rs.6,27,400/- (Rupees six lakhs twenty seven thousand four hundred only), *vide* a letter dated 31.03.2006⁷. This OTS proposal was subject to the condition that the entire amount would be paid within thirty days, that is, on or before 29.04.2006, or alternatively, 25% of the amount would be paid within two months and the balance 75% would be paid within six months. Payments were not made in terms of the said letter/ OTS Scheme-2004. The proposal lapsed.

11. The impugned judgment records that respondent no. 2 - Prasanta Kumar Mohapatra had submitted a representation dated 07.08.2006 for reduction of the OTS amount from Rs.6,27,400/- (Rupees six lakhs twenty seven thousand four hundred only) to

6 "second OTS proposal", for short

7 "third OTS proposal", for short

Rs.4,27,000/- (Rupees four lakhs twenty seven thousand only). It is the case of the appellant - Corporation that they had rejected the said representation *vide* letter dated 02.09.2006.

12. The impugned judgment, in our opinion, erroneously records that the appellant - Corporation had wrongly rejected the relaxation, as sought by respondent no. 2 - Prasanta Kumar Mohapatra in his letter dated 07.08.2006. We have read the contents of the said letter, but do not find any extraordinary or special reason as to why the representation deserved acceptance. Further, whether or not to accept a representation or reduction of the due amount, was a commercial decision to be taken by the appellant - Corporation. It is not for the Court to sit in judgment on the merits over the proposal, unless there were extraordinary facts or the proposal/offer made by the appellant - Corporation was not in accordance with the terms of the OTS scheme.⁸ The latter part was not pleaded by respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra. In our opinion, no such claim is acceptable.

13. On the other hand, we notice that the appellant - Corporation had substantially reduced the amount, while accepting the third OTS proposal to settle the dues on payment of Rs.6,27,400/- (Rupees six lakhs twenty seven thousand four hundred only). Option had also been given to respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra to pay the said amount by depositing 25%

⁸ See also *State Bank of India v. Arvindra Electronics Private Limited*, (2023)1 SCC 540

amount within two months and the balance 75% within six months. Respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra did not avail the concession.

14. In the aforesaid position, the appellant - Corporation had no other option but to proceed with the sale. On 14.11.2006, sale notice of the mortgaged immovable property was issued with the offset price of Rs.13,15,000 (Rupees thirteen lakhs fifteen thousand only).

15. Letter dated 24.11.2006 was issued to respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra to pay the dues of Rs.21,58,000/- (Rupees twenty one lakhs fifty eight thousand only), failing which, the appellant - Corporation would proceed with the sale of the mortgaged immovable property.

16. On 29.11.2006, the sale was conducted and the mortgaged immovable property was sold for Rs.13,20,000/- (Rupees thirteen lakhs twenty thousand only) in favour of respondent no. 3 - Tusar Ranjan Mishra. The third respondent deposited 25% of the sale price, that is, Rs.3,30,000/- (Rupees three lakhs thirty thousand only) on the date of sale itself. The balance sale consideration of Rs.9,90,000/- (Rupees nine lakhs ninety thousand only) was paid by respondent no. 3 - Tusar Ranjan Mishra on 05.12.2006.

17. Respondent no. 2 - Prasanta Kumar Mohapatra had filed Writ Petition (Civil) no. 15944/2006 before the High Court, seeking quashing of the sale notice dated 14.11.2006. Another prayer made

was that the appellant - Corporation should accept the payment under the third OTS proposal dated 31.03.2006. On 06.12.2006, the High Court passed an interim order and directed respondent no. 2 - Prasanta Kumar Mohapatra to deposit Rs.2,50,000/- (Rupees two lakhs fifty thousand only) in two weeks. Respondent no 2 - Prasanta Kumar Mohapatra had thereupon deposited Rs.2,50,000/- (Rupees two lakhs fifty thousand only). However, the writ petition was heard and disposed of *vide* order dated 12.04.2007, observing that in case a wrong was done in making the sale, the same would be recalled after giving an opportunity to first respondent - Sukanti Mohapatra to repay the amount. Application filed for modification of the said order was disposed of on 03.05.2007, observing that if any flaw or irregularity is pointed out by respondent no. 2 - Prasanta Kumar Mohapatra, the same shall also be taken into consideration.

18. Respondent no. 1 - Sukanti Mohapatra had sent a representation dated 3.05.2007 to the appellant - Corporation, challenging the sale. The same was rejected by the appellant - Corporation by way of a letter dated 21.06.2007.

19. Respondent no. 1 - Sukanti Mohapatra had filed Writ Petition (Civil) no. 7220/2007 before the High Court on 11.06.2007. Interim order was passed, directing respondent no. 1 - Sukanti Mohapatra to deposit Rs.4,00,000/- (Rupees four lakhs only) on or before 07.07.2007 and in the event of the deposit being made, physical possession of the mortgaged immovable property would not be taken without leave of the Court.

20. The appellant - Corporation returned Rs.2,50,000/- (Rupees two lakhs fifty thousand only) to respondent no. 1 - Sukanti Mohapatra on 27.06.2007 and Rs.4,00,000/- (Rupees four lakhs only) were again paid by respondent no. 1 on 06.07.2007.

21. Respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra thereafter filed Writ Petition (Civil) no. 8405/2007 with similar prayers as in Writ Petition (Civil) no. 7220/2007.

22. On 21.10.2008, the transfer/sale deed was executed in favour of respondent no. 3 - Tusar Ranjan Mishra. It may be noted here that the appellant - Corporation should not have executed the said transfer/sale deed in view of the interim orders passed. However, in our opinion, this does not settle the matter and cannot be a good ground to dismiss the present appeals.

23. The impugned judgment refers to Sections 31 and 32 of the Act. In our opinion these provisions have no application in the facts of the present case as the appellant - Corporation has proceeded in terms of Section 29 of the Act. To this extent, the impugned judgment is contrary to law and is unsustainable.

24. Learned counsel for respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra has drawn our attention to the judgment of this Court in *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors.*⁹ and *Kerala Financial Corporation*

⁹ (1993) 2 SCC 279. Referring to the exercise of power of the State Financial Corporation under Section 29, this Court observed that- "Keeping these various factors giving rise to conflicting interest the following directions are necessary to be issued to be observed by the Corporation while exercising power

25. The decision in *Mahesh Chandra* (supra) has been overruled in *Haryana Financial Corporation & Anr. v. Jagdamba Oil Mills & Anr.*¹¹, in which it has been held that Section 29 gives a right to the financial corporation *inter alia* to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to the financial corporation. This right accrues when the industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations as envisaged in Section 29 of the Act. Section 29(1) gives the financial corporation in the event of default, the right to take over the management, possession or both, and thereafter, deal with the property. It is observed that the

under Section 29:

Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable:

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account.

10 (2011) 4 SCC 171

11 (2002) 3 SCC 496

guidelines issued in *Mahesh Chandra* (supra), place unnecessary restrictions on the exercise of power by the financial corporation contained in Section 29 of the Act, by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. A person who has defaulted is hardly ever likely to cooperate in the sale of his assets. In fact, the procedure indicated in *Mahesh Chandra* (supra) would only result in a further delay in realization of the dues by the Corporation through sale of assets. Thus, the observations in *Mahesh Chandra* (supra) do not lay down the correct law and was overruled.

26. The decision in *Kerala Financial Corporation* (supra) is of a two-Judge Bench of this Court, whereas the decision in *Haryana Financial Corporation* (supra) is a decision of a three-Judge Bench. The judgment in *Kerala Financial Corporation* (supra) carries only a cursory reference to Section 29 of the Act, and has laid down guidelines for the sale of properties owned by the Kerala Financial Corporation, in the absence of State specific rules for the same. The guidelines deal with the aspect of proper valuation of the property, and do not comment on or prescribe a procedure for other aspects of the recovery process. In our opinion, this judgment does not come to the aid of respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra, as the appellant - Corporation was indulgent and has proceeded fairly. Multiple opportunities were given to respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra to repay the loan amount by way of OTS proposals/offers, as well as written communication through letters.

However, respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra remained in default, despite benevolent consideration and concession afforded to them. Sale was made, as a matter of last resort.

27. With regard to the sale, we find that respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra have not been able to find a buyer, who could offer a better price than the one which has been paid by respondent no. 3 - Tusar Ranjan Mishra. Nevertheless, keeping in view the facts of the present case and to balance equities *inter se* the parties, we give an option to respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra to pay the entire sale consideration of Rs.13,20,000/- (Rupees thirteen lakhs twenty thousand only) along with the registration amount and the stamp duty, to respondent no. 3 - Tusar Ranjan Mishra, with interest at the rate of 18% per annum, compounded annually, with effect from 01.01.2007 till the date of payment. This option can be exercised by respondent nos. 1 and 2 - Sukanti Mohapatra and Prasanta Kumar Mohapatra by making payment, on or before 31.07.2024. In case the said payment is not made along with the interest as directed, the appellant - Corporation will be entitled to take police aid to put respondent no. 3 - Tusar Ranjan Mishra in possession of the mortgaged immovable property. The Station House Officer (SHO) of the jurisdictional police station shall provide necessary aid and assistance for compliance of this order.

28. We have passed the aforesaid directions, as it is accepted by

the appellant - Corporation and respondent no. 3 - Tusar Ranjan Mishra that the payment of Rs.13,20,000/- (Rupees thirteen lakhs twenty thousand only) made by the latter to the former, has been adjusted in the loan account of respondent no. 2 - Prasanta Kumar Mohapatra.

29. The appeals are disposed of in the above terms. There shall be no order as to costs.

Pending application(s), if any, shall also stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
MARCH 21, 2024.