

ORISSA STATE FINANCIAL CORPORATION AND ANR. A

v.

M/S. HOTEL JOGENDRA

APRIL 18, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.] B

State Financial Corporations Act, 1951 :

Sections 29, 30—Party taking loan for construction of a hotel—Default in repayment—Rephasement—Party not submitting proposal and approaching Courts for stay and status quo—Held, public money is meant to be recycled to all needy entrepreneurs—Dilatory tactics defeat public policy and court process becomes an instrument of abuse—Court would protect only honest and sincere litigants—No indulgence would be shown to recalcitrant defaulter in repayment of loan—Corporation is at liberty to take action against the defaulter under S.29 irrespective of the orders passed by any Court. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7740 of 1996.

From the Judgment and Order dated 5.3.90 of the Orissa High Court in O.J.C. No. 500 of 1990. E

Shambhu Prasad Singh, Sunil K. Jain, J.K. Bhatia for Jain Hansaria & Co. for the Appellants.

Janaranjan Das for the Respondent.

The following Order of the Court was delivered : F

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the Division Bench of the High Court of Orissa dated March 5, 1990 made in OJC No. 500/90. Admittedly, the respondent had taken a loan of a principal sum of Rs. 14.68 lakhs for construction of the hotel which was payable in 18 yearly instalments between July 10, 1984 and January 10, 1993. The respondent committed default in payment of the loan as contracted. Pursuant to the G H

A request, a rephasement was done in November 1989 directing them to pay the amount in 9 half yearly instalments starting from January 1993 to January 1997 with interest on arrear defaulted amounting to Rs. 10.64 lakhs which was to be paid according to the schedule mentioned below :

B	March 1989	Rs. 1.30 lakhs
	March 1990	Rs. 2.00 lakhs
	March 1991	Rs. 2.84 lakhs
C	March 1992	Rs. 3.00 lakhs
	March 1993	Rs. 1.50 lakhs

In addition, current interest was also to be paid with half yearly interests. Since the respondent - Hotel did not comply with the conditions, notice was given to it under Section 30 of the State Financial Corporations Act, 1951 on February 1, 1990. Calling that notice in question, the respondent filed the above writ petition in the High Court. The High Court has directed the respondent to calculate the entire loan amount with interest including the additional loan sanctioned to treat he said amount as principal for the purpose of rephasement of the same for repayment with interest.

It would appear that subsequently action was taken by the appellant, but the respondent seems to have not complied with the directions. Accordingly, notice was issued under Section 29. The respondent instead of complying with the same, approached the High Court by Misc. Case No. 1677/90 which was disposed of by the High Court on April 9, 1991 directing the respondent to be personally present with the appellants on April 13, 1991 for consideration of the rephasement of the proposal as ordered in the impugned judgment. It would appear that the respondent again did not appear before the authorities on April 13, 1991. The first appellant was, therefore, free to exercise its statutory powers under section 29 in terms of the order passed by High Court as order in the Misc. Case on April 13, 1991 requesting seven days' time for submitting the proposal he sent a letter on the last date. Even thereafter, the respondent did not submit any proposal to rephase the amount payable as per the provisions contained in Section 29 of the Act.

Therefore, the Corporation again issued a letter on May, 8, 1991 A
 stating that since that respondent had not furnished the rephasing
 proposal as per the orders of the High Court, the appellant was free to
 take action as per law. Calling that order in question again, the respondent
 had filed OJC No. 2747 of 1991 seeking further directions to rephase the
 loan. The High Court by interim order dated June, 5, 1991 directed the B
 appellant not to take any coercive action against the respondent, but
 ultimately the writ petition came to be dismissed on January 25, 1994 with
 the following holding :

"the present dues of the Corporation is around Rs. 32, 24, 753.00.
 From the facts, it appears that the petitioner has become a per- C
 sistent defaulter and the Corporation is only taking steps available
 to it under the act to recover the loan. On facts, we do not consider
 it to be a fit case for our interference. The writ petition hence is
 dismissed."

Thereafter, the appellants has issued notice on February 17, 1994 D
 calling upon the respondent to pay the entire amount due as on January
 31, 1994 amount to Rs. 35, 32, 058.43 by February 28, 1994. Instead of
 making payment, the respondent again went to the Civil Court and filed
 Title Suit No. 88/94 in the Court of Civil Judge, Senior Division, Cuttack
 and obtained *status quo* order in Misc. Case No. 115/94 on 28.2.1994. E

It would, thus, be seen that the respondent is only interested to delay
 the repayment of the dues and has abused the process of the court taking
 indulgence of the court's direction. Under these circumstances, we find
 that no indulgence would be shown to such recalcitrant defaulter in repay- F
 ment of the loan. Public money is meant to be recycled to all the needy
 entrepreneurs. The dilatory tactics defeat the public policy and the court
 process becomes an instrument of abuse. Court would protect only honest
 and sincere litigants.

The appeal is accordingly allowed with exemplary costs of Rs. G
 10,000. The Corporation is at liberty to take action against the respondent
 as required under Section 29 of the Act, irrespective of the orders passed
 by any Court.