

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.272 of 1999

- 1.1. Bambam Kumar S/o Late Ram Shekhar Singh Resident of Village and P.O.- Sihma, P.S.- Matihani, District- Begusarai.
- 1.2. Chandan Kumar S/o Late Ram Shekhar Singh Resident of Village and P.O.- Sihma, P.S.- Matihani, District- Begusarai.
- 1.3. Sudha Devi W/o Late Ram Shekhar Singh Resident of Village and P.O.- Sihma, P.S.- Matihani, District- Begusarai.
- 1.4. Baby Kumari W/o Mithilesh Kr. Roy, D/o Late Ram Shekhar Singh Resident of Village and P.O.- Sihma, P.S.- Matihani, District- Begusarai, at present residents of Flat no.- 303, Haedeo Enclave, Block-C, Hanuman Nagar, P.S.- Patrakar Nagar, Patna- 20.

... .. Appellant/s

Versus

- 1.1. Bhusan Singh Son of Shree Narain Singh Resident of Kachahari Road, P.S. and District- Begusarai.
- 1.2. Mukesh Singh Son of Shree Narain Singh Resident of Kachahari Road, P.S. and District- Begusarai.
- 1.3. Ranjeet Singh Son of Shree Narain Singh Resident of Kachahari Road, P.S. and District- Begusarai.
2. Sudha Rani Devi, Wife of Shree Narain Singh Residing at Kachahari Road, P.S. and District- Begusarai.
3. Bihar State Financial Corporation, through its Managing Director, having its Head-Office at Fraser Road, P.S.- Kotwali, Town and District- Patna.
4. Branch Manager, Bihar State Financial Corporation, Begusarai Town, P.S. and District- Begusarai.

... .. Respondent/s

with
FIRST APPEAL No. 268 of 1999

1. Bihar State Financial Corporation, Through Managing Director. Bihar State Financial Corporation, through Managing Director, Bihar State Financial Corporation Building, Fraser Road, P.S. Kotwali, District Patna.
2. Branch Manager, Begusarai. Bihar State Financial Corporation, through Managing Director, Bihar State Financial Corporation Building, Fraser Road, P.S. Kotwali, District Patna.

... .. Appellant/s

Versus

- 1.1. Bhushan Singh S/o Shri Narayan Singh, Resident of Kachahari Road, P.S. and District Begusarai.



- 1.2. Mukesh Singh S/o Late Narayan Singh, Resident of Kachahari Road, P.S. and District Begusarai.
- 1.3. Ranjeet Singh S/o Late Shri Narayan Singh, Resident of Kachahari Road, P.S. and District Begusarai.
2. Sudha Rani Devi Wife of Shri Narayan Singh, Resident of Kachahari Road, P.S. and District Begusarai.
- 3.1. Sudha Devi W/o Late Ram Sekhar Singh, Resident of Kachahari Road, P.S. and District Begusarai.
- 3.2. Bambam Kumar S/o Late Ram Sekhar Singh, Resident of Kachahari Road, P.S. and District Begusarai.
- 3.3. Chandan Kumar S/o Late Ram Sekhar Singh, Resident of Kachahari Road, P.S. and District Begusarai.
- 3.4. Baby Kumari D/o Late Ram Sekhar Singh, W/o Mithilesh Kumar Roy Resident of Kachahari Road, P.S. and District Begusarai.

... .. Respondent/s

Appearance :

(In FIRST APPEAL No. 272 of 1999)

For the Appellant/s : Mr. Arun Kumar Sinha, Advocate
Mr. Pravin Prabhakar, Advocate
Mr. Ashutosh Krishna, Advocate

For respondent nos. 1 & 2 : Mr. Binod Kr. Singh, Advocate
Ms. Ankita Roy, Advocate
Ms. Vagisha Pragya V. Advocate

For the Respondent/Corporation : Mr. Rajnandan Pd. Advocate
Mr. Vinesh Kr. Singh, Advocate

(In FIRST APPEAL No. 268 of 1999)

For the Appellant/s : Mr. Rajnandan Pd. Advocate
Mr. Vinesh Kr. Singh, Advocate

For respondent nos. 1 & 2 : Mr. Binod Kr. Singh, Advocate
Ms. Ankita Roy, Advocate
Ms. Vagisha Pragya V. Advocate

For the Respondent no. 3 : Mr. Arun Kumar Sinha, Advocate
Mr. Pravin Prabhakar, Advocate
Mr. Ashutosh Krishna, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 18-03-2025

Heard Mr. Arun Kumar Sinha, Advocate assisted by Mr. Pravin Prabhakar, learned counsel for the appellants and Mr. Binod Kumar Singh, Advocate assisted by Ms. Vagisha Pragya



Vackanavi, learned counsel for the respondents in First Appeal No. 272 of 1999. Heard Mr. Rajnandan Prasad, learned counsel for the appellants, Mr. Binod Kumar Singh, learned senior counsel for the respondent nos. 1 & 2 and Mr. Arun Kumar Sinha, learned counsel for the respondent no. 3 in First Appeal No. 268 of 1999.

2. The present two appeals arise out of judgment and decree dated 19.05.1999 passed in Title Suit No. 39 of 1996 by learned Sub-Judge-5th, Begusarai.

3. First Appeal No. 268 of 1999 has been filed by Bihar State Financial Corporation (hereinafter referred to as 'the Corporation'), defendant nos. 1 & 2/appellants, whereas First Appeal No. 272 of 1999 has been preferred by the intervenor defendant/appellants.

4. The plaintiffs are original respondent nos. 1 & 2 in First Appeal No. 272 of 1999 and defendant nos. 1 & 2 are the appellants in First Appeal No. 268 of 1999 and original defendant no. 3 is the respondent in First Appeal No. 268 of 1999 whereas in First Appeal No. 272 of 1999, intervenor/defendant is the appellant and the plaintiffs are original respondent nos. 1 & 2 and defendant nos. 1 & 2 are respondent nos. 3 & 4 respectively.

5. The plaintiffs filed the aforesaid Title Suit for declaration that the intervenor/defendant did not derive any right,



title, interest or have possession by virtue of auction sale dated 18.03.1996 and also that the delivery of possession is void. It was further prayed to set aside auction sale and delivery of possession with a declaration that the plaintiffs have got title and interest in the suit property, and further for declaration that defendant had no right to auction sale the said property under Section 29 and 30 of the Bihar State Financial Corporation Act and also sought mandatory injunction directing the defendant Corporation to put the plaintiffs back in possession of the suit premises.

6. As per the case of the plaintiffs, the defendant Corporation is established under the State Financial Corporation Act, 1951 (hereinafter referred to as 'the Act') to promote industrialisation in the State of Bihar by establishing and developing industries and by getting the project of each industry completed and also by maintaining working capital of each industry through some financial banks.

7. Further case of the plaintiffs is that on 05.01.1982, the plaintiffs applied for sanction of Rs. 15,00,000/- loan for its Motel Industry at Begusarai. The Corporation wrongly and illegally estimated the total project of the industry at Rs. 12.50 lakhs and sanctioned a loan of Rs. 8.50 lakhs only on 29.05.1982 to the plaintiffs and according to the terms of the loan, promoter's



contribution i.e., of the plaintiffs was to be Rs. 2 lakhs. It is further contended that the plaintiffs deposited original title deeds of land and buildings on 24.09.1982 for creating equitable mortgage of the same in favour of defendant Corporation. On 02.12.1982, the partner of the plaintiffs executed document in favour of defendant Corporation. The defendant Corporation realised its mistake concerning sanction of the said loan and on 12.07.1984, sanctioned another loan amounting to Rs. 3.15 lakhs and both the loans were repayable in installments, last installment was being payable on 01.01.1993. It is further pleaded that even out of total sanctioned loan of Rs. 11.65 lakhs, Rs. 8.29 lakhs only was disbursed to the plaintiffs and about three lakhs rupees was adjusted towards alleged due of the defendants, on account of interest from the very beginning of the loan, as a result of which the total project of the plaintiffs could not be completed.

8. Further case of the plaintiffs is that after service of notice under Section 29 and 30 of the Act, the matter was finally settled on 06.11.1990 in terms of order passed in C.W.J.C. No. 6104 of 1990 by this Court. The plaintiffs have paid uptill now Rs. 16.50 lakhs to the defendant Corporation, but even then the defendant Corporation advertised the mortgaged properties of the



plaintiffs for sale by inviting tenders on 02.03.1996. Hence, the necessity of the suit.

9. It is further contended that the defendant Corporation has committed the following illegalities due to which the entire project of the plaintiffs could not be completed.

The total cost of the project was being about Rs. 20 lakhs but the defendant Corporation had estimated the same at Rs. 12.50 lakhs. The subsidy granted by the State Government to the plaintiffs was not released to the plaintiffs by the Corporation. The defendant Corporation has charged penal interest from the plaintiffs though there was no such agreement in the loan documents and it is against the norms of soft loan. The fresh sell notice on 02.03.1996 inviting tenders could not be legally made without service of fresh notice recalling the entire loan under Section 29 and 30 of the Act. The defendant Corporation is not entitled to put the project and properties of the plaintiffs to sale.

10. By amendment petition dated 30.06.1998, some further irregularities committed by defendant-Corporation were further added in paragraph 10(IX) to 10 (XVI) in the plaint.



11. On summon, defendant nos. 1 & 2 (Bihar State Financial Corporation) appeared and filed their written statement whereas the intervenor-defendant had filed his separate written statement and all the defendants have contested the suit on the ground of its non-maintainability as barred by law of limitation and also the suit is bad under the provision of waiver, estoppel, Specific Relief Act, acquiescence and res-judicata and State Financial Corporation Act. Both the sets of defendants have also filed their additional written statement.

12. The defendant Corporation pleaded that the defendant correctly estimated the loan amount at Rs. 8.5 lakhs and accordingly, loan was sanctioned at the initial stage and thereafter another loan of Rs. 3.15 lakhs was sanctioned. As per the term of agreement, the interest on the previous loan was to be adjusted from the subsequent loan and have alleged that the plaintiffs were never regular in payment of loan amount. When the plaintiffs failed to repay the installments, the defendants were compelled to take recourse of provision contained in Section 29 of the Act. The plaintiffs were noticed to pay the entire dues. Against the notice, the plaintiffs filed a writ bearing C.W.J.C. No. 6104 of 1990 before the Patna High Court against the defendant nos. 1 & 2. This Court with consent of the parties rescheduled the repayment installments,



according to which last installments for the balance amount including the interest was to be paid by 31.10.1991. This Court had further ordered that if the plaintiffs would fail to pay any of the installment (rescheduled as above), the Corporation would be free to proceed to sell. The defendant Corporation further contended that the plaintiffs paid 6 lakhs rupees in the year 1990-91 whereas no payment was done in the year 1991-92 and 1992-93. Further Rs. 50 thousands was paid in the year 1993-94. In terms of the order passed by this Court, Rs. 3 lakhs was payable by 31.10.1990 and thereafter, Rs. 1.5 lakhs was payable by 31.12.1990, Rs. 1.5 lakhs by 31.01.1991, Rs. 2 lakhs by 31.03.1991, Rs. 2 lakhs by 31.05.1991 and again Rs. 2 lakhs by 31.07.1991 and lastly, the balance amount including the interest was payable by 31.10.1991 but the plaintiffs paid Rs. 3 lakh on 31.10.1990, Rs. 1.5 lakhs on 31.12.1990 and Rs. 1.5 lakhs on 27.12.1991. When the plaintiffs failed to pay the installments in terms of order passed by this Court, the Corporation took steps to sell the plaintiffs' Unit. It is further contended that that the Corporation acted strictly in accordance with law and in view of the order passed by this Court, the Corporation advertised the Unit for sale. The plaintiffs were regularly informed but instead of paying the dues, the plaintiffs filed another writ application



bearing C.W.J.C. No. 6641 of 1996 in which material facts were concealed. The plaintiffs obtained an order from this Court to make payment of Rs. 10 lakhs within a period of three weeks. When the defendant-Corporation learnt regarding the aforesaid order, they informed the Court that this Unit has already been auctioned sold in which one Ramshekhar Singh had purchased the Unit and deposited the auction money on 29.05.1996. Accordingly, an agreement has also been executed. Then this Court modified the order and added Ramshekhar Singh as party. The plaintiffs foreseeing no alternatives withdrew the said writ application. Accordingly, the said writ application was dismissed as withdrawn. It was further contended in their additional written statement that the defendant no. 1 has submitted that the contention made in paragraph no. 10(IX) and 10(X) to 10(XVI) are false and baseless. The correct valuation of the Unit was assessed on the date of sale. The plaintiffs never cleared off the dues and interest, as such, they were never entitled to get any incentives. The steps taken under Section 29 and 30 of the Act is proper. The plaintiffs did not obey the order of the Hon'ble Court.

13. The case of the intervenor/defendant is that the plaintiffs did not make payment in terms of order passed in C.W.J.C. No. 6104 of 1990 by this Court as such, the defendant



Corporation was left with no other option but to advertise for auction of the Unit in newspaper and offer was invited and finally it was negotiated with the intervenor/defendant. But before making final settlement, the plaintiffs were given opportunity to retain the assets on matching terms and conditions and on his failure, the intervenor/defendant was asked to deposit the money finalised for sale of the Unit. Against this, the plaintiffs filed Title Suit for the reliefs as mentioned above. The intervenor/defendant was put in possession by the Corporation on 03.08.1996. The entire balance of auction amount was being paid in regular installments by the intervenor. Since then, intervenor/defendant is in peaceful possession of M/s Ranjeet Motel as bonafide auction purchaser and has acquired absolute right and title over the same.

14. Learned court below on the basis of pleadings of the parties framed the following issues:-

- (1) Whether the suit as framed is not maintainable?*
- (2) Whether the plaintiffs have got valid cause of action for the suit?*
- (3) Whether the suit is barred by law of limitation as well as by the provisions of Bihar State Financial Corporation?*
- (4) Whether the suit is barred by principles of estoppel, waiver and acquiescence?*
- (5) Whether the suit is barred by the provisions of Specific Relief Act?*



(6) Whether the suit is barred by law of resjudicata?

(7) Whether the auction sale dated 18.3.1996 and the delivery of possession given to the intervenor on the suit property is void and fit to be set aside?

(8) Whether the plaintiffs are entitled to be put back into possession over the suit premises?

(9) Whether the defendant no. 1 and 2 had no right to auction sale the suit property U/Ss 29 and 30 of the Bihar State Financial Corporation Act?

(10) What other relief or reliefs are the plaintiffs entitled to?

15. Learned Sub-Judge took up the issue no. 9 at first and came to conclusion that the defendant Corporation had got very right to sell the plaintiffs' Unit. The issue no. 9 was decided against the plaintiffs.

16. So far issue nos. 7 and 8 are concerned, learned trial court has held that there is no material on record to suggest that the plaintiffs were intimated as to what valuation of the plaintiffs' Unit had been determined prior to auction sell by the Corporation. D.W.-3, the Branch Manager of the Corporation, Begusarai Branch, in his deposition at paragraph 19 has accepted that before publication of notice, the valuation of the property was not got determined by any valuer. Learned lower court further held that prior to invitation of tenders or even prior to finalisation of the tenders, no intimation of any such valuation to the plaintiffs before



sale was given. It is further held with regard to notice under Section 30 of the Act that it is admitted position that the same were sent prior to the order of the Patna High Court in C.W.J.C. No. 6104 of 1990. The first notice was given by the defendant Corporation is Exhibit-B, which is dated 24.11.1988. Thereafter, a reminder was given on 15.11.1988 (Exhibit-C). Subsequent notices are Exhibit-C/2 and Exhibit- C/3 which are dated 27.07.1994 and 26.9.1994 respectively in which, the plaintiffs were requested to make payment of the overall dues failing which to face take over and sale of the plaintiffs' Unit. The order of this Court giving liberty to defendant Corporation to proceed with the sale in case of default in making payment of installments fixed by the Hon'ble Court is dated 06.11.1990 whereas notice sent to the plaintiffs i.e. Exhibit-C/1, Exhibit-C/2 an Exhibit-C/3 are dated 18.11.1988, 27.07.1994 and 26.09.1994. As such, it is apparent that even after default in payment of installments fixed by the Patna High Court was made by the plaintiffs, notices were sent to the plaintiffs in continuation of the original notice under Section 30 of the Act dated 24.11.1988. The learned trial Court did not find any force in the contention of the plaintiffs with regard to the notice.



17. It is further held that admittedly, at the spot the plaintiffs owned and possessed 7 kathas of land out of which only 5 kathas of land was given in mortgage as security to the Corporation by map attached to the agreement of loan which is Exhibit-A, but at the time of delivery of possession, the defendants did not handover possession by measurement as per the map attached to Exhibit-A. The delivery of possession given to the intervenor/defendant is not proper. In absence of measurement of the portion of the land taken possession of, it appears that possession was not taken strictly as per the measurement given in the map attached to Exhibit-A and the possession taken was a paper transaction. According to the provision contained in the Act in the case of default of payment of loan or any investment thereof, the financial corporation has to take over management or possession or both of concerned Unit at first and then it has to transfer it by way of lease or sale. But in the present case, it appears that before taking the plaintiffs' Unit, the Corporation advertised the same for sale inviting tenders and thereafter it sold the same. It is evident that the plaintiffs' Unit was taken over on 03.08.1996. The sale of plaintiffs' Unit was finalised on 10.05.1996 and an agreement for sale-cum- payment of balance



loan was executed on 07.06.1996. In such facts, the Unit was taken over after finalisation of sale

18. Learned trial court further held that from plain reading of the aforesaid provision contained in Section 29 (I) of the Act, it is very much apparent that sale of the Unit is to follow its take over and not vice-versa. It appears very much absurd and impractical to sell any mortgage or hypothecated property by the financial corporation without taking possession thereof. Default in payment of loan may attract Section 29 of the Act. But that loan is insufficient either to assume possession or to sell the property. Neither should be resorted to, unless it is imperative. Even though no rules appear to have been framed nor any guidelines framed by the Corporation was placed. In absence of completion of the Unit, the proceeding for recovery under Section 29 of the Act may not be justified. It has been further held that no valuation of the plaintiffs' Unit was ascertained either by the Corporation themselves or through other recognized agency.

19. The learned court below considered the Exhibit-E as well as deposition of D.W.-3 in paragraph 16, the intervenor/defendant did not make payment of the full tender money rather he deposited only 10 lakhs at the initial and rest amount of the tender money was allowed to be paid in 36 monthly



installments. From Exhibit-E, it is also apparent that balance amount of tender money amounting to Rs. 11,17,973.86 was treated by the Corporation/defendant to be a term loan to the purchaser intervenor/defendant on the usual terms and conditions of Corporation. This attitude of the defendant Corporation at the expense of the plaintiffs appears to be unjust and unfair and no reasonable prudent owner would accept such an offer. It appears highly unreasonable that in order to liquidate the loan of the plaintiffs, the intervenor/defendant was allowed to purchase and take possession of the loan without making full payment and a new loan for all practical purpose was granted to the intervenor. It is apparent from pleadings of the plaintiffs that the Unit could not be completed due to paucity of funds. In spite of giving assistance to the intervenor, the Corporation could have given been financial assistance to some extent to the plaintiffs. By order dated 17.07.1996 passed in C.W.J.C. No. 6641 of 1996, the Hon'ble Court allowed the plaintiffs to deposit a sum of Rs. 10 lakhs within a period of three weeks but the defendants intervened into the matter and disclosed to this Court that the property in question was auctioned sold and the intervenor had deposited the entire money of the auction sale. The aforesaid order dated 17.07.1996 was recalled. Though it was disclosed by the defendants that the entire



auction sale money was paid by them, but in fact, only 10 lakhs rupees was paid by them and remaining amount was allowed to remain as loan. It is apparent that defendants wrongly placed the fact about the payment of entire auction sale money before this Court and it would be also evident from the order dated 17.07.1996 that the plaintiffs were ready to make payment of Rs. 10 lakhs within a period of three weeks. It cannot be said that the plaintiffs were not ready to make any payment when matching offer was given to them by the defendants. Exhibit-C/5 is an offer given to the plaintiffs to retain the assets on matching terms but there is no evidence before the Court as to whether Exhibit-C/5 was sent and served upon the plaintiffs. Had the plaintiffs received the matching offer, he would not have rushed to the Hon'ble Patna High Court to file C.W.J.C. No. 6641 of 1996 and would not have given an undertaking to deposit Rs. 10 lakhs within a period of three weeks as they expressed before this Court. In the present case, the plaintiffs were not served with the notice of matching offer i.e. Exhibit-C/5 as stated above. The intervenor/defendant was allowed deferred payment of auction sale money which is unjust and unfair.

20. It is apparent from the record that the learned trial Court further discussed about the possession of the Unit. The



possession of the plaintiffs' Unit was handed over to the intervenor when even full payment was not made by him. If at all, the defendant Corporation was of the view that the plaintiffs' Unit should be taken over, the possession should have been retained by the defendant Corporation themselves till final payment by the intervenor. But in the present case, the intervenor without making full payment of the tender amount, was allowed to come in possession over the plaintiffs' Unit. It is admitted case of the parties that the plaintiffs, had made payment of Rs. 14,98,996/- uptill the date of take over were not allowed to remain in possession of the property, however the intervenor who made payment of only Rs. 10 lakhs was given possession thereon. This is unreasonableness and unfairness on the part of the defendant Corporation. In such fact of the case, the guidelines given in ***Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. & Ors.*** reported in ***AIR 1993 SC 935*** is very much applicable in the present case. The auction sale of the plaintiffs' Unit is vitiated by unjust and unreasonable act on the part of the Corporation and its officials and employees. Hence, it is liable to be set aside. The learned trial court decreed the suit in part and the auction sale dated 18.03.1996 was set aside and consequently, the title and interest of the plaintiffs over the suit property was declared in



favour of the plaintiffs. The possession over the suit property given to the intervenor/defendant was declared void. It is further held that the plaintiffs are entitled to get back possession over the suit premises.

21. The appellants namely, Bihar State Financial Corporation and defendant/intervenor being aggrieved and dissatisfied with the impugned judgment and decree, preferred separate appeal challenging the maintainability of the suit and assailed the impugned judgment and decree.

22. Mr. Arun Kumar Sinha, learned counsel for the appellants in First Appeal No. 272 of 1999 has vehemently submitted that Section 69(2) of the Indian Partnership Act, 1932 provides that no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the register of firms as partner in the firm. Hence, the suit is not maintainable. It is submitted that the aforesaid Title Suit has been filed by unregistered partnership firm, namely, M/s Ranjeet Motel, Kachehari Road, Begusarai through its managing partner Shree Naraiian Singh in course of his business. It is submitted that P.W.-7 (plaintiff) has admitted in his cross-examination that his partnership firm has not been



registered. It is also submitted that Exhibit-A is the agreement dated 02.12.1982 between M/s Ranjeet Motel Pvt. Ltd. through its partners and Bihar State Financial Corporation. It states that M/s Ranjeet Motel is an industrial concern. Thus, it is a partnership firm. Reliance has been placed in the case of ***Seth Loonkaran Sethiya & ors. v. Mr. Ivan E. John & Ors.*** reported in ***AIR 1977 SC 336***, in which the larger Bench of the Hon'ble Apex Court in Paragraph 21 has held as follows. "*a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the Partnership Act....*". Reliance has also been placed in the cases of ***Malluru Mallappa (dead) through Legal Representatives v. Kuruvathappa & Ors.*** reported in ***(2020) 4 SCC 313*** and ***Chittoori Subbanna v. Kudappa Subbanna & Ors.*** reported in ***AIR 1965 SC 1325***. It is further submitted that the present suit is barred by the principle of res-judicata. The plaintiffs/respondents filed C.W.J.C. No. 6104 of 1990 before the Patna High Court which was disposed of on 06.11.1990. There was specific direction with regard to the payment of due amount in installments starting from 31st December, 1990 and culminating on 31st October, 1991. It is further directed that whatever may be the balance amount including the interest which the petitioner is liable



to deposit in terms of the agreement by 31st October, 1991. If there was any default on the part of the petitioner (plaintiffs/respondents) in depositing anyone of the installments as indicated in order dated 06.11.1990, it was open to the Corporation respondent to proceed with the sell of the properties mortgaged and to execute documents in favour of the intending purchaser. The matter has already been decided substantially by this Court in civil writ jurisdiction i.e. C.W.J.C. No. 6104 of 1990 (Exhibit-K/1). The plaintiffs/ respondents have not complied the order of the writ court. The title suit for the same matter between the same party is barred by principle of res-judicata. Reliance has been placed in the case of *State of Punjab Vs. Bua Das Kaushal* reported in *AIR 1971 SC 1676*. The Apex Court has held that “*there is no good reason to preclude decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res-judicata in subsequent regular suits on the same matters in controversy between the same parties*”. It is further contended that the case of the plaintiffs is that the plaintiffs applied for sanction of loan of Rs. 15 lakh. The capital cost of the scheme was estimated Rs. 12.50 lakh which includes land, building, other assets and margin money for working capital. On 29.05.1982, loan of Rs. 8.50 lakh was



sanctioned. It was indicated that his installments could fall due on 30.06.1984 i.e. after two years of sanction. It is admitted case of the plaintiffs that 8.50 lakh was paid. Payment of interest will be from the date of disbursement. On 12.07.1984, additional loan of Rs. 3.15 lakh was sanctioned out of which Rs. 2,92,118/- was paid in Account II. It is submitted that the plaintiffs did not comply the order dated 06.11.1990 whereby payment schedule was fixed with the consent of the parties. Thereafter several reminders and opportunities were given by the Corporation to the plaintiffs to clear overdue. Last opportunity was also given to clear their accounts within 15 days, failing which action under Section 29 & 30 of the Act to take over possession of the mortgaged assets and sell as also invocation of personal guarantee will be initiated without any further reference to them. By Exhibit-C/3 dated 27.09.1994, the plaintiffs were given another opportunity for liquidation of entire dues of the Corporation within 15 days by treating that as a last notice for liquidation of the loan amount, failing which action will be taken under Section 29 & 30 of the Act. Despite that the plaintiffs/respondent 1st set did not pay any amount. Ultimately, on 02.03.1996, notice had been published in the newspaper Hindustan Times Patna daily inviting offer on plain paper for purchase of mortgaged assets of Unit mentioned in the



notice in sealed cover stating that the offer will be opened in the Corporation Head Office at 11 am on 18.03.1996 in presence of promoters who had been noticed to be available on that day. The name of the plaintiffs' Unit is at SI. No. 9 in which brief details of assets is mentioned as 'free hold land measuring 5 kathas with building and equipments'. An amount of BOS and reserve price has been mentioned as 20.39 lakhs. On 18.03.1996, sealed cover was opened and offer of two persons; the appellant and one Dr. Krishna Kumar Singh were found in respect of M/s Ranjeet Motel. It is further contended that the plaintiffs were also informed about auction notice. On 25.03.1996, vide Exhibit-C/4, the appellant as well as one Dr. Krishna Kumar Singh were advised to appear before the Managing Director on 03.04.1996 at 03:30 pm at Head Office for negotiation regarding sale of the Unit. Ultimately, the intervenor/defendant/appellant was given an offer to deposit Rs. 10 lakhs as initial payment and sale of the mortgaged assets was finalized in favour of the appellant on certain terms and conditions. Soon thereafter, the plaintiffs filed the present Title Suit before the court below on 26.03.1996.

23. Learned counsel for the appellants submitted that after finalisation of sale, the plaintiffs were given offer by the Corporation vide Exhibit-C/5 dated 17.04.1996 to retain the assets



on matching terms and conditions provided they give their unconditional acceptance letter along with payment within 21 days. Offer to retain the assets on matching terms and conditions signifies that the plaintiffs were to pay Rs. 10 lakhs as initial cash down payment within 21 days. The plaintiffs/respondent 1st set did not respond to the letter dated 17.04.1996 (Exhibit-C/5). Then after expiry of 21 days, vide Memo no. 807 dated 10.05.1996 (Exhibit-C/6), the appellant/intervenor was advised to submit the unconditional letter acceptance of sale and deposit the initial cash down payment of Rs. 10 lakhs within 21 days and execute the sale-cum-balance loan amount agreement to enable the Corporation to handover the possession of mortgaged assets of the Unit. Accordingly, Rs. 10 lakhs cash down payment through Bank drafts in favour of Corporation was done. After receiving the said drafts, the Corporation executed deed of agreement for sale in favour of the intervenor/appellants. However, the consideration money shall be equivalent to BOS (Break of Structure) as on the date of handing over possession of the Unit or execution and registration of sale deed which comes to be Rs. 21,17,973.86 as on 07.06.1996.

24. On the application of intervenor/appellants, he was made party in the suit on 20.02.1997. The plaintiffs filed writ



application bearing C.W.J.C. No. 6641 of 1996 for a direction to the Court below for grant of status quo concealing the facts of auction and deposit of money by the intervenor/appellants and obtained an interim order in their favour on 17.07.1996. When the intervenor/appellants came to know about the interim order, he filed intervention application for adding him as party respondents and also filed an application for modification of the said interim order dated 17.7.1996. Both the applications were allowed by this Court and the interim order dated 17.07.1996 was recalled which was not challenged by the plaintiffs/respondent 1st set. As a matter of fact, they filed Civil Revision application bearing Civil Revision No. 1553 of 1997 which was dismissed on 01.10.1997 which was subsequently affirmed by the Hon'ble Apex Court on 13.02.1998. It is further contended that during the pendency of Title Suit, plaintiffs/respondent 1st set again filed C.W.J.C. No. 3472 of 1997 to quash the auction sale and to restore back the possession of plaintiffs which was dismissed as withdrawn on 05.05.1998.

25. All actions taken by the plaintiffs/respondent 1st set shows that the plaintiffs were only interested in delaying the payment of dues by resorting to dilatory tactics. In the aforesaid facts, the Hon'ble Apex Court has already held that no indulgence



can be shown to such a recalcitrant defaulter. Reliance has been placed in the case *Orissa State Financial Corporation vs. Hotel Joginder & Anr.* reported in (1996) 5 SCC 357 (para 7, 8 & 9)

26. Learned counsel for the appellants further submits that the plaintiffs instead of making repayment of the dues of the Corporation, filed present Title Suit. Although they were directed by the Hon'ble Division Bench of this Court vide Exhibit-K/1 to make repayment by fixing payment schedule with consent of the parties and also they were given opportunity by the Corporation to retain the assets on matching terms vide Exhibit-C/5, the plaintiffs failed to do so. After taking over possession, as per inventory, possession of the Unit/premises was handover to the intervenor/appellants. So far objections raised by the plaintiffs on the plea that first the Unit should be taken over and thereafter, the Corporation could be proceeded for auction sale, this objection could not be sustained in view of Section 29 of the Act. Learned counsel submitted that it is not necessary to take the Unit first and then proceed for auction sale. Reliance has been placed in the case of *Durga Bhawani Cold Storage vs. Bihar State Financial Corporation & Ors.* reported in AIR 2002 Pat 46 (para 15). In view of the above Division Bench judgment, the Corporation may take over the management of the Unit or transfer it by way of lease



or sale as well as it is also not necessary to deposit the entire sale prices.

27. Learned counsel further submitted that the learned court below has also failed to appreciate that the appellants being bonafide purchaser have acquired valid title and has made substantial improvement of the property and invested huge amount and any interference by this Court would cause serious loss and prejudice to the intervenor/appellants. Learned trial court while allowing the Title Suit in part should have also decided about the money deposited by the intervenor/appellants which is to the tune of Rs. 23,37,408.86 between 22.05.1996 and 16.03.1999 vide Exhibit-J. Learned counsel for the appellants further submitted that Execution Case No. 6 of 1999 filed by the plaintiffs/respondent 1st set was stayed by order dated 15.09.1999. Against that, the respondent 1st set filed I.A. No. 11839 of 1999 for vacating the stay order which was rejected by this Court. In the aforesaid facts, the auction sale was held on 25.03.1996 and the possession of the Unit was handed over to the intervenor/appellants on 03.08.1996. Since then, the appellants are in possession of the Unit. It is further submitted that the present suit has been decreed in part. Issue no. 9 i.e. whether the Corporation had no right to auction sale the suit property under Section 29 & 30 of the Act has been decided



against the plaintiffs considering the order of Hon'ble High Court passed in C.W.J.C. No. 6104 of 1990. On the contrary, learned lower court has set aside the auction sell and declared the title and interest of the plaintiffs. It is further submitted that the learned lower court has wrongly held that delivery of possession was not according to map attached to Exhibit-A. Exhibit-F which is details of inventory which shows that the building's ground floor area is 4018 sq. feet plus khaprail building 1200 sq. feet, total comes to 5218 sq. feet. While according to map its area comes to 6997.83 sq. feet from northern side and 6711.86 sq. feet from southern side. Hence to complete the remaining area, it is mentioned in item no. 3. Some portion of building in which State Bank of India, ADB Branch is running to complete the measurement of land of 5 kathas as per the title deed and mortgaged deed. Learned trial court wrongly decreed the suit on surmises and conjectures.

28. On the other hand, learned counsel Mr. Binod Kumar Singh arguing on behalf of the plaintiffs/respondent 1st set submitted that so far question raised with regard to the maintainability of the suit in view of Section 69 of the Partnership Act, 1932, that the suit is barred under section 69 of the Partnership Act in view of the fact that plaintiff no. 1 i.e. M/s Ranjeet Motel is not a registered firm and relied upon the



deposition of partner Sri Narayan Singh who was examined as P.W.-7 and deposed in paragraph 9 of his cross-examination. It is stated by him that “ रंजीत मोटेल मेरा साझेदारी का फर्म जिस समय वित् निगम से मेरा एकरारनामा हुआ था उस समय मेरा फर्म निबंधित नहीं था अभी”. It is submitted by learned counsel for the appellants the subsequent word are missing in photocopy of deposition of P.W.-7 at the relevant place. Assuming for the sake of argument but not admitting that the plaintiffs/respondents is unregistered firm, even then it can maintain a suit in view of the judgment reported in **(2022) 13 SCC 772 (Shiv Developers through its Partners Sunil Bhai Som Bhai Ajmeri Vs. Aksharay Developers and Ors.)**, wherein it has been held that Section 69(2) of the Partnership Act, 1932 is not a bar to a suit filed by unregistered firm, if the same is for enforcement of a statutory right or an common law right. It is further submitted that in the present suit, the agreement is not in the regular business dealings of the firm (respondent no. 1) and the words “enforcing a right arising under the contract” used in Section 69(2) of the Partnership Act, 1932 signify the rights arising out of contracts in respect of the firm’s business transactions only. Reliance has been placed in the case of **Haldiram Bhujiyawala and Ors. vs. Anand Kumar Deepak**



Kumar and Anr. reported in ***(2002) 3 SCC 250*** and ***Purushottam v. Shivraj Fine Arts Litho Works*** reported in ***(2007) 15 SCC 58***.

29. The plaintiffs/respondent 1st set has averred that the appellants lays much emphasis on the orders of the Hon'ble High Court passed in C.W.J.C. No. 6104 of 1990 dated 17.09.1990 (Exhibit-K/1). It appears from the records of the case that the other orders of the Hon'ble High Court passed in the said Writ Petition and other Writ Petitions are also marked Exhibit-K/1 i.e. order dated 17.09.1990, 06.11.1990, 11.07.1991 passed in C.W.J.C No. 6104 of 1990 and order dated 25.07.1996 passed in C.W.J.C. No. 6641 of 1996. From perusal of order dated 17.09.1990 (Exhibit-K/1), the respondent no. 1 was directed to deposit Rs. 3 lakhs on or before 31.10.1990 and thereafter respondent no. 1 shall be depositing Rs. 1,50,000/- on or before 31.12.1990 and yet another Rs. 1,50,000/- on or before 28.02.1991 and another Rs. 1,50,000/- on or before 30.04.1991 and Rs. 1,50,000/- on or before 30.06.1991 and another Rs. 1,50,000/- on or before 31.08.1991 and the balance amount on or before 31.10.1991 and interim order was passed that the Corporation will be at liberty to proceed with sale but no agreement/sale deed shall be executed by the Corporation and ordered to be put on 20.09.1990. Thus, this order was not a final order. It is further submitted that pursuant to order



dated 17.09.1990 (Exhibit-K/1), respondent no. 1 had deposited Rs. 3,00,000/-. This fact has been recorded in order dated 06.11.1990 in the same writ case. It is further submitted that if there is any default of payment of installment as indicated in the order, it will be open to the respondent Corporation to proceed with the sale of the properties and to execute document in favour of intending purchaser. Thus, this order had also not finally decided the issue of sale which is in dispute in present appeal.

30. Learned counsel for the plaintiffs/respondents vehemently submitted that the respondent no. 1 in consultation with Bihar Financial Corporation filed an interlocutory application in C.W.J.C. No. 6104 of 1990 making a prayer that liberty may be given to the parties to enter into a fresh agreement by extending the period mentioned in the order dated 06.11.1990 (Exhibit-K/1). Though this interlocutory application was dismissed but it was stated in the last paragraph of the order that the said order will not prejudice the respondent no. 1 from approaching the Bihar State Financial Corporation for entering into an agreement with them on their own. In such view of the matter, the said order would not come in the way in entering into a fresh agreement if both the parties are ready to enter such agreement.



31. From perusal of order dated 25.07.1996 (Exhibit-K) passed in C.W.J.C. No. 6641 of 1996, it will appear that an information was given to this Court that the appellant has deposited the entire money of the auction sale. In fact, it was a misleading and false statement because from the record as well as during course of argument on behalf of the appellants in the First Appeal, it has been admitted that only Rs. 10 lakhs was deposited and rest amount Rs. 10,39,000/- was deposited in subsequent three years. Surprisingly, the same benefit was not given to the plaintiffs/ respondents. The appellants also placed reliance on the order of the Hon'ble Apex Court (Exhibit-K/3) and order passed in C.W.J.C. No. 3472 of 1997 (Exhibit-K/2), but those orders also do not directly and substantially decide the issues involved in the present suit. By the order dated 05.05.1998 passed in C.W.J.C. No. 3472 of 1997, this Court had directed for speedy disposal of the Title Suit No. 39 of 996. Therefore, the question raising the issue of res-judicata / constructive res-judicata does not arise. Learned counsel further submitted that from perusal of Exhibit-F and the steps taken by the appellants with regard to filing eviction suit after the judgment under appeal for evicting State Bank of India proves that the appellants were not even in possession over the alleged 5 kathas of land with its buildings standing over part of the



5 kathas of land. It is further submitted that the land is purchased through 3 sale deeds having total area 7 kathas as per recital of the 3 deeds which are not in dispute. The Corporation forcibly took possession on 03.08.1996 of the part of property under the agreement (5 kathas of land) and on the same day, it was handed over to the appellants which is evident from Exhibit-G. On perusal of planned map attached with Exhibit-A, the physical possession was not taken according to planned map. In fact, it is admitted position that at the time of delivery of possession, the entire area under mortgage was not delivered. The possession given by the Corporation without separating the mortgage property from the unmortgaged property of the plaintiffs/respondent, on this point, the trial court held that such possession is unjust and improper. It is clear from the record that the sale took place earlier and physical possession delivered over the part of the mortgage property thereafter. It is also submitted that the auction sell took place without any measurement and separating the mortgage property from the rest of the property of the plaintiffs which was not under mortgage while both such properties are in one block. Exhibit-3/B is the representation dated 24.11.1994 to Managing Director, State Financial Corporation with regard to the reschedulement and package scheme annexing a cheque bearing no.- A/1-1043828 of



Rs. 50,000/-. Exhibit-3/G is dated 11.07.1995 in which reference of the previous representation dated 24.11.1994 and 13.03.1995 has been mentioned and again it was reiterated for reschedulement or for scheme package of 25 per cent and detailed facts have been stated therein. There was a scheme of OTS (one time settlement) or package scheme under which 25 per cent of total dues is to be paid and for the rest amount, five years time was to be given under a reschedulement on the alleged rate of interest. In such reschedulement, the period was to be extended and such benefits was given to the other industrial units. It is further submitted that in between 1989-90 and 1990-91, about Rs. 90 lakhs have been repaid and there was no over dues of interest pending up to 28.02.1991. Rebate of 25 per cent of amount of interest was not given to plaintiffs/respondents whereas other units were granted such benefits. The plaintiffs have requested the Corporation for waiver of the penal charge from 1986 to March, 1994. The conduct of the Corporation was not fair rather it was arbitrary. Moreover, the plaintiffs/respondents made a representation dated 11.03.1995 (Exhibit-3/F) before Managing Director for 25 per cent package scheme or OTS (one time settlement) scheme. In the year 1993-94, the plaintiffs/respondents gave a cheque bearing no. A/375-044635 dated 25.03.1995 for an amount of Rs. 1,00,000/- to be paid to the



Corporation and the same was encashed. The plaintiffs/respondents made another representation on 03.08.1995 (Exhibit-3/C) before the Branch Manager, Begusarai for reminding the Managing Director regarding his application for taking appropriate decision in the matter. The plaintiffs raised single grievance on 20.03.1996. As stated above, the Corporation and its authority have not disposed of the representation made by the plaintiffs one after another seeking either reschedulement or for benefit of 25 per cent package scheme or OTS scheme. The plaintiffs have written letter dated 30.11.1994 (Exhibit-3/D) to respondent no. 4 stating therein that Rs. 40,000/- has been paid through cheque no. A/1-104328. It is further submitted that the appellants made an application dated 22.08.1995 (Exhibit-3/I) directly to the Managing Director, Bihar State Financial Corporation, Patna for purchasing M/s Ranjeet Motel, Begusarai when there was no advertisement to sale which was advertised on 02.03.1996 (Exhibit-D) fixing 18.03.1996 for public auction in which he has clearly stated that the Unit should be sold in his favour and possession should be given within a month after depositing 25 per cent of the due amount and rest amount should be paid in installments. The appellants wrote another letter dated 13.02.1995 (Exhibit-3/K) directly to the Managing Director



regarding purchase of M/s Ranjeet Motel stating therein that he is ready to pay 25 per cent of consideration amount at a time and rest balance amounts would be paid upon reschedule payment to be fixed by Bihar State Financial Corporation.

32. Learned counsel for the plaintiffs/respondents submitted that the Head Office of the B.S.S.C invited two persons including the appellants for negotiating to sale of the Unit vide Memo No. 7809 dated 25.03.1996 (Exhibit-C/4). It appears from Exhibit-C/4 that no auction took place on 18.03.1996. Subsequently, an order of sale was issued in which 36 months period was allowed for payment of the term loan with the balance amount which was contrary to the terms and conditions envisaged under Exhibit-D (advertisement) which provides in Clause 9 of the advertisement that in case of finalisation of sale, the purchaser shall have to deposit 10 per cent of the agreed consideration money within a week. In principle, upon acceptance of the offer by the Corporation the balance of cash consideration money shall have to be deposited within 21 days from the date of issue of the sale order failing which the deposit made earlier shall be forfeited and the sale shall be cancelled. The sale order (Exhibit-C/6) is under Memo No. 807 dated 10.05.1996 and thereafter on 03.08.1996 vide Exhibit-G, the Unit in question was taken



possession without making payment of the balance of cash consideration money as required under the advertisement dated 06.03.1996. It is further submitted that Exhibit-7 which is office order contained in Memo dated 01.08.1994 prescribing steps for recovery of the Corporation's dues, it appears from the said office order that there were several steps which were to be followed to ensure recovery of the Corporation's dues. From the perusal of Clause 3, 4, 6 & 8, it appears that the Corporation is obliged to calculate the amount that will be payable in case of OTS scheme, if applicable under Clause 3. The respondent repeatedly requested the Corporation for giving benefit of OTS or 25 per cent package scheme and reschedulement. The plaintiffs/respondents was not given benefit of such scheme rather the said benefit was given to the appellants which is contrary to advertisement (Exhibit-D). The respondent Corporation acted unfairly and arbitrarily adversely affecting the interest of the plaintiffs in selling the Unit contrary to their own office Order (Exhibit-7). It is vehemently submitted that from Clause 6 and 8 of the aforesaid office order, it is clear that the recourse to Section 29 of the Act will be resorted to only when the promotor of the Unit is not ready for either OTS or 25 per cent initial deposit package scheme.



33. Learned counsel further submitted that before selling of the property, no valuer was appointed for assessing the market value of the property which was going to be auctioned sold on 18.06.1996 pursuant to the advertisement dated 02.03.1996 (Exhibit-D). The plaintiffs examined government valuer as P.W.-11. He has proved his valuation report marked as Exhibit-5. From the valuation report, it appears that the market value of the property in question has been fixed on the basis of rate prevailing in the market. The details of which has been mentioned in the report. According to the calculation, the market value of the property was Rs. 76,12,543/- in the year 1996. Very surprisingly, the Unit was advertised to sale for Rs. 20.39 lakhs/- only [item no. 9 of the advertisement (Exhibit-D)]. As per the report of the valuer dated 15.02.1997 (Exhibit-5), the market value of the property was Rs. 76,12,553/- and against the said valuation of the property in auction sale, there was no objection to the said report either by the appellants or Bihar State Financial Corporation.

34. It is further submitted that the plaintiff/respondent has examined himself as P.W.-7 and has deposed in his deposition that the valuation of the property is more than one crore rupees and further stated that he could not complete the project as there was no payment of the total sanctioned amount. He does not know



about the advertisement which was published in newspaper English edition. It is further stated that he has stated before the Patna High Court that he is ready to purchase the property for the amount on which the property was auctioned sold, and stated that the appellant is in possession of the entire disputed property. The appellants is in possession on the basis of illegal order of sale dated 03.08.1996. The plaintiffs/respondents are ready to deposit money which has been deposited by the appellants to the State Financial Corporation. Respondent no. 3 has admitted from his ledger (Exhibit-H) that the respondent no. 1 has already paid Rs. 14,98,996/- out of loan advance of Rs. 11.65 lakhs. In fact, the plaintiffs/respondents have already paid more than the amount which has been advanced by the State Financial Corporation. Therefore, respondent nos. 3 & 4 were not suffering any loss or injury at the hand of the plaintiffs/respondents. The action taken by the appellants in exercise of power under Section 29 & 30 of the Act is illegal and arbitrary. Reliance has been placed by the appellants in the case of *Orissa State Financial Corporation and Another Vs. Hotel Jogendra* reported in (1996) 5 SCC 357 (para 8) which deals with that loanee adopting a delaying tactics and misusing the forum of the High Court. In the present case, the plaintiffs/respondents has already paid more than the amount taken



by him as loan. Therefore, the ratio of that decision is not applicable in the present case. In reply to the decision reported in (1995) 2 SCC 754 (para 21 & 23) and relied by learned counsel for the appellants, the facts of the above case relates to a company and there is no documentary evidence to show that the Corporation was acting in unfair manner taking arbitrary decision contrary to their own office order dated 01.08.1994 (Exhibit-7) relating to recovery of Corporation's dues. When the plaintiffs have made repeated requests through his Managing Partner, Sri Narayan Singh that the Corporation's dues be rescheduled under benefit of the OTS scheme or 25 per cent package scheme be given. Despite the Office Order (Exhibit-7), such benefits were not extended to it. Therefore, the ratio of the aforesaid judgment will not be applicable in the present case. It is further submitted that the appellants relied upon the decision reported in *AIR 1993 SC 1435 (Para 10) [U.P. Financial Corporation Vs. Gen Cap (india) Pvt. Ltd. And Ors.]* which is not applicable in the present case. The trial court has given a clear finding that the Corporation has got right under Section 29 of the Act to sale the Unit. The question is whether the sale was in accordance with law or not? The trial court has held that the sale was not in accordance with law. The judgment relied upon by the learned trial court in the case of



Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Ors., reported in (1993) 2 SCC 279. The said judgment has been overruled by the decision of the Supreme Court in the Case of *Haryana Financial Corporation vs. Jagdamba Oil Mills* reported in (2002) 3 SCC 496 (para 17 & 18). It is apparent from the record that there is statutory violation on the part of the Corporation who had acted in an unfair, unreasonable and with malafide intent in collusion with the appellants and wrongly sold the industrial unit of plaintiffs/respondents and immediately delivered possession over part of the mortgaged property without identifying the mortgaged property. However, it is clear from the records that no auction sale took place on 18.03.1996 as per the advertisement on 02.03.1996 (Exhibit-D). Had there been any final sale of the Unit through public auction on 18.03.1996, then calling only two persons; one of them being the appellant for negotiation on 03.04.1996 at 03.30 pm at the Head Office, Patna before the Managing Director of the Corporation, would not have arisen. In spite of such negotiation, if at all, negotiation had taken place on that day, then Rs. 10 lakhs only would not have been deposited under the entire amount due to the Corporation. This action of the Corporation clearly shows malafide action apart from being unfair and unreasonable. The learned trial court has rightly decreed the



suit in favour of the plaintiffs/respondents. In both the appeals, there is no merit and the same are liable to be dismissed.

35. The appellants in First Appeal No. 268 of 1999 has also assailed the impugned judgment. The appellants are the defendant nos. 1 & 2 in the suit. The learned counsel for the appellants submitted that the learned trial court has wrongly held that the suit was not barred by Principle of Res-judicata or Constructive Res-judicata. Learned trial court misdirected itself and did not properly construe the various orders passed in the writ applications prior to filing of the present suit by the plaintiffs and wrongly held auction of the mortgaged assets and delivery of possession to the defendant/purchaser as illegal and set aside the same. The learned court below wrongly held that even if the plaintiff was defaulter as per the agreement executed by them for repayment of loan and was also defaulter in terms of order of the High Court passed in writ application he was entitled for recovery of possession of the said Unit from the defendant/purchaser who had complied the terms of the sale whereas the plaintiff/respondents defaulted in obeying the court's order. The plaintiff has admitted that he applied for loan on 05.01.1982 and thereafter term loan of Rs. 8.50 lakhs was sanctioned on 29.05.1982. Subsequently, terms of sanction was accepted and



title deeds of land were deposited for creating equitable mortgage on 24.09.1982, required documents were executed on 02.12.1982, additional loan of Rs. 3.15 lakhs was sanctioned. A sum of Rs. 11.29 lakhs was available out of total sanctioned loan of Rs. 11.65 lakhs. The last date for payment of installment was 01.01.1993, there was default in payment of installments leading to recall of the loan as per the terms and conditions of the loan agreement and also as per power vested in the Corporation under Section 29 & 30 of the Act, asking the loanee to discharge their entire liabilities to the Corporation at once. Against the notice of recall of loan, a writ application bearing C.W.J.C. No. 6104 of 1990 was filed and with the consent of the parties, the matter was finally settled and accordingly schedule of installments was fixed. The said schedules of installments has not been carried out by the plaintiffs/respondents and they did not paid the installments as per the order dated 06.11.1990 passed in C.W.J.C. No. 6104 of 1990. In the aforesaid order, there was a rider that in the event of failure to deposit any of the installments, the Corporation can proceed with sale and execute the agreement. Another writ application filed against auction sale dated 18.03.1996 bearing C.W.J.C. No. 6641 of 1996 was dismissed as withdrawn and yet another writ application filed bearing C.W.J.C. No. 3472 of 1997 was also



dismissed as withdrawn, could not have filed Title Suit No. 39 of 1996 to raise the very same grievance against the refusal of injunction by the trial court. Civil Revision No. 1553 of 1997 also ended without success and SLP (Civil) No. 1917 of 1998 was also dismissed. The learned trial court had nothing left to adjudicate except by way of indulgence in hair splitting. In the aforesaid facts, the suit was clearly barred by res-judicata and constructive res-judicata. The deficiency on the part of the Corporation in the manner of grant loan disbursement and non-cooperation could not be gone into by the trial court. Reliance has been placed in the case of *State of Punjab vs. Bua Das Kaushal* reported in *AIR 1971 SC 1676 (para 4)*. The principle of res-judicata has been settled by the Supreme Court in the case of *Haryana Financial Corporation Vs. Jagdamba Oil Mills* reported in *(2002) 3 SCC 496 (para 6, 7, 8 & 9)*. The cause of action having been pleaded in paragraph 11 of the plaint as on 21.08.1995 when the demand of outstanding dues was Rs. 17,70,000/- as on 31st March, 1995 and further on 02.03.1996 when the tender notice was issued could not plead the grievance relating to the initial process of transactions and the learned trial court also could not have gone into those questions as reflected in the impugned judgment.



36. The learned counsel for the appellants submitted that the Writ Application bearing C.W.J.C. No. 6641 of 1996 was filed by the plaintiffs at the stage when the auction sale was already done on 18.03.1996 and the payment as per sale order was made by the purchaser and agreement was executed on 07.06.1996 and only possession was to be delivered and the plaintiffs raised all possible issues and ultimately withdrew the writ application which was dismissed as withdrawn. As such, no question remained to be adjudicated by the trial court. The plaintiff/respondent has also filed another writ application bearing C.W.J.C. No. 3472 of 1997 which was disposed of on 05.05.1998 without any interference, as such, the entire matter up to period 05.05.1998 shall be deemed to be settled against the plaintiffs. Hence, no relief could be granted in favour of the plaintiffs.

37. It is further submitted that the law does not require physical take over of the Unit before sale and the learned trial court misconstrued the provision of law.

38. Learned counsel for the appellants submitted that from the conduct of the plaintiffs/respondents, it is apparently clear that neither notice under Section 29 & 30 of the Act dated 24.11.1988 (Exhibit-B) was obeyed nor notice under Section 29 of the Act dated 12.09.1990 was complied nor order of this Court



passed in C.W.J.C. No. 6104 of 1990 (Exhibit-K/1) was complied. A notice under Section 29 of the Act was published in the newspaper (Exhibit-D) wherein the plaintiffs were also given notice to be present at the time of public auction. Moreover, installments fixed by this Court with consent was not paid. Thereafter several notices Exhibit-C/1, Exhibit-C/2 and Exhibit-C/3 were not complied, which has not been properly considered by the trial court. Therefore the judgment of the trial court is bad in law. Hence, the impugned judgment and decree is liable to be set aside.

39. On the basis of rival contentions of the parties, following points are formulated in both the appeals:-

(i) Whether the decisions of the co-ordinate Bench of this Court in C.W.J.C. No. 6104 of 1990 operates as res-judicata or constructive res-judicata in the present suit?

(ii) Whether the auction sale in question is in accordance with law?

(iii) Whether property in question was undervalued or the reserve price was fixed on a lower side?

(iv) Whether the auction sale dated 18.03.1996 and delivery of possession to the intervenor/defendant/appellant of the



suit property is according to law and in terms of Section 29 and 30 of the Act?

(v) Whether the suit filed by unregistered firm is barred under Section 69(2) of the Partnership Act, 1932?

F I N D I N G S

40. The Title Suit No. 39 of 1936 was filed for setting aside the auction sale and delivery of possession and for declaration that defendant nos. 1 & 2 had no right to auction sale the property under Section 29 and 30 of the Act, and that the auction sale dated 18.03.1996 in favour of intervenor/defendant no. 3 was illegal and void, and the auction purchaser did not acquire any right therein, and also for an order of mandatory injunction directing the defendant Corporation to put the plaintiffs back in possession of the suit premises.

41. The claim of the plaintiffs/respondents is that he set up a motel over the suit land which is belonging to him situated in the prime locality of Begusarai by the roadside. It is further claimed that the suit premises is valued at more than Rs. 20 lakhs and he spent further several lakhs of rupees, from his savings, however he was constrained to take a loan from the Corporation for completing the project and he applied for sanction of loan of Rs. 15 lakhs for its motel industries at Begusarai though the



project was for more than the aforesaid amount. It is further case of the plaintiffs/respondents that the Corporation sanctioned loan of only Rs. 8.50 lakhs out of Rs. 15 lakhs. It is further case of the plaintiffs that he again took loan of Rs. 3.50 lakhs from the Corporation. According to the terms of loan, the promoter's contribution was to be Rs. 2 lakhs. The plaintiffs/respondents deposited original title deeds of the building for creating equitable mortgage in favour of defendant Corporation. The first loan amount was given on 29.05.1982 and second loan amount was released on 12.07.1984. Both the loans were repayable in installments and the last installment was payable on 01.01.1993. Further case of the plaintiffs is that the repayment of loan fell in arrears on account of the establishment being in loss at initial stage and in spite of the request of the plaintiffs, instead of rescheduling the loan, the defendant Corporation started clandestine move to take over the motel in illegal manner in collusion with the defendant/appellant (in First Appeal No. 272 of 1999). The plaintiffs/respondents filed a writ application and pursuant to certain orders passed by a Bench of this Court, certain repayment was also made. It is submitted that the plaintiffs already repaid of Rs. 6.50 lakhs to the Corporation, but in spite of that it advertised



the mortgaged property of the original plaintiffs for sale in the local newspaper by inviting tenders on 02.03.1996. Hence the suit.

Point no. (i)

42. The decision of this Court in writ jurisdiction is with regard to the repayment of loan amount by the borrower and the present suit has been filed for certain reliefs as well as setting aside auction sale in favour of intervenor/appellant. The order of this Court is only with regard to the mode of payment of loan amount. This Court had not decided finally all issues involved in the present case. However, this Court vide order dated 05.05.1998 passed in C.W.J.C. No. 3472 of 1997 had directed for early disposal of Title Suit No. 39 of 1996. Moreover, this Court had never stopped the proceedings of present Title Suit in view of order passed in different writ proceedings while directing for speedy disposal of Title Suit. The question of resjudicata or constructive resjudicata will not apply in the present fact of the case. Therefore, the suit is not barred by Principle of Resjudicata or Constructive Resjudicata.

Point nos. (ii), (iii) & (iv)

43. To appreciate the matter and for determination of points involved in both the appeals, it is important to go through



the relevant provision of The State Financial Corporation Act,
which are as follows:-

29. Rights of Financial Corporation in case of default.—(1) *Where any 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 in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concerns, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.*

(2) *Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.*

(3) *The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.*

(4) *Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it*



as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern.

30. Power to call for repayment before agreed period.—*Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—*

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or



that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation

32A. Power of Financial Corporation to appoint directors or administrators of an industrial concern when management is taken over.—*(1) When the management of an industrial concern is taken over by the Financial Corporation, the Financial Corporation may, by order notified in the Official Gazette, appoint as many persons as it thinks fit,—*

(a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956 (1 of 1956) to be directors of that industrial concern; or



(b) in any other case, to be administrators of that industrial concern.

(2) The power to appoint directors or administrators under this section includes the power to appoint any individual, firm or company to be the managing agent or manager of the industrial concern on such terms and conditions as the Financial Corporation may think fit.]

(3) Nothing in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in any instrument relating to the industrial concern shall, in so far as it makes in relation to a director, any provision for the holding of any share qualification, age limit, restriction in the number of directorships, retirement by rotation or removal from office, apply to any director appointed by the Financial Corporation under this section.

32C. Powers and duties of directors and administrators.—*(1) Subject to the control of the Financial Corporation, the directors, or as the case may be, the administrators appointed under section 32A, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial concern and shall exercise such powers and have such duties as may be prescribed.*

(2) Without prejudice to the generality of the powers vested in them under sub-section (1), the directors or as the case may be, the administrators appointed under section 32A, may, with the previous approval of the Financial Corporation, make an application to a court for the purpose of cancelling or varying any contract or agreement entered into any time before the issue of the notified order



under section 32A, between the industrial concern and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial concern, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement and the contract or agreement shall have effect accordingly.

32D. No right to compensation for termination of contract of managing agent, managing director, etc.—(1) *Notwithstanding anything to the contrary contained in any contract or in any law for the time being in force, no managing agent, managing director or any other director or a manager or any person in charge of management of an industrial concern shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with such concern.*

(2) *Nothing contained in sub-section (1) shall affect the right of any such managing agent or managing director, or any other director or manager or any such person in charge of management to recover from the industrial concern, moneys recoverable otherwise than by way of such compensation.*

48. Power of Board to make regulations.—

(2) *In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—*



(l) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;

44. The State Financial Corporation was founded based on the objectives of supporting the small and medium institution in India for doing business. It further played a vital role in banking industry by outlining the features of loan, debts and equity, acquiescence and subscription policies to business that are searching for further exposure to market. The State Financial Corporation provides long term financial assistance to the business by providing the small to medium enterprises with monetary support. The Act was published in 1951 in order to support the inter-neural activities of small to medium enterprises in India. The Act involves significant members of the Board of financial corporations of different states of India.

45. On plain reading of Section 29 of the Act, there is no doubt that the financial corporation has right to take over the management or possession or board of industrial concern as well as the right to transfer by way of lease or sale. Section 32(a) to 32(e) of the Act have been added with respect to the matters relating to taking over of the management of industrial concern. From the provision of Sub-section 1 of Section 29 of the Act, it is apparent that after taking over of the management or possession,



the right to transfer the properties accrues to the State Financial Corporation and not prior to it. It further empowered that the Corporation with regard to transfer by way of sale for realising the property mortgage to the financial corporation has to be exercised reasonably and in good faith after complying the provisions of Section 30 of the Act. The plaintiffs/respondents emphatically pleaded that the sale was conducted in hush-hush manner and it was effected without notice to the loanee. It is also apparent from the record that before publication of notice, the valuation of the property was not determined by any valuer. It also appears from the record that before sale no intimation was given to the plaintiffs. D.W.-3, the Branch Manager of the Corporation in his deposition accepted that valuation of the property was not determined by any valuer. This aspect of the matter in detail was discussed by the trial court and it has been held that non-determination of valuation of the plaintiffs' Unit before sale as well as non-intimation of any such valuation to the plaintiffs/respondents before sale is highly prejudicial to the plaintiffs/respondents. Although the plaintiffs/respondents submitted a valuation report (Exhibit-5) of valuer, namely, Sunil Kumar Singh, P.W.-11. He has proved his valuation report. The market value of the property in question has been fixed on the basis of prevailing rate in the market. According



to the calculation, the market value of the property was Rs. 76,12,543/- in the year 1996. While the Unit was advertised for auction sale and reserved price was fixed at Rs. 20.39 lakhs [Item no. 9 of advertisement (Exhibit-D)]. Moreover, P.W.7 stated in his deposition that the defendant Corporation did not take any steps for ascertaining valuation of the plaintiffs' Unit and that at the time of sale, the price of plaintiffs' Unit was more than one crore rupees.

46. It is admitted fact that the notice under Section 30 of the Act was sent prior to order of this Court passed in C.W.J.C. No. 6104 of 1990. The first notice which was given by the defendant Corporation is Exhibit-B, which is dated 24.11.1988. Thereafter, a reminder was given on 18.11.1988 (Exhibit-C). Subsequent notices are Exhibit-C/2 and Exhibit-C/3 which are dated 27.07.1994 and 26.09.1994 respectively in which the plaintiffs were requested to make payment of the overall dues failing which to face the take over and sale of the plaintiffs' Unit. By virtue of order passed by this Court, a letter was given to the defendant Corporation to proceed with the sale in case of default in making payment of installments fixed by this Court vide order dated 06.11.1990. The notices were sent to the plaintiffs in continuation to the original notice under Section 30 of the Act



dated 24.11.1988. This submission of the plaintiffs has not been accepted by the trial court.

47. In view of the above discussions and materials on record, the valuation of the plaintiffs' Unit was not ascertained prior to the advertisement of Auction Sale. The valuation mentioned in the advertisement is an imaginary one which has not been proved by the Corporation. It appears from the record that tenders were invited through advertisement in newspaper (Exhibit-D). After finalisation of tender, a notice was given to the plaintiffs intimating them that as per tender notice advertised in Hindustan Times on 02.03.1996, the defendants Corporation received tender and finalized the same. The terms and conditions in the notice (Exhibit-C/5 dated 17.04.1996) are incorporated and also offer being made to the plaintiffs to retain the assets on matching terms and conditions provided they give unconditional acceptance letter along with payment within 21 days from the issue of this letter which was received on 25.04.1996 by the plaintiffs. However before the said notice dated 17.04.1996, the plaintiffs filed the present suit on 26.03.1996. The Corporation after expiry of 21 days on 10.05.1996, advised the appellant/intervenor to submit unconditional letter of acceptance of sale and deposit the initial cash down payment of Rs. 10 lakhs



within 21 days and execute the sale-cum-balance loan agreement to enable the Corporation to handover the possession of the mortgage assets of the Unit. The appellants/intervenor deposited Rs. 10 lakhs cash down payment through bank draft in favour of the Corporation and accordingly, deed of agreement for sale was executed by the Corporation in favour of intervenor/appellants on 07.06.1996. The consideration money equivalent to Break of Structure (BOS) as on the date of handing over possession of the Unit or execution and registration of sale deed whichever is earlier, which comes to Rs. 21,17,973.86 as on 07.06.1996 while the said Unit as per the approved valuer report dated 15.02.1997 was Rs. 76 lakhs and odd. It is apparent from the record that the Unit in question was put on auction at a very low consideration amount. It is apparent from Exhibit-3/J, which is balance outstanding of M/s Ranjeet Motel as on 19.06.1986 in which the principal amount Rs. 11,29,236.15 has been shown. The letter was signed by Assistant Manager and Branch Manager on 23.08.1995 but the balance outstanding is shown of the year 1986. It has been clearly stated that Rs. 6 lakhs was deposited on 31.10.1990, 31.12.1990, 27.02.1991 as per the order of this Court (Exhibit-K/1). The penal chart was also attached in which the grand total is shown to be Rs. 1,70,781.44 up to 31.08.1995 as penal charges which is wrong



contrary to the agreement between the parties. However, as stated above, before sale of the property, no valuer was appointed for assessing the market value of the property which was advertised for sale and date and time was fixed at 11 am on 18.03.1996 pursuant to the advertisement dated 02.03.1996. An Amount of BOS and reserve price has been mentioned as 20.39 lacs. Pursuant to the notice published in newspaper dated 02.03.1996, the appellant (intervenor/defendant) and one Dr. Krishna Kumar Singh filed their tender for the purchase of M/s Ranjeet Motel. Taking into consideration the offer of intervenor/defendant/appellant and Dr. Krishna Kumar Singh, they were advised to appear before the Managing Director on 03.04.1996 at 03:30 pm at Head Quarters for negotiation of sale of the Unit. It is admitted case of the intervenor/defendant that the appellant/intervenor was given an offer to deposit Rs. 10 lakh as initial down cash payment and sale of the mortgaged assets was finalized on 25.03.1996 in favour of the appellant/intervenor on certain terms and conditions. It appears from the record that after finalization of sale, the plaintiff/respondent 1st set was given offer by the Corporation vide Reference No. 357 dated 17.04.1996 (Exhibit-C/5) to retain the assets on matching terms and conditions provided they give their unconditional acceptance letter along with payment within 21



days. The said letter was received by the plaintiff/respondents 1st set on 25.04.1996. In reply to aforesaid letter dated 17.04.1996, the plaintiff/respondents 1st set submitted his request on 11.05.1996 before Managing Director of the Corporation and prayed for rescheduling the payment of the due amount and package scheme under which after accepting 25 per cent of the amount due for the rest five years at old rate of interest, the installments were fixed as has been done in the case of other concerned industrial units. In another representation, the plaintiffs filed representation before the concerned authority on 24.11.1994 (Exhibit-3/B) and requested to accede to scheme of OTS (One Time Settlement).

48. It appears from Exhibit-C/4 dated 25.03.1996, no auction took place on 18.03.1996. Only two persons were called; one of them being appellant. Thereafter, an order of sale was issued in which 36 months period was allowed for payment of term loan with balance amounts which was contrary to the terms and conditions envisaged under Exhibit-D. The plaintiff/respondents' Unit was advertised in daily newspaper 'Hindustan Times' on 02.03.1996 (Exhibit-D). At serial no. 9 of the said advertisement, the name of the Industrial/Units was mentioned. The requirement of auction sale mentioned in the said tender notice was that in case of finalisation of sale, the purchaser



have to deposit 10 per cent of the agreed cash consideration money within a week. In principle upon acceptance of offer by the Corporation, the balance of cash consideration money shall have to be deposited within 21 days from the date of issue of sale order failing which the deposit made earlier shall be forfeited and the sale shall be cancelled. It is apparent from Exhibit-C/4 dated 25.03.1996, that the Bihar State Financial Corporation invited two persons including the appellant for negotiations for sale of the Unit before the Managing Director on 03.04.1996 at 03:30 pm at the Head Office, Patna. The opportunity for liquidation of corporation's entire dues within 15 days from the date of issue of the letter dated 27.09.1994 (Exhibit-C/3) was given to the plaintiffs failing which the authority will take the possession over the mortgaged assets of the Unit without giving any further notice to the plaintiff/respondents for recovery of Corporation's dues and vide Memo No. 357 dated 17.04.1996 and the authority concerned gave an offer to retain the assets on matching terms and conditions provided given unconditional acceptance letter along with the payment within 21 days from the date of issue of this letter.

49. Moreover, it is admitted case of both the appellants especially Bihar State Financial Corporation that before finalisation of sale, the Corporation had not assessed the value of



mortgaged property. It is apparent from the record that the valuation of the property under mortgaged was assessed by the authority concerned at Rs. 12,50,000/- in the year 1985 at the time of granting loan to the plaintiff/respondents. The property in question was advertised for auction sale in the year 1996 (Exhibit-D). The registered approved valuer (P.W.-11) has submitted his valuation report of the suit property at Rs. 76,12,543/- (Exhibit-5) which was neither challenged nor any objection was filed to valuation report by the appellants or Bihar State Financial Corporation.

50. The process was initiated by the Corporation to sell the subject assets of the mortgaged Unit. In view of auction rules, the operating agency i.e. Bihar State Financial Corporation was under an obligation to obtain the valuation report of the subject property and after due assessment has to arrive at the reserved price for the sale of the property. It is apparent from the record that no steps was taken by the Corporation to obtain the valuation report from any agency and without due assessment, the reserve price was fixed for the sale of the property.

51. The object of the auction is to secure optimum realizable value of the property by giving opportunity to the potential buyers facing competitive bids either in open or closed



format. The auction is the process that involves buying and selling goods and services by offering them for bids, taking bids and selling items to the highest bidder and that is possible if there is a competitive bidding between the bidders.

52. The object of auction has been considered by the Hon'ble Apex Court in ***Lakshmanasami Gounder v. CIT, Selvamani and Others*** reported in ***(1992) 1 SCC 91*** which is as under:-

“The object of the sale is to secure the maximum price and to avoid arbitrariness in the procedure adopted before sale and to prevent underhand dealings in effecting sale and purchase of the debtor's property. Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities or the sale officers who should act fairly and objectively. Their action should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias, favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the debtor.”

53. It is apparent from the record that the price of mortgaged property was not settled in public auction rather the same was claimed to be settled in the office of the Corporation's Head Office at Patna on 03.04.1996. Later on, a deed of agreement



was executed by the Corporation in favour of intervenor/appellant on 07.06.1996 (Exhibit-E) in which it has been indicated that consideration money shall be equivalent to Break of Structure (B.O.S.) as on the date of handing over possession of the Unit or registration of sale deed which is earlier.

54. In the background of action/steps taken by the Corporation in the auction sale proceedings, the Corporation has not filed any documents which justifies the reserved prices of the Unit under Sale, no minutes of meeting relating to auction purchase of the plaintiffs' Unit to show that the auction sale property was duly assessed to secure optimum realizable value of the property. The Corporation has completely failed to prove its obligation before selling the property. The Bihar State Financial Corporation/ appellant in First Appeal No. 268 of 1999 acted unfairly and unreasonably in selling the property of the industrial concern which is also apparent from Exhibit-C/4, the letter of the Corporation to the appellants (First Appeal No. 272 of 1999) and another letter dated 25.03.1996 for appearance before the Managing Director of the Corporation on 03.04.1996 for negotiation of sale of the Unit, namely, M/s Ranjeet Motel. It appears from the said exhibits that no auction sale took place on 18.03.1996 as per advertisement dated 02.03.1996 (Exhibit-D). It



is apparent that no public auction took place on 18.03.1996. The auction was finalised in the office of the Managing Director of the said Corporation on 03.04.1996 (Exhibit-C/4). Later on, deed of agreement was executed on 07.06.1996 (Exhibit-E). The sale order (Exhibit-C/6) bearing Memo No. 807 dated 10.05.1996 was issued by the Financial Corporation. On that basis, the Unit in question was taken into possession on 03.08.1996 without making payment of the balance cash consideration money as required under the advertisement dated 06.03.1996. The manner in which the sale has been conducted (Exhibit-D and Exhibit-C/4) and sale order (Exhibit-C/6) was passed, it appears that the Corporation, respondent nos. 3 and 4 (First Appeal No. 272 of 1999) acted unfairly and contrary to the advertisement adversely affecting the interest of the plaintiff/respondents in selling the Unit contrary to their own office order (Exhibit-7), the office order dated 01.08.1994 for OTS scheme. However, the plaintiff/respondents had already paid Rs. 14,98,996/- (Exhibit-H, ledger of the Corporation) out of loan advanced of Rs. 11,65,000/-. The mortgaged property measuring an area of 5 kathas and its building were sold at a very small price without assessing the value of the property.



55. It is apparent from the record that the reserve price was mentioned or fixed at Rs. 20,39,000/- in tender notice for sale of mortgage assets unit of the corporation on “As is where is the basis” on balance outstanding market value and the final bid was accepted and sale was finalized for amount on the terms and conditions. The consideration money of the property in question shall be equivalent to B.O.S. (Balance of Outstanding) as on the date of any other possession of the unit or execution and registration of sale deed whichever is earlier, which comes to Rs. 21,17,973.86/- as on 07.06.1996. However, the corporation dues which cumulatively including interest accumulated to the tune of Rs. 20,38,776.50/- as on 29.02.1996.

56. In ***Ram Kishun and Ors. Vs. State of Uttar Pradesh and Ors.*** reported in ***(2012) 11 SCC 511***, the Hon’ble Apex Court has held in paragraph 20 that fixation of the reserve price doesn’t preclude the claimant from adducing proof that the land has been sold for a low price. It was further held in paragraph 21 and 22 which is as follows:-

*“21. In **Desh Bandhu Gupta Vs. N.L. Anand & Anr.** reported in **[(1994) 1 SCC 131]** this Court held that in an auction-sale and in execution of Civil Court’s decree, the Court has to apply its mind to the need for furnishing the relevant materials particulars in the sale proclamation and the records must indicate*



that there has been application of mind and principle of natural justice had been complied with.

“22. In view of the above, it is evident that there must be an application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings.”

57. The reserve price was not fixed on the basis of report of the valuer. The reserve price was fixed on the basis of dues including the interest accumulated to the tune of Rs. 20,38,776.50/-. However, DW-3, the Branch Manager of Bihar State Financial Corporation, Begusarai Branch in paragraph 19 of his deposition has accepted that before publication of tender notice, the valuation of the property was not got determined by any approved valuer. The plaintiff has proved the valuer report marked as Exhibit-5 assessed by registered Valuer/Approved Valuer, namely, Sunil Kr. Singh (PW-11). According to the calculation, the market value of the property was Rs. 76,12,543/- in the year 1996. The valuation of approved Valuer has not been challenged by the defendant/appellant. It is apparent from the above facts that the reserve price for sale was not fixed on the basis of any valuation report assessed by the approved Valuer of the subject property.



However, inventory of the assets of the mortgage unit was prepared on 03.08.1996 after finalizing the fixing price. Thus, the very procedure adopted by the Corporation (Appellant of First Appeal No. 268 of 1999) appears to be defective at its very inception. The action taken by Corporation in the procedure adopted before sale is arbitrary. The action of the corporation is not legitimate. The property has been sold through auction sale for lesser value.

58. In the case of *Mardia Chemicals Ltd. & Anr. Vs. Union of India and Ors.* reported in *(2004) 4 SCC 311*, it has been held that-

“presumption is in favour of validity of an enactment and a legislation may not be declared unconstitutional likely more so, in the matters relating to fiscal and economic policies resorted to in the public interest, but while resorting to such legislation it would be necessary to see that the persons aggrieved get a fair deal at the hands of those who have been vested with the powers to enforce drastic steps to make recovery.”

59. In view of the above, the auction sale on 18.03.1996 pursuant to tender notice dated 02.03.1996 is without finalizing the reserve price of the mortgage unit. It is apparent from the record that there is no assessment of valuation of mortgage property on



record and also DW-3 (Branch Manager) admitted that the mortgage property was not assessed by any approved Valuer. It is also apparent from the record that the reserve price was fixed on the basis of outstanding dues on the mortgage which is not the real value of the suit property. However, registered/approved Valuer assessed the property in question at Rs. 76,12,543/-. The corporation has failed to do so. The substantial injury to the plaintiff/respondents would amount to material irregularity and ultimately vitiates the subsequent proceeding. Point nos. (ii), (iii) & (iv) answered in favour of plaintiff/respondents and against both the appellants.

Point No. V

60. Whether the unregistered firm can maintain a suit? In this regard, the Hon'ble Supreme Court has held that Section 69(2) of the Partnership Act, 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right. This view has been taken in the case in *Shiv Developers through its Partners Sunil Bhai Som Bhai Ajmeri (Supra)*. Enforcing a right arising under the contract used in Section 69(2) of the Partnership Act, 1932 signify the rights arising out of contracts in respect of firm's business transactions only.



61. In case of *Purushottam & Anr. Vs. Shivraj Fine Arts Litho Works & Ors.* reported in *(2007) 15 SCC 58*, it has been held that-

“registration of a firm was conceived as a protection to third parties dealing with a partnership firm. Registration ensured the certainty of existence of the firm and its membership so that later unsuspecting third party contracting with the firm may not run the risk of being defeated on discovery that neither the partnership firm nor its partners existed in fact.”

62. The bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a 3rd party in the course of business dealing with such 3rd party. If the unregistered firm is a party or has not entered in connection with the business of unregistered firm with a 3rd party, the bar of Section 69(2) will not apply. In the present case, the contract between plaintiffs and defendant corporation was not one entered into by the unregistered firm as in the course of its business dealing with the defendants so viewed, the bar of Section 69(2) cannot apply to the suit filed by the plaintiff/respondents.

63. In the light of the narrative and discussions above, in my opinion the auction sale is bad in law. The tender notice published in the newspaper without taking the possession of the unit by the corporation is in violation of the procedure. It is also



evident from the material on record that the reserve price was fixed without assessment of valuation of the suit property. No approved Valuer has submitted any report with regard to the value of the property. The unit in question was sold only against the due in favour of corporation. The auction sale dated 18.03.1996 was not done on that day, the sale order was issued by the Managing Director on the basis of negotiations with the appellant intervenor/defendant which is against the spirit and purpose of auction.

64. Thus, it is held that the judgment and decree passed by the court below is fit to be affirmed.

65. In the result, finding no materials in both the First Appeals, the same are hereby dismissed but under the circumstances without costs.

66. However, the appellants-auction purchasers, having paid the entire auction money to the Bihar State Financial Corporation (appellant in F.A. No. 268 of 1999), lawfully took possession of the property in auction sale, which is a hotel/motel. In the interest of complete justice between the parties, this Court is of the considered opinion that the decree holder, i.e., plaintiffs-respondents, be directed to deposit the entire outstanding dues of the Bihar State Financial Corporation, along with interest accrued



up-to-the date when the Motel, in question, was taken over by the appellants of F.A. No. 272 of 1992.

67. The entire amount, along with interest, shall be deposited within a period of two months from the date of the pronouncement of this judgment before the Bihar State Financial Corporation (appellant in F.A. No. 268 of 1999). Upon such deposit of the said money by the decree holder, the Bihar State Financial Corporation shall refund the auction sale money to the auction purchasers (appellants in F. A. No. 272 of 1999) within 15 days from the date of such deposit.

68. Since the appellant-auction purchasers are carrying business of Motel which was originally established by the decree holder and continued by the appellants after taking over the possession of the said Motel (Ranjeet Motel) in a auction sale proceeding and the appellants raised income from it ever since they came in possession, therefore, interest on the auction sold amount deposited by auction purchasers has not been considered.

69. However, in the event of default by the decree holder in depositing the entire outstanding dues within the prescribed period, the possession of the appellants in F.A. No. 272 of 1999 shall not be disturbed.



70. The stay granted vide order dated 15.09.1999 with regard to further proceeding of Execution Case No. 6 of 1999 pending in the Court of Subordinate Judge V, Begusarai is hereby vacated.

71. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

Premchand/
Prabhat/
Shyambihari-

AFR/NAFR	AFR
CAV DATE	04.03.2025
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