

Dipti Engineering Vs. General Manager Gujarat State Financial Corpn.

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Court : Gujarat

Decided On : Jul-17-2008

Reported in : AIR2008Guj169

Judge : Jayant Patel, J.

Acts : Contract Act; [Constitution of India](#) - Article 12

Appeal No. : Special Civil Application No. 18090 of 2007

Appellant : Dipti Engineering

Respondent : General Manager Gujarat State Financial Corpn.

Advocate for Def. : H.S. Munshaw, Adv. for Respondent 1

Advocate for Pet/Ap. : A.R. Gupta, Adv. for Petitioner 1

Disposition : Petition allowed

Judgement :

Jayant Patel, J.

1. Rule. Mr. Munshaw waives notice of Rule for the respondent.

2. With the consent of the learned advocates appearing for both the sides, the matter is finally heard.

3. The short facts of the case appears to be that the loan facility was sanctioned in favour of the petitionre for Rs. 21,20,000/- and the amount of Rs. 18,42,000/- was disbursed by the respondent to the petitioner firm. In the said loan transaction, one of the property viz. residential premises of one partner of the petitioner Shri Tulsidas Bhimrao Vadelvar, was placed as collateral security with the other securities. The petitioner firm could not repay the amount and respondent Corporation proceeded against the building and plant and machinery of the firm and realised the amount of Rs. 11,12,000/- in the year 2001 and as per the petitioner, the outstanding amount remained as Rs. 7,98,997/- with interest. As the residential house of one of the partner was also given as collateral security, the respondent Corporation took the possession of the said house and the offers were invited by respondent Corporation for disposal of the said property. It appears that the highest offer received by the respondent Corporation was of only Rs. 2,70,000/- as against the valuation of Rs. 3,50,000/-. As the highest offer coming on record was of Rs. 2,70,000/-, the partner of the petitioner showed willingness to pay the said amount. The said offer was considered by GSFC, and vide letter dated 02.02.2006, GSFC informed to the petitioner that the Tender Committee of the respondent Corporation in its meeting dated 25.01.2006 has contemplated to accept the offer for purchase of the collateral security for Rs. 2,70,000/- on the terms and conditions which are mentioned in the said letter, which inter alia included for payment of 10% of the amount within 30 days from the sale letter and all usual terms and conditions were to be made applicable. It is an admitted position that the petitioner deposited the amount of Rs. 2,70,000/- vide Demand Draft dated 29.05.2006 drawn in favour of State Bank of India and thereafter, he requested for entrustment of the possession of the said property. It appears that instead of handing over the possession of the property by the GSFC, it is communicated to the petitioner by letter dated dated 22.06.2006 that the Recovery Committee of GSFC has considered the matter and has taken the decision that the property can be released on payment of Rs. 3,50,000/- and therefore, the additional amount of Rs. 80,000/- has been demanded for releasing the property in favour of the partner of the petitioner and to handover the possession of the same. It is under these circumstances, the petitioner has approached to this Court.

4. Heard Mr. Gupta, learned Counsel appearing for the petitioner and Mr. Munshaw appearing for the respondent Corporation.

5. The only aspect that deserves to be considered is whether the respondent Corporation can be permitted to back out from the offer given and having acted upon by accepting the consideration of Rs. 2.70 Lakhs.

6. The fact as referred to hereinabove are not in dispute so far as the offer made by the respondent to the petitioner vide letter dated 02.02.2006. The relevant portion of the said letter reads as under:

By virtue of the decision taken in the Tender committee meeting dated 25.01.2006 the corporation contemplated to accept the offer for purchase of collateral security, i.e., land, building of M/s Dipti Engineering, situated at S. No. 302, T.P. Scheme No. 7, Municipal Survey No. 42/62, Lalji Ni Chali, Hatkeshwar, Khokhra, Ahmedabad for Rs. 2.70 Lakhs (Rupees Two Lac Seventy Thousand Only) on the following main terms and conditions:

The purchaser will pay 100% amount within 30 days from the date of sale letter.

All other terms and conditions of the sale letter shall be applicable.

It is hereby mentioned that you had called upon to remain present before the Tender Committee meeting held on 25.01.2006 vide our public advertisement dated 25.12.2005. You are being original borrower of the company, you have a priority right over any other person or party to purchase the said assets put to sale by the corporation, we hereby would like to offer you for purchase of the said assets on said identical terms and conditions with clarifications that this offer shall not in any way absolve you as the original borrower of your repayment liability of the rest of the debts owned by you to the Corporation.

You are hereby advised to indicate your written consent to the said offer within 10 days from the date of this letter failing which it would be presumed that you are not interested in the said offer and in that event the corporation shall be at the liberty to go ahead with the decision to sell the assets to the bidder/s as per its decision taken by the competent authority.

7. It is also an admitted position that the partner of the petitioner having accepted the aforesaid offer, paid the amount of Rs. 2.70 Lakhs by D.D. No. 899869 dated 29.05.2006. Therefore, the offer for sale of the property upon receipt of the consideration could be said as completed.

8. It was required for the respondent Corporation to handover the possession by acting upon the offer made to the petitioner vide letter dated 02.02.2006. But, inspite of the same, the stand taken by the respondent Corporation is that, as per the decision of the Recovery Committee, the property could be released for Rs. 3.50 Lakhs and therefore, the additional amount of Rs. 80,000/- has been demanded for release of the property from the charge of the GSFC and to handover the same to the partner of the petitioner.

9. It is well settled that the principles of promissory estoppel applies even to the Public Corporation in the matter of contract as well as in the field of its lawful activity. The learned Counsel for the respondent Corporation was candid in conceding that the offer of the GSFC vide letter dated 02.02.2006 was not dependent upon the finalisation of the amount by recovery committee. Therefore, once such condition was not incorporated in the offer and the partner of the petitioner having accepted the offer and having tendered the money and respondent corporation having accepted the said money, it would not be open to the respondent to back out once the contract is completed.

10. Apart from the above, it would also be not open to the respondent Corporation to back out from the representation made by it to the partner of the petitioner who has altered his position on such representation. If the aforesaid conduct is permitted on the part of the respondent Corporation, it would be in breach of the principles of promissory estoppel as well as it would also be in breach of the relationship as per the law of contract. The respondent Corporation being an instrumentality of the State within the meaning of Article 12 of the Constitution, cannot be permitted to back out from the promise given and having acted upon the same, after receipt of the consideration of Rs. 2.70 Lakhs. It is also well settled that the conduct on the part of the State or the instrumentality of the State even in the field of contractual relationship has to be just, fair and reasonable. The stand

taken by the respondent Corporation of demanding the amount of Rs. 80,000/- more after making offer and after having received the full consideration, can be said as ex facie arbitrary.

11. The contention of the learned Counsel for the respondent Corporation that the valuation of the property was Rs. 3.50 Lakhs and the petitioner were aware about the same, hardly assumes any importance inasmuch as GSFC was also fully aware that the valuation of the property was Rs. 3.50 Lakhs and it had also made an attempt to realise the full value but the highest offer received was of Rs. 2.70 Lakhs. Therefore, the offer was given to release the charge and to entrust the possession against the consideration of Rs. 2.70 Lakhs. Once the GSFC under the conscious knowledge by lawful authority offered the release of the property for Rs. 2.70 Lakhs, if permitted to demand additional amount under the pretext that the actual valuation was Rs. 3.50 Lakhs, the same would be in breach of the principles of promissory estoppel and would also run counter to the settled position under the law of contract, more particularly because, it is not a case where the GSFC gave offer under any mistaken belief, but it was a case where consciously, inspite of the knowledge that the valuation was of Rs. 3.50 Lakhs, offer was given for Rs. 2.70 Lakhs. Under these circumstances, the contention raised on behalf of the respondent Corporation cannot be accepted.

12. In view of the above, the action on the part of the respondent Corporation cannot be sustained as the same is unjust, arbitrary, and in breach of the principles of promissory estoppel and also against the law prevailing under the Contract Act.

13. Hence, the direction deserves to be issued is to the respondent Corporation to release the charge and to handover the residential premises being S. No. 302, T.P. Scheme No. 7, Municipal Survey No. 42/62, Lalji Ni Chali, Hatkeshwar, Khokhra, in favour of the partner of the petitioner Shri Tulsidas Bhimrao Vadelvar. Hence, ordered accordingly. The possession of the property shall be actually handed over within two weeks from the receipt of the order of this Court.

14. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

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