

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 51 OF 2015
(Arising out of SLP(C) No.22775 of 2012)****M/s Swati Ferro Alloys Pvt. Ltd. ... APPELLANT****VERSUS****Orissa Industrial Infrastructure
Development Corporation (IDCO) & Ors. ... RESPONDENTS****J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

Leave granted.

2. This appeal has been preferred by the appellant-M/s. Swati Ferro Alloys Pvt. Ltd. against the judgment dated 18th April, 2012 passed by the Division Bench of High Court of Orissa at Cuttack in WP(C) No.16790 of 2008. By the impugned judgment, the High Court observed and held as follows:

"Admittedly the land in question belongs to IDCO and the same was leased out in favour of one M/s Prachi Vanijya (P) Ltd. for manufacturing of Konark Fans, which was mortgagable right in favour of OSFC and other financial institutions.

Latter on M/s Prachi Vanijya changed its name to M/s Eastern Fan. Opposite parties 3 to 6 are the legal heirs of one Satya Narayan Swain, who was stated to be one of the partners of said M/s Eastern Fan and according to the petitioner, said Satya Narayan Swain had agreed to transfer the land in favour of the petitioner.

Learned counsel for the IDCO seriously disputed the aforesaid transaction and submits that though the

opposite parties 3 to 6 are the legal heirs of one of the partners of the M/s Eastern Fan, the said M/s Eastern Fan has not been made a party.

Counsel for the opposite parties 3 to 5 also dispute transaction. Learned counsel for OSFC submits that they have no role to play as the land till date belongs to IDCO.

This writ application is full disputed facts and the prayer made in the writ application cannot be granted in a proceeding under Article 226 of the Constitution of India as factual disputes cannot be decided in this proceeding.

The writ application is accordingly dismissed.

It is open for the parties to approach the Civil Court, if it so desires."

3. The factual matrix of the case is as follows:

The 1st respondent-Orissa Industrial Infrastructure Development Corporation ('IDCO' for short) allotted Plot no. C/9, Industrial Estate, Cuttack on 18.3.1982 in favour of a partnership firm-M/s Prachi Vanijya (P) Ltd. on hire-purchase basis. A mortgage in favour of 2nd respondent-Orissa State Financial Corporation by M/s Prachi Vanijya was allowed by the 1st respondent to secure loan. The 1st respondent intimated the 2nd respondent on 27.11.1986 that the plot is transferred in favour of M/s Prachi Vanijya (P) Ltd. subject to payment of outstanding amount of Rs.97,888/- as on 30.11.1986.

4. The case of the appellant is that the assets of M/s Prachi Vanijya (P) Ltd. comprising of land and building, shed and fan machines situated at C/9, Industrial Estate, Cuttack were purchased along with a loan liability of Rs.6,60,000/- of the 2nd respondent by M/s Eastern Fans on 5.12.1987, of which Sri Satya Narayan Swain was the Managing Partner. M/s Prachi Vanijya

requested the 1st respondent to give no objection to change its name as M/s Eastern Fan. The 1st respondent vide its letter dated 5.12.1987 informed that it has no objection to change of the name subject to receipt of recommendation from the 2nd respondent.

5. The 2nd respondent on 16.12.1987 intimated that it has agreed to a change in name of M/s Prachi Vanijya to M/s Eastern Fans. Thus, Plot No. C/9, Industrial Estate, Cuttack along with the loan liability was transferred in the name of the M/s Eastern Fans, a partnership firm. Ever since the transfer of assets in favour of Eastern Fans, the unit was non-functional and the loan amount of 2nd respondent against Eastern Fans had mounted and it had become impossible for Sri Satya Narayan Swain to run M/s Eastern Fans due to excessive paucity of funds. Sri Swain thus approached and persuaded Sri Purushottam Lal Kandoi, Director of the appellant company-M/s Swati Ferro Alloys Pvt. Ltd. for relieving him of the loan burden of 2nd respondent.

6. Pursuant to discussion between the parties, the appellant company was incorporated on 22.3.1989 with three Directors, namely, Sri Purushottam Lal Kandoi, Sri Rakesh Jajodia and Sri Satya Narayan Swain with a share capital of Rs.5,00,000/-. The object of the Company was, inter alia, to undertake manufacturing Ferro Alloys.

7. On the request of appellant company and M/s Eastern Fans, on 26.4.1989 the 1st respondent gave permission to accommodate

the appellant company in the premises aforesaid for a period of 2 years. It was mutually agreed on 6.7.1989 that the appellant-company will take over the term loan liability of M/s Eastern Fans as against the complete transfer of all its assets in favour of the appellant company. A Board resolution dated 6.7.1989 was passed resolving that all liabilities of M/s Eastern Fans with the 2nd respondent as on said date be taken by the appellant company along with all the assets including the land. The Managing Partner of M/s Eastern Fans, Sri Satya Narayan Swain, who was also the Director of the appellant company at that time was authorized to negotiate and finalize the said matter with 2nd respondent. The Managing Partner of the partnership firm M/s Eastern Fan wrote letters dated 10.7.1989 and 11.7.1989 to the 2nd respondent intimating that the appellant company will take responsibility to clear the term loan along with accrued interest by taking over the fixed assets of M/s Eastern Fans i.e. the land along with shed and the plant and machinery. 2nd respondent acted on the letters written by Satya Narayan Swain and accordingly by letter dated 9.1.1990 agreed that the appellant company shall take over the entire assets and liabilities of M/s Eastern Fan. The appellant company was asked to pay a sum of Rs.1,00,000/- as down payment towards the loan liability outstanding against M/s Eastern Fan (Prachi Vanijya), which was duly done.

8. A revised sanction letter was issued by 2nd respondent on 21.3.1990 further clarifying that the appellant company was allowed to take over the entire assets and liabilities along with the accrued interest and other statutory dues.

9. According to the appellant, pursuant to the aforesaid letters dated 9.1.1990 and 21.3.1990, the appellant company became the owner of Plot No.C/9, Industrial Estate, Cuttack. All the assets and liabilities of M/s Eastern Fan were taken over by the appellant company on 31.3.1990 by making a down payment of Rs.1,00,000/-. The assets of M/s Eastern Fan became the assets of the appellant company which were reflected in the balance sheet of the appellant company.

10. Further case of the appellant is that the appellant company took additional term loan from 2nd respondent for Rs.11,37,000/- which was sanctioned on 31.3.1992 on the said basis the appellant company has full rights over the plot in question. A memorandum of deposit of title deeds for mortgaging the assets of the appellant company to 2nd respondent was executed on 25.7.1992. On the very same day i.e. on 25.7.1992 a deed of hypothecation was signed between the appellant company and the 2nd respondent to furnish security towards the loan of Rs.20,48,284.14/-. According to appellant the said deed of hypothecation was on the basis of security of (a) an equitable mortgage of borrower's property with all buildings and structures thereon and fixed machineries situated at Industrial

Estate, Khapuria, Cuttack and (b) hypothecation of all tangible moveable property. The said deed covers the first term loan in consequence of takeover of M/s Eastern Fans of Rs.9,11,284.00/- and the additional term loan of Rs.11,37,000/- for new Ferro Alloys Plant of the appellant, both amounting to Rs.20,48,284.14/- and clearly refers to the Plot No.C/9, Industrial Estate, Cuttack with land and building. Thus, according to appellant, for all purposes the appellant company was treated as an owner of the Plot No.C/9, Industrial Estate, Cuttack.

11. From the record we find that the appellant company has also setup a fresh unit for making Ferro Alloys in aluminium thermic process on 27.5.1997 and also taken facility of Letter of Credit from State Bank of India for Rs.1,50,000/- in the year 1992, which was renewed every year. It has also been sanctioned cash credit limit of Rs.40 lakhs by the State Bank of India in the year 1992 and the same was extended every year, as apparent from letter dated 27.5.1997.

12. 2nd respondent also accepted the execution of Tripartite Agreement with the State Bank of India by letter dated 29.1.1998. The Tripartite Agreement clearly states that 2nd respondent had in its custody the title deeds relating to the property of the appellant company. It appears that the appellant persuaded the 2nd respondent for transfer of lease right and title of the appellant since it has taken all the assets of the

partnership firm of M/s Eastern Fans. In support of this, the appellant company relied upon letter dated 23.12.2003 issued by the 2nd respondent duly recommending the transfer of title of the plot in favour of the appellant. The grievance of the appellant company is that despite several representations made to 1st respondent between 2003 and 2008 no action was taken by it to transfer the title of the said plot in favour of the appellant company.

13. As no action was taken, the appellant company moved before the High Court seeking transfer of the right in their favour, wherein the aforesaid observation was made by the Division Bench of the High Court by impugned judgment dated 18th April, 2012.

14. Learned counsel for the appellant submits that all the facts as were pleaded in the writ petition were not disputed by the 1st and 2nd respondents. It was contended that refusal of 1st respondent to transfer the lease of the Plot No.C/9, Industrial Estate, Cuttack in favour of the appellant is wrong, arbitrary and highly illegal and the same was subject to judicial review under Article 226 of the Constitution of India and the High Court erred in dismissing the writ petition holding disputed question of fact merely because 3rd to 5th respondents have opposed the writ petition with a mala fide intention for their vested interests, which cannot be a ground for the High Court to dismiss the writ petition without giving any reasons.

15. Respondents have disputed the claim of the appellant to transfer the land in the name of the appellant company.

16. From the bare pleading of the case and the record, we find that there is disputed question of fact about the ownership of the Plot No.C/9, Industrial Estate, Cuttack. Therefore, the High Court was justified in dismissing the same and directing the parties to approach the Civil Court for resolving such dispute.

17. From the pleading and record the following fact emerges:

- (i) The 1st respondent-IDCO allotted Plot no.C/9, Industrial Estate, Cuttack on 18.3.1982 in favour of M/s Prachi Vanijya (P) Ltd. on hire-purchase basis subject to payment of outstanding amount of Rs.9,78,880/- as on 30.11.1986. The appellant has pleaded that the land along with building, shed and fan machines situated at C/9, Industrial Estate, Cuttack were purchased from the 2nd respondent by M/s Eastern Fans on 5.12.1987, of which Sri Satya Narayan Swain was the Managing Partner along with a loan liability of Rs.6,60,000/- of the 2nd respondent. It is not clear as to how M/s Eastern Fans purchased the land from M/s Prachi Vanijya, if the land was originally taken from 1st respondent on hypothecation basis subject to payment of Rs.9,78,880/-. From letter of M/s Eastern Fan dated

10.7.1989, Annexure P-5 (Page 31), we find that the said M/s Eastern Fan intended to setup plant of Ferro alloy in their factory premises at C/9, Industrial Estate, Khapuria, Cuttack and therefore it was decided between themselves and M/s Swati Ferro Alloys Pvt. Ltd. that the appellant-Company will take responsibility to clear the term loan paid by 2nd respondent-Orissa State Financial Corporation along with accrued interest. In the said letter, it was intimated that M/s Eastern Fan intended to start manufacturing activities under the name and style of M/s Swati Ferro Alloys Pvt. Ltd. The appellant company was thereby incorporated by M/s Eastern Fan for the said purpose. Letter dated 9.1.1990 issued by 2nd respondent-Orissa State Financial Corporation to the appellant company shows that the appellant company was intimated that entire assets and liabilities of M/s Prachi Vanijya was transferred to the appellant company and the same was agreed upon by the appellant company on certain terms and conditions.

- (ii) Letter dated 23.12.2003 written by 2nd respondent-Orissa State Financial Corporation to the Managing Director, IDCO, indicates that M/s Eastern Fan availed loan from 2nd respondent and mortgaged the

leasehold land in favour of 2nd respondent as security.

- (iii) Letter dated 26.4.1989 written by 1st respondent-IDCO shows that the appellant-company -M/s Swati Ferro Alloys Pvt. Ltd. was allowed only accommodation inside the premises of M/s Eastern Fan for a period of 2 years and they have not given permission for transfer of the land.

18. We agree with the observation of the High Court that this matter involves disputed question of fact. Despite the same, prima facie it appears that neither original borrower nor the present appellant does any business in the land in question, except for taking loan against the land. In this background while we upheld the impugned judgment dated 18th April, 2012 passed by the Division Bench of High Court of Orissa at Cuttack in WP(C) No.16790 of 2008, we are of the opinion that the respondent-IDCO should inquire into the matter to find out as to whether the land is properly used by one or other party for the purpose it was open or by opening different firms or companies in different names in same premises, they are availing loan mortgaging the same very land. For such inquiry the respondent-IDCO will issue notice to the 2nd respondent-Orissa State Financial Corporation, appellant-M/s Swati Ferro Alloys Pvt. Ltd., M/s Eastern Fan and any other party who may be interested.

On such enquiry it will be open for the competent authority to pass an appropriate order.

19. The appeal is dismissed with aforesaid observations.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(V. GOPALA GOWDA)

NEW DELHI,
JANUARY 6, 2015.



JUDGMENT