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RAJASTHAN FINANCIAL CORPORATION
Udyog Bhawan, Tilak Marg, C-Scheme, Jaipur - 302 005.

Ref.No.RFC/F./Law-5/HO/1886/7008 Dated: 18th November, 2008

CIRCULAR
(Lit. Cir. No. 160)

**Sub: Important Court Decision of Smt. Madan Kanwar Vs.
RFC - SBCWP No. 235/2008.**

The Hon'ble High Court for Rajasthan at Jodhpur vide its order dated 17.09.2008 has held that proper chance was given to the petitioner by the Corporation and the sale of the assets was made according to the Rules & Regulations. The Corporation has given ample opportunity to attend the HOLC Meeting but the petitioner did not attend the said Meeting. The Court has further held that property sold by the Corporation has fetched the fair market value.

Photocopy of the order referred to above is enclosed for reference which may be used in the pending cases filed against the Corporation.

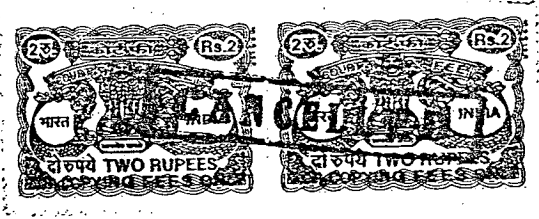


(Pawan Arora)
Executive Director

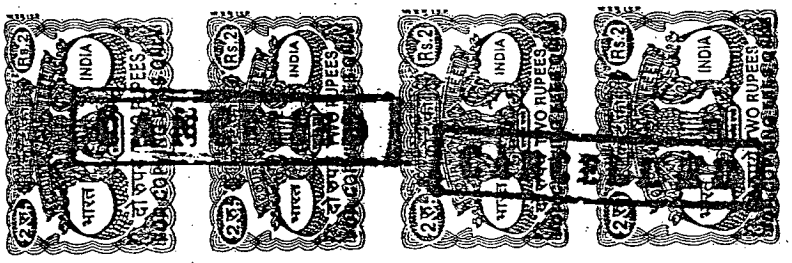
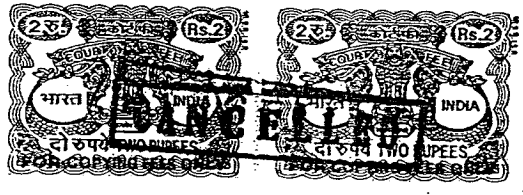
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 संख्या ५०२ में काम आएगा।
 दिनांक १८-१-०९
 प्रशासनिक अधिकारी न्यायिक
 प्रतिलिपि विभाग
 राजस्थान उच्च न्यायालय, जोधपुर



Certified P.S. Copy of order *20/10*

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

S.B. CIVIL WRIT PETITION NO. *235/2008*

PETITIONERS :-

1. Sat. Madan Kanwar wd/o late Shri Parasmi Jangda aged 67 years R/o Near Old Hospital, Badar Chowk, Bilara Tehsil Bilara District Jodhpur.
2. Dharm chand)
3. Roop Chand aged 42 years)
4. Ujagaraj) All sons of late Parasmal Jangda R/o Near Old Hospital, Badar Chowk, village Bilara Tehsil Bilara distt. Jodhpur.



VERSUS

RESPONDENTS:-

1. Rajasthan Financial Corporation, Through Branch Manager, Jodhpur Udhayg Bhawan, New Power House Road, Jodhpur.
2. D.B.M. (Regional Office) Udhayg Bhawan, New Power House Road, Jodhpur.
3. C.M.D. Udhayg Bhawan, Tilak Marg, Jaipur.
4. M/s Jai Vijay Industries 43, Unmed Club Road, Rai Ka Bagh, Jodhpur
Among Partnership Sh. Kanlesh Dhadnich & Sh. Anrilchras Dhadnich and Ghanshyam Rathi Sh. Hafezi Mal Rathi.

सही प्रतिलिपि
14 OCT 2008
 प्रशासनिक सचिवालय
 राजस्थान हाईकोर्ट, जोधपुर

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JOINT COMMISSIONER
 Rajasthan High Court, JODHPUR

(2)
5. Sub Registrar,
Stamp & Registration,
Bilara District Jodhpur.

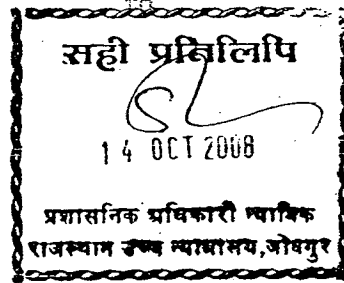


WRIT PETITION UNDER ARTICLE 226 AND
227 OF THE CONSTITUTION OF INDIA.

AND

IN THE MATTER OF THE STATE FINANCIAL
CORPORATION ACT, 1951

(CENTRAL ACT NO.63 OF 1951).



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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Smt. Madan Kanwar & Ors.

Vs.

Rajasthan Financial Corporation and Ors.

S.B.Civil Writ Petition No. 235/2008

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Date of Order : 17/09/2008

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

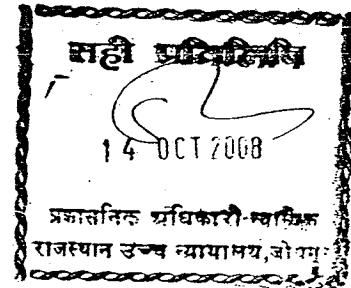
Mr. S. Sharma for the petitioners.

Dr. Sachin Acharya }

Mr. Rājesh Joshi } for the respondents.

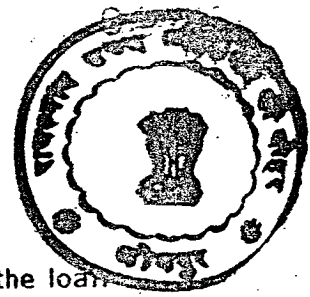
BY THE COURT

Reportable



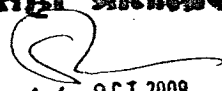
By the instant writ petition under Article 226 of the Constitution of India, the petitioners seek quashing of sale certificate and sale deed dated 31.12.2007 Annex.4 and 5 in favour of M/s Jai Vijay Industries.

The facts and circumstances giving rise to the instant writ petition are that the petitioners were granted the loan by the respondent Rajasthan Financial Corporation (for short 'the RFC' hereinafter) and as on 1.4.2002 a sum of Rs.37,32,451/- was outstanding. A loan agreement was also executed and the property was pledged by way of mortgage in favour of



respondent RFC. As per the terms and conditions of the loan agreement, the petitioners were to repay the loan amount in installments, however, they failed to repay the loan amount and therefore, the respondent RFC initiated proceeding under Section 29 of the State Financial Corporation Act, 1951 (for short 'the Act' hereinafter) and took over the possession of the assets which were mortgaged as a security against the said loan. The possession of the assets of the petitioners was taken over by the respondent RFC and part of the property/ assets has been sold i.e. the agriculture land bearing Khasra No.634/1, 635/1 and 636/1 to Shri Ghanshyam Rathi on 21.08.2006. The petitioners earlier filed a writ petition before this Court being SBCW No.926/2005 which came to be disposed of by order dated 20th November, 2007. In the earlier writ petition, this Court noticed that admittedly, the possession of the assets of the petitioner unit is with the respondent RFC and they have even sold part of the assets in the form of agricultural land to Sh. Ghanshyam Rathi on 21.8.2006 and this court disposed of the writ petition on the following terms :-

"Accordingly, this writ petition is disposed of with the direction to the petitioners who may appear before the Branch Manager, RFC, Jodhpur on 5.12.2007 at the first instance and the Branch Manager shall prepare a proper proposal for settlement of dues for approval by higher Management/ competent

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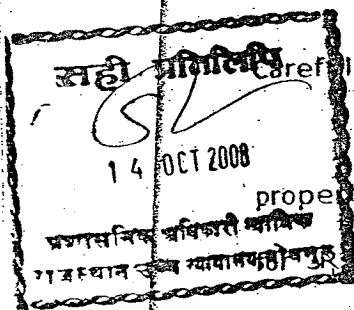
authority in the head office of respondent RFC. The said authority/ Committee is expected to take a decision in the matter after providing a reasonable opportunity of hearing to the petitioners. Once such net amount is determined and communicated to the petitioners in writing by the said competent authority/ committee, the petitioner may be allowed a period of three months to clear off such dues. If such dues are not cleared by the petitioner, the respondent RFC would be free to proceed to realize the remaining security of the petitioner firm for realizing such dues."

According to the petitioner even after the order of this Court dated 20.11.2007, the respondent RFC proceeded to confirm the sale in favour of private respondent in respect of the assets/ security by sale deed dated 31.12.2007 Annex.4 and 5. Hence this writ petition.

I have heard learned counsel for the parties.

Carefully gone through the material available on record.

Learned counsel for the petitioner submits that the property of the petitioner has been sold by the respondent RFC for Rs. 7,37,000/-, whereas according to counsel for the petitioner, market value of the said property is Rs. 25 lacs and presently the petitioners have a prospective buyer for such amount and therefore, the sale may be quashed and the property may be put to reauction. Learned counsel has relied on a decision of Hon'ble Supreme Court in Gairai Jain Vs. State of





Bihar and Others 2004 AIR SCW 3263.

Learned counsel appearing for the respondent RFC as also the private respondent submits that the instant writ petition is barred by constructive resjudicata to the extent that the sale deed dated 21.08.2006 has not been challenged by the petitioners in the earlier writ petition though it was within the knowledge of the petitioners as is evident from the order of this Court dated 20.11.2007 and even this Court while disposing of the writ petition made it clear that if such dues are not cleared by the petitioner, the respondent RFC would be free to proceed to realize the remaining security of the petitioner firm for realizing such dues and according to the learned counsel for the respondent RFC, even in the earlier writ petition there had not been any restraint order against the RFC for confirmation of the sale and execution of the sale deed in pursuance thereof.

Learned counsel for the respondent RFC submits that the petitioners failed to appear before the RFC in compliance of the order of this Court dated 20.11.2007, on 05.12.2007. The property therefore, put to the public auction after due publicity subsequently sold. The sale of the property on 21.8.2006 by auction sale in favour of Ghanshyam Rathi has not been challenged by the petitioner even in the earlier writ petition and there being no restraint order for conformation of the sale and accordingly the RFC confirmed the sale and executed the sale

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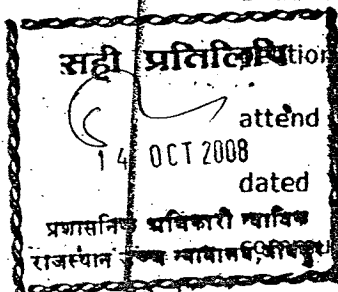
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राजस्थान उच्च न्यायालय, जोधपुर



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deed sought to be quashed by the instant writ petition. Learned counsel submits that the property which was put to public auction has fetched market value. A copy of the auction proceeding has been placed on record as Annex.R/1. Learned counsel further submits that while disposing of the earlier writ petition, this Court was conscious of the fact that the agriculture land has already been sold by the respondent RFC in favour of Ghanshyam Rathi on 21.8.2006 and therefore, the Court made a direction with regard to the remaining property even permitting the RFC to proceed to realize the remaining security of the petitioners if such dues are not cleared by the petitioners. The respondent RFC by communication Annex.R/7 addressed to the petitioner firm requested the petitioners to attend the special HOLC meeting scheduled to be held on 21.2.2008 at 11.30 AM in the Board Room (first floor) of the Corporation at Udyog Bhawan, Tilak Marg, Jaipur, copy of which was received by the



petitioners on 14.2.2008 at 3.00 P.M. yet the petitioners failed to attend the meeting and again by communication Annex.R/8 dated 22.2.2008 holding of the special meeting was communicated to the petitioners stating therein that the petitioners case was placed before the special HOLC which was held on 21.2.2008 but since the petitioners did not attend the said meeting, the RFC has decided to give one more opportunity of hearing to the petitioners and therefore, advised the



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petitioners to attend the HCLC meeting scheduled for 07.03.2008 at 11.30 AM in the Board Room (first floor) of the Corporation at Udyog Bhawan, Tilak Marg, Jaipur. Yet the petitioners failed to attend the meeting even on second notice and therefore, by Annex.R/9 the respondent RFC finally decided the matter noticing therein that nobody turned up for attending the meeting and the case has been discussed in the light of the decision of Hon'ble High Court.

In Gajraj Jain Vs. State of Bihar and Others (supra) Hon'ble Supreme Court held that a charge consists in the right of a creditor to receive the payment out of the proceeds of the realization of the property or fund charged with the debt. A bare reading of sub-secs. (1) & (4) of S. 29 shows that it is similar to S.69 of T.P. Act under which it is stipulated that a mortgagee exercising the power of sale is a trustee of the surplus sale proceeds and after satisfying his own charge he holds the surplus for the subsequent encumbrancers and ultimately for the mortgagor. Section 29 (1) contemplates, therefore, a sale for distribution of sale proceeds and not a sale for distribution of property charged with the debt. It also implies that the first charge holder must act in a manner which protects not only its own interest but also the interest of the subsequent charge holder and the mortgagor. This in turn implies that the first charge holder is bound to obtain the best possible price for the

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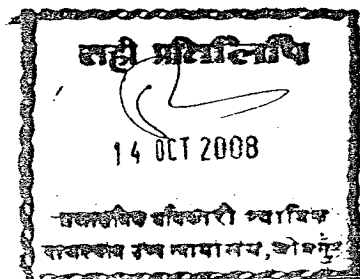


mortgaged assets and the best possible price must, in the context, mean the fair market value.

According to learned counsel for the petitioners, the price at which the property of the petitioners has not been sold is not a fair market value.

From the material available on record, there being no such material pointing out that the sale was not according to the market value and even it was open for the petitioners at the time of filing earlier writ petition either requesting the Court for permitting them to clear the dues since till then the sale was not confirmed but the petitioners have not made any such attempt even in earlier writ petition and therefore, in my view, this cannot be adjudicated and concluded that the property sold by the respondents vide Annex 4 and 5 did not fetch the fair market value and therefore, the decision relied on by learned counsel for the petitioner turns on its own facts and is of no help to the petitioners.

In this view of the matter, I do not find any merit in the writ petition. The writ petition is therefore, dismissed. No order as to costs. Stay petition also stands dismissed.



(H.R.PANWAR), J.

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