
(2007) 11 PAT CK 0080
In the Patna High Court

Anand Mohan Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Citation : AIR 2008 Patna 53 : (2009) 4 PLJR 112 : (2008) 1 PLJR 443

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The petitioner, his father and brother had Jointly and severally taken a loan for purchase of a tractor from the State Bank of India. They had defaulted. The State Bank of India initiated certificate proceedings against the three. At the time of initiation of the proceeding itself, the father and the brother had died. The initiation of the proceedings as against the father and the brother was an initiation against dead persons. Notwithstanding that the certificate was issued against all the three i.e. against the two dead persons and the petitioner.

2. It appears that a petition was filed before the Certificate Officer and the Certificate Officer thinking that all the certificate debtors were dead, dropped the proceedings as a whole. A review application was then filed by the Bank which was rejected by the Certificate Officer. The State Bank of India then filed an appeal before the Collector. The Collector noticed the real facts. He noticed that two of the persons named in the certificate were dead. The third, the petitioner, was alive and had appeared in the proceedings, as such, he set aside the order of the Certificate Officer and remanded the matter to him to proceed against the petitioner. It is the legality and propriety of such an order that is challenged before this Court.

3. Heard Shri Devendra Kumar Sinha, learned senior Counsel in support of the writ petitioner and Mr. S.K. Sinha for the Bank. The Bank has also filed a counter-

affidavit. With the consent of the parties, the matter has been taken up and is being disposed of at the stage of admission itself.

4. The first contention raised on behalf of the petitioner is that once a certificate is issued against dead persons, the certificate is void and non est. That being so, it was incumbent upon the Certificate Officer to reinstate the proceedings. Secondly, it was submitted that the liability of the petitioner would be only one third as there were three persons who had taken the loan and he cannot be saddled with the entire liability.

5. Having considered the arguments, in my view, both the submissions are not tenable.

6. So far as the first contention is concerned, it cannot be disputed that if the certificate proceedings were against the persons who were dead, then the proceedings are non est. The certificate issued in such proceeding would be void ab initio. But unfortunately, that is not the case in the present case. The proceedings were initiated against three persons of whom two died prior to the initiation of the proceedings. The fact of the matter is that so far as the petitioner is concerned, he does not dispute he being a party to the loan and is still alive. The certificate proceeding against the other two dead persons may at best be void and unenforceable. But so far as the petitioner is concerned, there cannot be any objection on this ground. The Certificate issued against him is valid and binding. This disposes of the first submission.

7. Coming to the second submission, it is only to be noted that three persons had taken a loan "jointly and severally". This expression "jointly and severally" implies their joint liability as well as individual for the entire loan amount. Whether the liability is to be discharged jointly or severally, it is open for the creditor to proceed either against one of the joint lonees or against all of them. Any one discharging the loan amount would be creditor so far as other lonees are concerned. But he cannot be allowed to say that notwithstanding liability being joint and several, either all three have to be proceeded against or none.

8. Nothing has been brought on the record to show that the State Bank of India has discriminated so far as the petitioner is concerned in not choosing to proceed against others. The others are none else than the father and brother of the petitioner. In that view of the matter, even the second contention merits no consideration.

9. In the result, this writ application has no merit and is dismissed accordingly.