

(2020) 02 PAT CK 0346

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5732 Of 2019

Anil Kumar @ Anil Prasad

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Bihar And Orissa Public Demand Recovery Act, 1914 — Section 60

Citation : (2020) 02 PAT CK 0346

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Arbind Kumar Singh, S.K.Mandal, Aun Prasad, Rabish Nandan Sinha

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for setting aside the entire proceedings of Certificate case no. 03 of 2015-16, pending before the learned District Certificate Officer, Vaishali as well as the order dated 16.11.2018, passed by the District Certificate Officer, Vaishali, Hajipur, whereby and whereunder the petitioner has been directed to deposit the certificate amount with interest in equal share as that of the other parties to the Certificate proceedings.

2. The brief facts of the case are that a firm in the name and style of M/s Anapurna Krishi Kendra at Lalganj, Dist-Vaishali was established by the deceased father of the petitioner and the father of the petitioner had applied for obtaining credit facility up to a sum of Rs. 7 lacs before the respondent- Canara Bank, whereafter the same was granted to the aforesaid firm. Subsequently, the father of the petitioner had applied for enhancement of the cash credit facility up to a limit of Rs. 10 lacs and the same was also granted by the respondent- Bank. It is stated that during the lifetime of the father of the petitioner herein, the family property was divided among three brothers and as far as the aforesaid firm is concerned, it had gone in the share of Sri Hare Krishna Prasad and the petitioner has got no connection with it.

3. The learned counsel for the petitioner has submitted that the petitioner has got no role to play in the aforesaid firm, however the outstanding loan dues of the said firm is being sought to be recovered from the petitioner herein.

4. The learned counsel for the respondents- State and Bank have submitted that it is apparent from the records of the case that the loan was given by the Bank to the aforesaid firm when the entire family was a joint family and since the loan is outstanding to be paid by the aforesaid firm as also the property acquired by the members of the joint family from the business proceeds of the aforesaid firm is being enjoyed by all the family members, hence the entire family members including the petitioner herein are liable to repay the loan amount in equal proportion. Infact, a bare perusal of the impugned order dated 16.11.2018 would show that the private respondents herein i.e. the respondents no. 7 and 8 have also supported the aforesaid stand of the respondent- Bank. It is also apparent from the impugned order dated 16.11.2018 that the documents of partition submitted by the petitioner herein has been declared to be false, fabricated and instead, reliance has been placed on the collective decision of the family members to put on sale, the joint family property for liquidating the outstanding loan amount.

5. I have heard the learned counsel for the parties and perused the materials on record. I find that the impugned order dated 16.11.2018, passed by the Certificate Officer, Vaishali is appealable, inasmuch as there is a provision of appeal under Section 60 of the Bihar and Orissa Public Demand Recovery Act, 1914, hence the petitioner would be well advised to assail the impugned order dated 16.11.2018 by filing an appropriate appeal. However, the learned counsel for the petitioner has submitted, at this juncture, that the petitioner would be required to deposit certain sums of money for maintaining the appeal, thus the petitioner is not willing to avail the remedy of appeal, hence the present petition be decided on its own merit.

6. This Court finds that it is a well settled law that in cases of availability of an alternative remedy, the High Court should not interfere unless and until the writ petition seeks either enforcement of any of the fundamental rights or there is violation of Principles of Natural Justice or where the orders of the proceedings are wholly without jurisdiction or the vires of an Act is under challenge. Reference in this connection be had to a judgment reported in (2003) 2 SCC 107 (Harbanslal Sahnia And Anr. vs Indian Oil Corpn. Ltd. And Ors.). This Court further finds that in the present case, neither the vires of the Act is under challenge nor the orders/ proceedings are without jurisdiction nor there is violation of Principles of Natural Justice nor the writ petition seeks enforcement of any of the fundamental rights. Infact, the petitioner had filed his detailed objection which has been considered by the learned Certificate Officer, Vaishali while passing the impugned order dated 16.11.2018.

7. Considering the aforesaid facts and circumstances of the case and for the reasons mentioned hereinabove, this Court holds that the present writ petition is

not maintainable in view of the alternative remedy available to the petitioner herein by way of filing appropriate appeal under Section 60 of the Bihar and Orissa Public Demand Recovery Act, 1914, hence the writ petition stands dismissed.