(2021) 12 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 17633 Of 2016

Bijay Kumar Jena APPELLANT

Vs

State Bank Of India And Others RESPONDENT

Date of Decision : 07-12-2021

Acts Referred:

Citation : (2021) 12 OHC CK 0039

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Suresh Tripathy, Pradipta Kumar Mohanty, A. Patnaik

Final Decision : Dismissed

Judgement

Arindam Sinha, J

1. Mr. Tripathy, learned advocate appears on behalf of petitioner and submits, opposite party no.3 had uploaded information to effect that his client is a fraud. Prayers in the writ petition are for direction to compel opposite party to quash data entered in its website under heading, 'Third party entities involved in fraud', to extent it names petitioner. Consequential prayers are for compelling opposite parties to tender written apology as well as suitable compensation.

2. He submits, though counter by opposite party bank was to be filed on 4th December, 2021 but copy was served yesterday. However, he wants to press for hearing of the writ petition. He files his client's rejoinder on leave obtained, copy served in Court today upon Mr. Patnaik, learned advocate appearing on behalf of opposite party no.3. Mr. Tripathy submits, copy for opposite party bank will be served in course of the day.

3. He refers to page 5 in counter of the bank, where it has been stated, inter alia, as follows:-

" Therefore, the Bank advised the petitioner Advocate vide Letter No.808 dated 27.08.2011 and No.1170 dated 27.09.2011 to submit show cause for submitting false TIR. The Petitioner submitted the show cause reply, but the same was not satisfactory."

He then draws attention to annexure-9 in the rejoinder at page 23 to submit, explanation was given by his client on the letter disclosed.

4. Mr. Mohanty, learned senior advocate appears on behalf of opposite party nos.1 and 2 [State Bank of India(SBI)]. He submits, by letter dated 27th August, 2011, petitioner was called upon to explain his conduct in certifying title of a property to be genuine, when it was not. Contents of the letter are reproduced below:-

" On the basis of your Title Investigation Report dated 09/11/2006 of the property of Shri Sudhakar Sahu, a housing loan of Rs.1321000/- was sanctioned on 10/11/2006. You have certified in para 5 of Certificate of title of the TIR that " Shri Sudhakar Sahoo has acquired absolute, clear and marketable title over the schedule property and further certified that the title deeds are genuine and a valid mortgage can be created and the said mortgage would be enforceable"

2. As per the latest development on the basis of our inspection we observe that Shri Amit Kumar Das is the rightful owner of the property as he has purchased the property first and Shir Sudhakar Sahoo is the subsequent purchaser of the same property. (sold to him for the second time).

3. Under the above circumstances, kindly explain and substantiate the TIR submitted by you on the said property to protects the interest of the Bank."

A month later by letter dated 27th September, 2011 the bank informed petitioner that no explanation had been received and, therefore, it presumed that he does not have further explanation in the matter.

5. He refers to circular dated 1st July, 2013 of Reserve Bank of India. Clause 3.2.3 says, inter alia, as follows:-

"Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard. Ii this regard the banks should follow normal procedures and the processes followed should be suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such their parties for circulation among the banks."

He submits, as such, on his client being satisfied that there was no explanation, by communication dated 11th February, 2014, inter alia, petitioner's name was reported to opposite party no.3 for being included in the caution list. He submits, further, by subsequent letter dated 7th February, 2015 his client sought necessary action from opposite party no.3, inter alia, to delete/withdraw petitioner's name from the caution list.

6. Mr. Patnaik submits, by letter dated 14th February, 2015 his client confirmed to Chief Executives of member Banks that, inter alia, petitioner's name had been

deleted/withdrawn from the caution list.

7. In reply, Mr. Tripathy draws attention to search results disclosed from page 28 onwards in the writ petition. He demonstrates that this result is on information uploaded by opposite party no.3 regarding third party entities involved in fraud. His client's name is appears against serial no.278. He submits further, IDBI Bank on 8th

September, 2015 stated, inter alia, as follows:-

"It has come to our knowledge from reliable sources that you have been depaneled/removed by some of the Banks from their list of panel advocates. In view of the above, the matter has been reported to our higher authorities to take a decision whether to continue your name in our Bank's pane of Advocates.

In view of the above circumstances, you are requested to offer your comments on the above, within seven days of receipt of this letter, for our further needful in the matter."

He submits, the information continued to be available in the website, hence the writ petition.

8. Pleadings in the counter filed on behalf of SBI, relied upon by Mr. Tripathy does not corroborate documentary evidence disclosed in it. Furthermore, annexure-9 in the rejoinder is an undated and unsigned letter, without acknowledgement of receipt by the bank.

9. The search results relied upon on behalf of petitioner says that the information was on data entered with effect from 1st January, 2011. The disclosure in the writ petition, does not say when the search results were obtained. Furthermore, contents of said letter dated 8th September, 2015, written by IDBI Bank, does not refer to information obtained from the website of opposite party no.3. This finding is against maintainability of the writ petition presented to Court on 3rd October, 2016, since opposite party no.3 on 14th February, 2015 had confirmed deletion of petitioner's name. Mr. Tripathy's further reliance on order dated 14th May, 2014 in his client's earlier writ petition W.P.(C) No.9269 of 2014 is also of no aid regarding the writ petition not being maintainable.

10. For reasons aforesaid, the writ petition is dismissed.

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