(2003) 04 PAT CK 0069

In the Patna High Court

Case No : C.W.J.C. No. 16227 of 2001

Binod Kumar Nayak — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 5, 7, 9

Citation : (2003) 2 BLJR 1252 : (2003) 3 PLJR 455

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Uday Bhanu Roy, for the Appellant; S.K. Sinha, for the Respondent

Judgement

Aftab Alam, J.—A statement of one''s loan account, one would expect to get from the bank/financial institution in the normal course. But in this State it is seldom, if ever, that the borrower is able to get a copy of his loan account. Curiously, in a large number of cases coming to the notice of this Court the statement of the loan account was not furnished to the borrower even when a certificate case was instituted by the bank/financial institution for recovery of its dues. In the absence of the statement of account, the borrower, facing the highly coercive recovery proceeding is at a disadvantage to see whether or not the interest was charged correctly and payments, if any, made by him were duly accounted for. The case in hand only illustrates the point.

2. The petitioner took an agricultural term loan of Rs. 1,90,000/- from the State Bank of India, Agriculture Development Branch, Basopatti, Madhubani. The loan was granted on March, 2, 1996 and in terms of the loan agreement it was repayable in 18 six monthly instalments, each of Rs. 10555/- plus interest, commencing from 1-7-1997. Though the payments were not made on schedule and the amounts paid were not as per the instalment amount fixed in the agreement, it is undeniable that the petitioner made substantial payments towards the liquidation of the loan.

3. Having deposited substantial amounts, the petitioner assumed (though erroneously) that he had fully paid off the dues and asked the Bank to give him the No Dues Certificate. The Bank of course did not issue the Certificate for the simple reason that the loan was not fully liquidated and there were outstanding dues against him. But at the same time the Bank never cared to give the petitioner a statement of account that would have shown the manner in which interest was charged and the exact amount remaining due after taking into account the payments made by him.

4. The petitioner having thus failed to get the No Dues Certificate from the Banks or any reply to his requests, came to this Court in this writ petition, filed on 19-12-2001. In this writ petition he prayed for a direction to the bank to issue him the No Dues Certificate on the plea that he had fully paid off the loan along with interest.

5. During the pendency of this case the Bank in order to recover its dues from the petitioner instituted a proceeding under the Public Demands Recovery Act before the District Certificate Officer, Madhubani. The Certificate case was instituted on 31 -3-2003 for recovery of a sum of Rs. 1,48,520.00 paise. The petitioner is still to receive a notice in the certificate case. But in this case a counter-affidavit is filed in which a copy of the loan account is enclosed as Annexure-C.

6. From the statement of account it appears that interest was charged on the loan amount on June 29 and on November, 30, 1996 even though the first instalment for the repayment of the loan fell due on 1-7-1997.

7. Mr. Uday Bhanu Roy, Counsel for the petitioner submitted that the statement of account showed that interest was levied wrongly and as the result the dues against the petitioner got wrongly inflated. Mr. Roy submitted that the charging of interest was not in accordance with the decision of this Court in Jainath Prasad Vs. State of Bihar and Others, in which this Court had the occasion to consider the matter of levy of interest on agricultural loan in the light of the decision of the Supreme Court and the guidelines issued by the Reserve Bank of India.

8. Mr. S.K. Sinha appearing for the bank, on the other hand, contended that the loan account of the petitioner was maintained strictly in accordance with that decision and the circulars issued from time to time by the Reserve Bank of India.

9. At this stage, I am not inclined to enter into this controversy and the petitioner may against this issue in the objection that he may file in the certificate proceeding before the Certificate Officer.

10. Needless to say that in case any objections are raised with regard to the calculation of interests the Certificate Officer will be bound to examine the matter in the light of the decisions of this Court and the Supreme Court and the relevant circulars of the Reserve Bank of India and to pass an appropriate order on the issue, Any party aggrieved by the decision of the Certificate Officer would be free

to seek his remedy, in accordance with law.

11. But before parting with the records of this case, I would like to observe that this is not an isolated case in which the petitioner was needlessly forced to come to this Court owing to the Bank''s failure to give him a statement of his loan account. This Court finds that it is the general practice and the banks hardly ever even to the borrower a copy of the statement of account. Even when steps are taken for recovery of the loan by instituting proceedings under the Public Demands Recovery Act a requisition is simply made for the amount shown as outstanding due and no statement of account is sent to the Certificate Officer along with the requisition, The result is that even after a certificate case is instituted the borrower/certificate debtor has no means to verify the correctness of the certificate amount or the manner in which interest was levied and the deposits, if any, made by him were accounted for. Consequently the provision for filing objections u/s 9 of the Act, for all intent and purposes, becomes illusory and the loanee/certificate debtor is compelled to accept the correctness of the amount mentioned in the requisition/certificate.

12. This Court has come across cases in which the borrowers/certificate debtors were compelled to approach this Court, in exercise of its writ jurisdiction, for no more than being given the statement of account of their loans so that they may be able to verify whether the deposits made by them were duly accounted for and the levy of interest was made properly.

13. The Supreme Court has held that right to information is a facet of the fundamental rights guaranteed under Article 19 of the Constitution and transparency in the working of public offices is the need of the hour. I, therefore, see no reason why a copy of the statement of account should not be furnished to the loanee/ certificate debtor along with the notice issued to him u/s 7 of the Public Demands Recovery Act. I, therefore, hold that enclosing a copy of the statement of account along with the requisition made u/s 5 of the Act, must be held, to be implicit in the provisions of Sections 5 to 9 of the Public Demands Recovery Act. This Court, therefore, deems it proper and necessary to issue a direction to all the Nationalised Banks, Rural Regional Banks and other financial institutions that while issuing requisition u/s 5 of the Act a copy of the statement of account of the loanee/certificate debtor in adequate numbers must also be enclosed. There must be two copies for the record in the certificate proceeding and one copy for each of the certificate debtors. It is further directed that unless the requisition is accompanied with copies of statement of account the Certificate Officer shall not sign the certificate but shall ask the Bank to furnish copies of the statement of account in sufficient numbers, Further in cases of recovery of loans from the banks and other financial institutions notices issued u/s 7 of the Act shall carry with them a copy of the statement of account so that the loanee/ certificate debtor may be able to make a meaningful objection u/s 9 of the Act.

14. This writ petition stands disposed of with, the aforesaid observation and direction.

15. Let a copy of this order be handed over to Mr. Binod Bihari Sinha who will send it for necessary compliance to the Chief General Manager, State Bank of India.

16. Let a copy of this order be also communicated to all the District Magistrates, local Head Officer of all the Nationalised Banks/Rural Regional Bank and other financial institutions.

