(1996) 12 PAT CK 0024

In the Patna High Court

Case No : M.A. No. 258 of 1996

Branch Manager, Central Bank of India and Others — APPELLANT

Vs

Pawan Kumar Mittal — RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 46
Bihar and Orissa Public Demands Recovery Rules — Rule 53

Citation : (1999) 95 CompCas 505

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : M.K.P. Sinha, Ajay Kumar and Abhinesh Kumar, for the Appellant; Ramesh Kumar Agrawal and Jitendra Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The present appeal is directed against the order dated May 20, 1995, passed in Title Suit No. 223 of 1994 by which Subordinate Judge III, Motineri, has restrained the defendants-appellants from proceeding with Certificate Case No. 304 CBI/1992-93, pending before the Certificate Officer, Motineri.

2. According to the case of the appellants respondent No. 1 was granted a loan of Rs. 25,000 in the shape of a cash credit limit on August 24, 1994, and the same was secured by mortgage of property executed by respondent No. 1 and the partners of the firm in question. The respondents utilised the cash credit facility and defaulted in repayment of the loan and thereafter a certificate case under the provisions of the Bihar and Orissa Public Demands Recovery Act (hereinafter referred to as "the Act") was registered against respondent No. 1 on the requisition of the appellants for recovery of outstanding dues against him. Respondent No. 1 appeared and he is alleged to have filed a petition on July 15, 1994, before the certificate officer admitting the liability and praying for two months'' time to repay the certificate amount. In the month of October, 1994,

respondent No. 1 filed Title Suit No. 223 of 1994, for declaration that the certificate case is void ab initio and for restraining the appellants from taking any action in the certificate case and for declaring the attachment of the property as illegal and that the appellant is not entitled to recover the amount through the certificate case.

3. During the pendency of the suit an injunction petition was filed by respondent No. 1 (the plaintiff) therein to restrain the defendant appellants) from proceeding with the certificate case. In the injunction petition it has been stated that he never appeared in the certificate proceeding nor filed petition admitting the claim and thus the aforesaid order was obtained by committing fraud.

4. The learned Subordinate Judge after hearing the parties has passed the impugned order restraining the appellants from proceeding with the certificate case.

5. The ground for granting the injunction is that the order passed by the certificate officer dated September 22, 1994, directed the plaintiff to deposit the dues within a week, otherwise AW/DW will be issued against the provisions of law. The relevant paragraph 6 of the order of the Subordinate judge giving the ground for grant of injunction is quoted below :

"From the order of the certificate officer dated September 22, 1994, it transpired that he directed the plaintiff of the case to deposit the dues within a week, otherwise A/W would be issued. Clearly, in my view, the order of the certificate officer creates apprehension in the mind of the plaintiff and he filed this suit and prayer for injunction. Rule 53 of the Rules state that (1) the certificate officer may before issuing a warrant for the arrest of the certificate debtors issue a notice calling upon him to appear before the certificate officer on a day to be specified in the notice and show cause why he should not be committed to civil prison ; and (2) where appearance is not made in obedience to the notice the certificate officer shall issue a warrant for the arrest of the certificate debtor. Clearly the order of the certificate officer contemplates issue of A/W after 7 days of the order passed by him which is against the provision of law."

6. The grant of injunction is a discretipnary relief and the court at the time of granting injunction has to consider prima facie case, balance of convenience and irreparable injury.

7. Admittedly, a certificate case is pending against respondent No. 1 under the provisions of the Act and there is an elaborate procedure for notice to file objection during its pendency and in case of rejection of the objection there is provision for appeal and revision.

8. Section 46 of the Act runs as follows :

"General bar to jurisdiction of civil courts, save where fraud alleged.--Except as otherwise expressly provided in this Act, every question arising between the certificate holder and the certificate debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act or relating to the confirmation or setting aside by an order under this Act, of a sale held in execution of such certificate shall be determined not by suit but by order of the certificate officer before whom such question arises, or of such other certificate officer as he may determine :

Provided that a suit may be brought in a civil court in respect of any such question-Upon the ground of fraud."

9. According to the said provision, every question arising between the certificate holder and the certificate debtor relating to the making, execution, discharge or satisfaction of a certificate shall be determined by the certificate officer and the remedy by way of suit is barred except on the ground of fraud.

10. The reason for grant of injunction that the order passed by the certificate officer is in violation of Rule 53, in my view, cannot be a ground for grant of injunction. If there was any violation of the rule then the respondent should have appeared before the certificate officer and pointed out the same before him. Any order passed by the authority in violation of the rule cannot be said to have been obtained by practising a fraud upon the respondent. This apart, the trial court has not taken note of the ground for grant of injunction.

11. Admittedly, in this case the loan was advanced to the respondent and he has riot paid the loan and a public body filed a certificate case. In such a case injunction can be granted in exceptional cases where a very strong case is made out.

12. After going through the order, I am of the view that the learned Subordinate Judge has not exercised his discretion according to law and the order passed by him shows that there is complete non-application of mind by him with regard to the requirement of law governing the grant of injunction.

13. Accordingly, the impugned order is set aside and a copy of this order be immediately communicated to the certificate officer to proceed with the certificate case according to law.

14. It is stated that another miscellaneous appeal filed by the petitioner against the grant of injunction in the similar suit filed by Badri Kumar Mittal, son of respondent No. 1, has been admitted. The effect of the same is the stay of the certificate case. In that view of the matter, the aforesaid miscellaneous appeal, i.e., N. A. No. 257 of 1995, be placed for hearing as a first case before an appropriate Bench after obtaining permission from the Hon''ble the Chief Justice on January 6, 1997.

