(2012) 09 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 7415 of 2012

Chaudhury Susil Chandra Das APPELLANT

Vs

The Branch Manager, State Bank of India and Another RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Citation : (2013) 1 OLR 586

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.

W.P.(C) No. 7415 of 2012 and Misc. Case No. 6484 of 2012

1. This misc. case has been filed by the petitioner with a prayer to direct the opp. parties-Bank to release the Tractor, bearing Registration No. OR-05-Q-0981, seized by them in favour of the petitioner. It appears that the petitioner incurred an agricultural loan from the opp. party-Bank and due to non-payment of the said loan as per the term of contract by issuing a notice to the petitioner, the Bank has seized the Tractor in question which the petitioner alleges, Was being used for agriculture operation. Prior to seizure of, the Tractor, the petitioner has filed a suit, being C.S. No. 40 of 2011 against the opp. parties seeking a permanent injunction restraining the opp. parties from seizing the Tractor, which was purchased by availing the loan and from effecting any recovery of the loan amount. During pendency of the said suit, the petitioner filed an interim application for injunction to restrain the defendant-Bank from seizing the Tractor. The said prayer was rejected, against which the petitioner preferred an appeal, being FAO No. 60 of 2011. The lower appellate Court, i.e. the learned Addl. District Judge, Kendrapara, by its order dated 4.4.2012 also confirmed the order of rejection passed by the Trial Court and dismissed the appeal with a cost of Rs. 500/-. Being aggrieved, the petitioner has filed the present writ petition. The question as to whether the Bank will be permanently injuncted from recovery of the unpaid loan amount from the petitioner is to be determined in the suit.

2. It is submitted by Mr. Routray, learned counsel for the petitioner that after disposal of the appeal by the lower appellate Court, the opp. parties have seized the said Tractor from the possession of the petitioner.

3. Mr. Kar, learned counsel'' appearing for the opp. parties submits that before seizure of the Tractor, a notice was issued to the petitioner intimating him that the Bank is going to seize the Tractor.

4. The question, therefore, arises whether the power of seizure envisaged in the hypothecation agreement executed by a loanee in favour of the Bank can be exercised unilaterally by the Bank without approaching any Court of law. The Supreme Court in the case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, while dealing with a case relating to a loan taken by the writ petitioner before the High Court, who was the respondent in the Civil Appeal before the Apex Court, from ICICI Bank, Allahabad Branch for purchase of a Truck and defaulted in payment of the installments and the Bank in terms of the agreement entered into between the parties took possession of the Truck in question by use of force, expressed its disapproval of the procedure adopted by the bank in removing the vehicle from the possession of the writ petitioner and deprecated the practice of the Bank in hiring recovery Agents, who are musclemen for taking possession of vehicles. The Supreme Court further laid down that the Bank should resort to procedure recognized by law to take possession of the vehicles in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong arm tactics. Justice Dr. AR Lakshmanan while concurring with the judgment passed by Mr. Justice Altamas Kabir observed that the first mistake is on the part of the Bank, who does not believe in educating the masses regarding the promises. Once the loan is taken and there appears a default, then the witch-hunt begins. The Hon''ble Judge went to the extreme of observing that the Bank is the aggressor and the public is the victim and deprecated the practice of engaging recovery/collection agents, equating the same to a modernized version of Shylock''s pound of flesh. Relying upon the aforesaid judgment in the case of Citicorp. Maruti Finance Ltd. Vs. S. Vijayalaxmi, again Hon''ble Mr. Justice Kabir reiterated the earlier view and laid down that even in a case of goods subject to Hire Purchase Agreements. the recovery process has to be in accordance with law and not by use of force. The said case though a case of Hire Purchase though more tale tell in favour of the financier where the financier normally continues to be the owner of goods till the ownership is transferred in favour of the hirer, the Supreme Court even in such circumstance laid down that if any action is taken for recovery in violation of the guidelines of the Reserve Bank of India or principles as laid down by the Apex Court. such action is bound to be struck down. The instant case is one of hypothecation of the Tractor where the ownership of the Tractor remains with the loanee/hypothecator and not with the Bank. It is also well known that there is a line of distinction between hypothecation of a property and pledge thereof. In case of pledge, a pledge letter is issued by the pledger in favour of the pledgee giving a notional possession of the pledged articles/goods in favour of the pledge

and thus, the pledgee is authorized to sell the pledged articles/goods in default of payment of the loan, which is absent in case of hypothecation.

(Emphasis supplied).

5. In view of such position, the ratio of the aforesaid decisions of the Supreme Court applies with more force to the case at hand. This Court, therefore, finds that the seizure made by the opp. parties/Bank was not in accordance with law and the opp. parties/Bank could not have seized the Tractor without following due process of law. This Court, therefore, directs the opp. parties/Bank to release the Tractor bearing Registration No. OR-05-Q-0981 immediately in favour of the petitioner on giving an undertaking that the petitioner will not dispose of the Tractor as a whole or any part of the same till disposal of the suit. The authorities of the Bank shall act immediately on production of the certified copy of this order before them. It is made clear that the impugned orders passed by the Courts below are not interfered with by this writ petition except setting aside the portion of the order directing payment of cost by the petitioner. This writ petition and the misc. case are accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

