(2018) 10 PAT CK 0076

In the Patna High Court

Case No : Letters Patent Appeal No. 936 Of 2017 In Civil Writ Jurisdiction Case No. 20520 Of 2012

Chief General Manager And Ors — APPELLANT

Vs

Sheo Nandan Singh And Anr — RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:
Indian Penal Code, 1860 — Section 406, 420, 467, 468, 471
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 1 PLJR 3

Hon'ble Judges : Mukesh R. Shah, CJ;Ashutosh Kumar, J

Bench : Division Bench

Advocate : Kaushlendra Kumar Sinha, Sunil Kr. Singh, Rajiv Kr. Singh, Dr. Manoj Kumar

Final Decision : Allowed

Judgement

1. Admit.

2. Shri Rajiv Kumar Singh, learned counsel, waives service of notice of admission on behalf of the Respondent No.1 (original writ petitioner) and Shri

Manoj Kumar, learned counsel, waives service of notice on behalf of Respondent No.2.

3. In the facts and circumstances of the case and with the consent of the learned counsel appearing on behalf of the respective parties, the present

appeal is taken up for final hearing today.

4. Heard learned counsel appearing on behalf of the respective parties at length.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 24.4.2017 passed in C.W.J.C.

No. 20520 of 2012, by which the learned Single Judge allowed the said petition preferred by the respondent No.1 herein-original writ petitioner and

quashed and set aside the demand notice dated 5th of August, 2012, issued under the signature of Branch Manager, State Bank of India, Agriculture

Development Branch, Banka, asking the petitioner to submit an amount of Rs. 3,10,844/- along with the interest and other charges, the original writ

petitioner- respondents 1 to 6 have preferred the present Letters Patent Appeal.

6. The facts leading to the present appeal, in nut shell, are as follows:

6.1 That the original writ petitioner applied for sanction of a loan of Rs.4,05,462/- which was to be sanctioned to him in the year 2007 itself. The said

loan was sanctioned in favour of the original writ petitioner by the S.B.I.

6.2 That the original writ petitioner took the said loan for purchase of a vehicle. The original writ petitioner was asked to deposit a sum of

Rs.1,05,462/- as a margin money for availing the said sanctioned loan to him. Thereafter, the aforesaid sanction of the loan amount was then released

in favour of a firm/dealer known as â??M/s. A-One Hyundai Motorsâ?? and a Bankerâ??s Cheque was issued in favour of the dealer M/s. A-One

Hyundai Motors on 18.10.2007. It appears that thereafter the original writ petitioner did not take the delivery of the vehicle from the dealer- M/s. A-

One Hyundai Motors, as it appears that he was not interested in purchasing the vehicle. Therefore, the dealer M/s. A-One Hyundai Motors issued the

Bankerâ??s Cheque in favour of the original writ petitioner of Rs.4,80,667/-. It appears that the said cheque was returned to the original writ

petitioner for want of funds in the account of M/s. A-One Hyundai Motors and a proceedings under Section 138 of Negotiable Instruments Act seems

to have been pending. That thereafter even the State Bank of India also filed a criminal case against the original writ petitioner as well as the dealer

M/s. A-One Hyundai Motors for the offences under Sections-420, 467, 468 and 471 of I.P.C.

6.3 It appears that the original writ petitioner approached this Court by way of Cr.W.J.C. No.414 of 2010 to quash and set aside the F.I.R. of Banka

P.S. Case No.535 of 2009, registered under Sections- 406 and 420 of I.P.C. It appears that by the judgment and order dated 7.9.2011, a learned

Single Judge of this Court quashed the F.I.R., insofar as the original writ petitioner is concerned. That thereafter as a total sum of Rs.844/- was

payable by the original writ petitioner and, therefore, the original writ petitioner was served with the notice dated 5th of August, 2012 for paying the

amount of Rs. 3,10,844/- along with the interest.

7. Feeling aggrieved and dissatisfied with the Bankâ??s notice dated 5th of August, 2012, the original writ petitioner â?" loanee filed C.W.J.C. No.

20520 of 2012 before the learned Single Judge.

8. That by the impugned judgment and order, the learned Single Judge has quashed and set aside the demand notice dated 5th of August, 2012,

however, observing that as the criminal case is pending against original Respondent No. 5 â?" Dealer which has not reached to its own conclusion and

the said trial is going on, so far as the original writ petitioner is concerned, no liability can be attached on him for the present, until and unless it is

established that M/s. A-One Hyundai Motors has no role to play and is absolved of the allegations made in the said case.

9. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge in quashing and setting aside the

demand notice issued by the Bank, The State Bank of India and others have preferred the present Letters Patent Appeal.

10. Shri Kaushlendra Kumar Sinha, learned counsel appearing on behalf of the appellants State Bank of India and others has vehemently submitted

that, in the facts and circumstances of the case, the learned Single Judge has materially erred in quashing and setting aside the demand notice.

11. It is vehemently submitted by Shri Kaushlendra Kumar Sinha that while quashing and setting aside the demand notice issued by the Bank, issued

against the loanee- original writ petitioner, the learned Single Judge did not properly appreciate the fact that, so far as the Bank is concerned, it had

nothing to do with any transaction between the dealer and the loanee, more particularly with respect to the return of the cheque issued by the dealer to

the loanee which came to be dishonoured.

12. It is further submitted by Shri Kaushlendra Kumar Sinha that as such the Bank sanctioned the loan in favour of the original writ petitioner- loanee

and, therefore, there was a contract between the Bank and the original writ petitioner- loanee and as a total sum of Rs.3,10,844/- with interest was

due and payable by the loanee, the Bank was justified in issuing the demand notice.

13. It is further submitted by Shri Kaushlendra Kumar Sinha that the learned

Single Judge materially erred in observing and holding that till the trial

against the dealer- M/s. A-One Hyundai Motors is concluded, so far as the original writ petitioner is concerned, no liability can be attached on him for

the present.

13.1 Making above submission, it is requested to allow the present appeal.

14. Present appeal is vehemently opposed by Shri Rajiv Kumar Singh, learned counsel appearing on behalf of the original writ petitioner.

15. It is submitted by Shri Rajiv Kumar Singh that on one hand the original writ petitioner did not get the possession of the vehicle from the dealer and

on the other hand the cheque issued by the dealer in favour of the original writ petitioner came to be dishonoured. It is submitted that, therefore, the

original writ petitioner lost both. It is submitted that, therefore, the learned Single Judge has rightly quashed and set aside the demand notice.

16. Dr. Manoj Kumar, learned counsel appearing on behalf of the dealer M/s. A-One Hyundai Motors has submitted that as such the amount of

Rs.3,00,000/- was paid to the original writ petitioner in cash and, in fact, the receipt for the same is produced before the learned trial court in the

Negotiable Instruments Act case. It is submitted that as the signature on the same is disputed by the original writ petitioner, the matter is required to

be sent to the Forensic Science Laboratory/handwriting expert. It is submitted that, therefore, till the same, there is no liability of the dealer to make

payment either to the Bank or to the original writ petitioner.

17. Heard learned counsel appearing on behalf of the respective parties at length. Perused the impugned order passed by the learned Single Judge.

We have also considered the relevant documentary evidence/material on record.

18. At the outset, it is required to be noted that as such the Bank sanctioned the loan in favour of the original writ petitioner for purchase of the

vehicle. Therefore, it was for the original writ petitioner to pay the amount outstanding towards the loan amount to the Bank. In the present case, it so

happened and it is borne out from the record that the original writ petitioner was not interested in getting the possession of the vehicle and, therefore,

he got the entire amount directly, namely the amount of loan as well as the margin money from the dealer by cheque. However, unfortunately, the

cheque issued by the dealer came to be dishonoured. It is the specific case on behalf of the Bank that as such the dealer as well as the original writ petitioner were hand in gloves and without informing and/or intimating the Bank, the dealer paid the entire amount- loan amount as well as the margin

amount to the original writ petitioner by cheque which came to be dishonoured. It is the case on behalf of the dealer now that the amount of

Rs.3,00,000/- was paid by cash to the original writ petitioner, which is disputed by the original writ petitioner. Be that as it may, as the loan was

sanctioned in favour of the original writ petitioner for purchase of a vehicle, it was primarily the liability/responsibility of the loanee- original writ

petitioner to pay the amount due and payable under the loan account to the Bank for which the demand notice was issued. The aforesaid aspect has

not been considered at all by the learned Single Judge while passing the impugned order.

19. Under the circumstances, we are of the opinion that the learned Single Judge has materially erred in quashing and setting aside the demand notice.

20. In view of the above and for the reasons stated hereinabove, the present appeal succeeds. The impugned judgment and order passed by the

learned Single Judge quashing and setting aside the demand notice dated 5.8.2012 seeking to recover a sum of Rs.3,10,844/- with interest is hereby

quashed and set aside. Present appeal is allowed accordingly.

21. No costs.

