(2008) 02 PAT CK 0179

In the Patna High Court

Case No : CWJC No. 10261 of 2005

Farmudur and Another — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2008) 3 PLJR 417

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Prabhas Ranjan and Ashok Kr. Prasad, for the Appellant; Nillu Agrawal for the Bank, for the Respondent

Judgement

Navaniti Pd. Singh, J.—Two petitioners stood guarantors to a loan obtained by one Abdul Khalik from the respondent-State Bank of India for purchasing a tractor. The loan was an agricultural roan. The principal debtor i.e. Abdul Khalik defaulted and as such a certificate proceeding was initiated being Certificate Case No. 1453/1992-93. In the certificate proceeding apart from the said Abdul Khalik being made a party, two petitioners were also made party being guarantors. During the pendency of the certificate proceeding, Abdul Khalik died. Respondent-Bank did not take steps to substitute his heir instead it sought to enforce the certificate against the two petitioners, who were merely guarantors and consequently warrants of arrest were obtained. The petitioners have come before this Court challenging the proceeding and the action of the respondent-Bank in this regard. Respondent-Bank has appeared and filed a counter affidavit in which they have merely stated that they are now taking steps for substituting the heirs of late Abdul Khalik but whether they have already got the substitution made or not, learned counsel for the Bank is not in a position to disclose, in view of the fact that the petitioners do not dispute that they are guarantors and as such jointly and severally liable for the dues alongwith principal debtor.

2. I do not think that any purpose would be served by keeping this writ petition

pending and after hearing the parties and with their consent this petition is being disposed of at the stage of admission itself.

3. Though in common law the petitioners being guarantors cannot escape from the liability to liquidate the loan of the creditor, they are jointly and severally liable for the dues of the Bank but we are living under a Constitution of which Article 14 is there, which is an antidote for any arbitrary action. Bank cannot for any undisclosed reason and cannot without good reason leave the principal debtor to escape even though he may be in a position to liquidate the debt and ignoring him or his right and liability to liquidate the debt would merely follow the guarantor, leaving guarantor to pursue the principal debtor in its own time. This situation becomes inequitable when one finds that though the Bank can enforce the provisions of Public Demand Recovery Act for immediate realisation of dues but the guarantor is there left with ordinary common law remedy for recovering his dues from the principal debtors which is a money suit, which would take more than a decade. It is this inequitable situation that this Court insists upon the creditor who abandons the principal debtor and goes after the guarantor for recovery of its dues, to disclose good reason for doing so, in absence whereof the action though permissible in law would be violative of Article 14 of the Constitution. Once the Bank came to know about the death of the principal debtor, it was obligatory on the part of the Bank to take effective step for substituting his heirs and proceed against them before proceeding against the guarantors, the petitioners.

4. In that view of the matter I direct the respondent-Bank to substitute the principal debtor, who has died during the pendency of the certificate proceeding and take steps against the substituted persons. Till such time steps are not taken for substitution or against substituted heir of the principal debtor no further action would be taken against the petitioner.

5. I may also take note of one of the grievances raised by the petitioners. Petitioners submit that the loan being for agricultural purpose for purchase of tractor, the calculation of liability has to be done in terms of the judgment of this Court as in the case of Jainath Prasad Vs. State of Bihar and Others, wherein this court has held in respect of agriculture loan that the Bank can only charge simple interest and directions have been issued by this Court to the Bank to revise their accounts statements. Needless to say that the Bank would follow the direction of the said judgment. I may also point out that this Court in several judgments have held that merely to enforce payment of civil debt warrant of arrest under the provision of Public Demand Recovery Act cannot be issued. It can only be issued under the contingencies mentioned therein, which are, inter alia, any action taken by the debtor to defeat the claim. Merely failure to pay the civil debt is not a condition, which would attract issuance of warrant of arrest. This is another aspect which the certificate officer would keep in mind. With the aforesaid observations and direction this writ petition stands disposed of.