

(2008) 07 PAT CK 0168
In the Patna High Court

Jay Mangal Singh

APPELLANT

Vs

Bihar State Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Citation : AIR 2008 Patna 192

Hon'ble Judges : Navniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navniti Prasad Singh, J.—Heard the parties.

2. The petitioner Jay Mangal Singh was at the relevant time Secretary of the Ajanta Tel Utpadak Sahyog Samiti Limited, duly registered under the Bihar Co-operative Societies Act, 1935. The Co-operative had taken a loan from Central Co-operative Bank Limited, Aurangabad. Having taken loan, it defaulted in repayment, the consequences, thereof, was that for recovery of outstanding dues a certificate proceeding was initiated against the said Co-operative. While doing so, petitioner was made a party to the certificate proceeding and shown as a certificate debtor. This was done specifically mentioning that the petitioner was the Secretary of the said Co-operative when the loan was granted.

3. The Co-operative challenged the proceedings before this Court in the earlier writ petition, which was dismissed. Petitioner has now challenged the proceedings as against him and has submitted that being a Secretary and merely an office bearer of the Co-operative he cannot be made personally liable for the dues incurred by the Cooperative. The loan was neither sanctioned to the petitioner nor taken by the petitioner. The petitioner had neither underwritten the loan nor guaranteed its repayment. He was merely Secretary of the Cooperative, which cannot visit him with personal liability.

4. On the other hand, the learned Counsel for the Central Co-operative Bank submits that loan having been taken by the Cooperative under the Secretaryship

of the petitioner, petitioner would be accountable someone had to repay the loan.

5. Having heard the parties and considered the matter, in my view, the certificate proceedings as against the writ petitioner cannot be sustained under the provisions of the Bihar Co-operative Societies Act. A Co-operative is a body incorporate and an independent juristic entity. That being so, it is distinct from not only its member but members elected as office bearers. This distinction as between the Co-operative and its constituents is to well establish for any further discussion on the matter.

6. That being so, the loan having been taken by the Cooperative, it cannot be recovered from the petitioner. Especially, as petitioner is being proceeded against only because he happen to be the elected Secretary of the Co-operative. He is not being proceeded against on the ground of having underwritten or guaranteed the repayment of loan. He has no personal liability in the matter, except, to the extent he may be liable for any loan or advances taken and remaining unpaid from his Co-operative. That is not the case of the respondents. That being so, the certificate proceedings as against the petitioner cannot be sustained and are wholly without jurisdiction. Petitioner cannot be proceeded against. The certificate proceedings to that extent as pending before District Co-operative Officer, Aurangabad shall stand quashed. The writ petition is allowed to the extent, as indicated above.