(2003) 12 PAT CK 0084

In the Patna High Court

Case No : LPA No''s. 744, 745 of 1997

Nalanda Central Co-operative Bank Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Citation : (2003) 12 PAT CK 0084

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Ishwar Singh, for the Appellant; K.P. Yadav for the State and Mr. Yogendra Mishra for Respondents 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—These Letters Patent Appeals have been filed by Nalanda Central Co-operative Bank Ltd., in effect, not challenging the judgment as to the modality in which the loan is to be recovered and a process is to be initiated virtually de novo in putting on notice the individuals who may have taken loans from the banks as if to eliminate the office bearers. What is being challenged, in effect, is the operative portion in paragraph 12. In so far as the loan is concerned, the learned Judge himself has certified that it had been taken in 1985 by Ashok Primary Weavers'' Co-operative Society. It is a strange phenomenon that one corporate body will take a loan from another corporate body a bank and will tie up a banking corporation in knots in an exercise as if how not to pay the loan. Borrowing from a franchised bank is a public debt.

2. Between 1985 and today 18 years have passed. Every conceivable legal plea has been put up as a front that those who are in-charge of the Ashok Primary Weavers'' Cooperative Society are not responsible for discharging the loan. The Court fails to see how this is so. If it were directors of an incorporate company under the Companies Act, 1956 the exercise not to pay the loan when a director may have stood a guarantee or indemnity may tantamount to misdemeanour of the Director. Office bearers of the society are the trustees. A position of an office

bearer of a corporate body, if treated as a luxury comes with an obligation. If it did not come with an obligation then it would be an irresponsibility of taking loans as a largesse and insuring that it will not be recovered from the Society. This lands the bank in a hide and seek game to find its debt though the debtor is right in front of the bank.

3. Today, a new economic order destroys any equity which is there and comes to the aid of the bank and creditors to recover the monies. In so far as public debt is concerned to honour them is a matter of credit and credibility. Otherwise the Court has often observed that if these debts get caught in legal wrangles, the Court will be virtually encouraging deficit financing. This was not the purpose of granting loans to co-operative societies as in the present case for making a business of not paying.

4. A submission has been made on behalf of the Society, to the effect, that if the matter were adjourned, then the members of the Society will get together and discharge the loan but this process is likely to take a little time. The Court is not inclined to grant any further indulgence as it brings more complications. Public debts will leave the complication of heirs who will be saddled with liability for the only sin that their ancestors had taken a loan from the co-operative bank. The purpose of a public justice system is not to perpetuate more complications.

5. Thus, debtor Society is obliged to pay loans whether by itself or by catching the guarantors, office bearers are not excluded, as they were trustees. The trustees partake the nature of guarantors. The loan has to be discharged. It is entirely up to the Society how it will pay. It may have one month''s time to clear the loan failing which the bank will be free to take whatever remedies there are to proceed against the Society and its members, jointly or severally.

6. This order modifies the operative portion of the impugned order in the matter relating to the modality of recovery of the loan. These appeals are allowed to the extent indicated above with costs.

