

(2014) 12 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 1053 of 2013

Shahin Khan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 5, 60, 62
Civil Procedure Code, 1908 (CPC) — Section 51

Citation : (2015) 2 JLJR 9

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Kumar Sah, Advocate for the Appellant; Atanu Banerjee, G.A., Rajesh Kumar, Amit Kumar and Manindra Kumar Sinha, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Seeking quashing of Certificate Case No. C.C. III 196/2011-12 pending in the court of Certificate Officer, Godda and quashing of order dated 30.07.2012 passed by the Certificate Officer whereby, bailable warrant has been issued against the petitioner, the petitioner has approached this Court.

2. The brief facts of the case are that, the father of the petitioner namely, Late Md. Manzoor Alam @ Khan started a family business of watch shop in the name and style of M/s. United Watch Company now M/s. New Bombay Watch at Godda. The father of the petitioner took loan in the name of the petitioner in which his father stood as a guarantor. After the death of his father on 01.03.2008, the brothers of the petitioner and his mother namely, Masomat Zarina Begam inherited the ancestral properties. On a requisition under Section 5 of the Bihar and Orissa Public Demands Recovery Act, 1914, a proceeding was initiated vide Certificate Case No. 196 of 2011-12 for recovery of a sum of Rs. 9,67,538/- before the Certificate Officer, Godda. A notice dated 09.05.2011 was issued to the petitioner thereafter, for a lesser amount of Rs. 9,39,640/- and in the said proceeding vide order dated 30.07.2012, a bailable warrant has been issued

against the petitioner.

3. A counter-affidavit has been filed on behalf of the respondent Nos. 1 and 2 denying the averments in the writ petition. It is stated that the petitioner is the loanee and therefore, he is liable to make payment of the loan amount.

4. Heard the learned counsel appearing for the parties and perused the documents on record.

5. Mr. Manoj Kumar Sah, the learned counsel appearing for the petitioner referring to a judgment in Hari Prasad Agarwalla Vs. The State of Bihar and Others, , submitted that the requisition for certificate has not been verified by the requisitioning officer and therefore, the certificate proceeding is without jurisdiction. It is further submitted that the amount sought to be recovered from the petitioner has not been clearly ascertained as the notice for two different amount has been issued to the petitioner. It is further submitted that after the death of his father, the respondent-State Bank of India could not have proceeded against the petitioner alone.

6. As against above, Mr. Rajesh Kumar, the learned counsel appearing for the respondent-State Bank of India referring to a decision of this Court in "Sheo Prasad Thakur @ Shivjee Thakur v. The State of Jharkhand & Ors." [L.P.A. No. 451 of 2012] submits that merely because the requisition for certificate has not been verified by the requisitioning officer, the requisition for certificate does not become invalid. The petitioner has an opportunity to raise all the objections in the certificate proceeding. The learned counsel refers to a judgment in Sawar Mal Choudhary and Others Vs. State Bank of India and Others, and submits that under the Bihar and Orissa Public Demands Recovery Act, 1914, there is an adequate and efficacious remedy provided under Sections 60 and 62 of the Act and therefore, this writ petition is not maintainable.

7. From the materials on record, it appears that the petitioner is the loanee for the loan amount and his late father stood guarantor for the said loan. The proceeding initiated against the petitioner cannot be challenged by the petitioner on the plea that after the death of his father the respondent-State Bank of India cannot proceed against him alone because the loan was taken for the family business. Referring to the contention with respect to verification of the requisitioning officer in the Requisition Certificate, I find that though the certificate itself has been signed however, at the place of verification there is no signature of the requisitioning officer. The plea taken by the petitioner that this would reflect that the requisitioning officer has failed to record his satisfaction, can be raised by the petitioner in the certificate proceeding. As rightly pointed out by the counsel for the respondent-State Bank of India, the petitioner has adequate remedy of appeal and revision under Sections 60 and 62 of the Bihar and Orissa Public Demands Recovery Act, 1914. Accordingly, the challenge to proceeding in the Certificate Case No. C.C. III 196/2011-12 fails.

8. In so far as, the challenge to order dated 30.07.2012 is concerned, I find that

in the certificate proceeding the petitioner has appeared and submitted his written statement. The Certificate Officer has recorded that the show-cause reply filed on behalf of the petitioner does not appear to be logical. In this view of the matter, the reply of the petitioner was rejected and a bailable warrant was issued. Section 51 of the Code of Civil Procedure provides the power of the court to enforce execution. Section 51 specifically provides that resort to Section 51 which provides for detention of the judgment-debtor cannot be taken unless, a finding is recorded that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the court or the judgment-debtor dishonestly transferred, concealed, or removed any part of his property. No such finding has been recorded in the impugned order dated 30.07.2012 and thus, the same is liable to be quashed.

9. In the result, this writ petition is partly allowed. The petitioner is permitted to raise all the objections which he has raised before this Court, in the certificate proceeding.