

(2014) 03 JH CK 0109
In the Jharkhand High Court
Case No : L.P.A. No. 451 of 2012

Sheo Prasad Thakur

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 JH CK 0109

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Rajeev Sharma, Sr. Adv., Rita Kumari, Jenish Minz and A. Burman, Advocate for the Appellant; Rajesh Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal has been filed for setting aside the order dated 21.9.2012 passed in W.P.(C) No. 1521 of 2006, in and by which the learned Single Judge dismissed the writ petition filed by the appellant praying therein to quash the certificate proceeding in Certificate Case No. 105 of 1996-97.

2. The case of the appellant is that the father of the appellant filed a loan application before the 3rd respondent for purchasing tractor, trailer, hood and cultivator for agricultural purposes and pursuant thereto Bank has granted loan of Rs. 1,40,000/- to the appellant's father. The appellant has also signed as guarantor for the said loan.

3. The grievance of the appellant is that the dealer Maa Chanda Industries had delivered only the tractor but did not supply the cultivator, trailer and hood to the borrower owing to which the tractor supplied to the father of the appellant was of no use and could not be used for agricultural purposes, for which agricultural loan was taken. In this regard a complaint was also filed against the Dealer and Manager of the Bank, which was registered as Bono PS Case No. 188 of 1991 for cheating and other offences. The Branch Manager - 3rd respondent filed a

requisition before the Sub-divisional Certificate Officer, Sahibganj on 8.8.1996 against certificate debtor-Gajadhar Tahkur (father of the appellant) and guarantor, namely, Sheo Prasad Thakur @ Shivjee Thakur (appellant) for realization of the loan amount worth Rs. 3,30,901.60 along with costs, charge and interest, which was registered as Certificate Case No. 105 of 1996-97.

4. According to the respondent-Bank, even though the certificate debtor appeared before the Certificate Officer, he had not filed his objection before the Certificate Officer. On the other hand, the certificate debtor has only filed a petition for stay of the certificate proceeding on 31.12.1996, which was rejected by the then Certificate Officer, Sahibganj. The certificate debtor has neither filed any objection petition before the Certificate officer nor has paid the loan amount and, therefore distress warrant has been issued by the Certificate court. In the meantime, the certificate debtor-Gajadhar Thakur died on 14.7.1998 and the Certificate holder has filed a petition for substitution on 18.8.1998 to bring on record the legal heirs of certificate debtor-Gajadhar Thakur, namely Sheo Prasad Thakur - guarantor and Raj Kishore Thakur, whose names were substituted and fresh notice was issued u/s 7 of the Public Demand Recovery Act. On notice, both the legal heirs of the original judgment debtor-Gajadhar Thakur have appeared and filed an objection petition on 11.7.2000. The Certificate Officer passed an order on 12.12.2001 and rejected the objection petition filed by the certificate debtors. It is the further case of respondent-Bank that the Certificate debtors have not deposited the certificate amount to the Bank and at last Certificate Officer has issued bailable warrant of arrest against the appellant on 21.11.2005 and the appellant being one of the Certificate debtors was arrested and produced before the Certificate Officer, Sahebganj on 18.12.2005. According to the respondent-Bank the appellant had given undertaking before the Certificate Officer that he will deposit the balance amount and on such undertaking the Certificate Officer has granted one month's time to the appellant and released him on personal bond and temporarily distress warrant has been withdrawn but subsequently the appellant had not deposited the said amount. On the other hand, he moved the High Court by filing writ petition being W.P. (C) No. 1521 of 2006.

5. The learned senior counsel for the appellant has submitted that in the present case there is no satisfaction of the Certificate Officer that amount of Rs. 3,30,901.60 is due and payable by the Certificate debtors as per Form-1 and, therefore the entire proceedings vitiate for want of jurisdiction. The learned senior counsel further submitted that since a criminal case has been registered against the dealer M/s. Maa Chanda Industries being Borio PS Case No. 188 of 1991, the Certificate Officer ought to have inquired into the same and determined whether the amount is payable or not and in absence of any satisfaction of the certificate officer, the entire proceeding is vitiated. It was further submitted that the learned Single Judge was not right in directing the appellant to raise the objection before the Certificate Officer and the learned Single Judge did not keep in view the contentious issue raised before the Court

as regard jurisdiction.

6. Mr. Rajesh Kumar, learned counsel appearing for the respondent - Bank has submitted that even though the Certificate debtor - Gajadhar Thakur appealed before the Certificate Officer but he did not choose to file any objection and subsequently the appellant also appeared before the Certificate Officer and inspite of his undertaking to pay the loan amount, did not pay the same. The learned counsel for the respondent-Bank submitted that since efficacious statutory remedy is available under the Public Demand Recovery Act by way of appeal u/s 60 of the Public Demand Recovery Act and thereafter revision u/s 62 of the said Act, the learned Single Judge rightly dismissed the writ petition and passed the order, warranting no interference.

7. We have considered the submissions of the learned counsel for the appearing parties and perused the materials on record.

8. There are serious disputed question of facts involved, viz (i) whether the entire loan amount is repayable by the original borrower or the appellant; (ii) whether on being arrested pursuant to the distress warrant, the appellant had actually given the undertaking to pay the amount and other questions. These disputed facts can be agitated only before the Certificate Officer. The learned Single Judge rightly gave liberty to the appellant to raise objection before the Certificate Officer and the Certificate Officer to consider the same and pass a reasoned order in accordance with law and as such we do not find any infirmity in the order of the learned Single Judge.

Furthermore, as contended by the learned counsel for the respondent, the Public Demand Recovery Act provides for statutory appeal provided u/s 60 of the Act and as against any reasoned order passed in appeal, revision lies before the competent authority.

9. Section 60 of the Public Demand Recovery Act reads as under:

60. Appeal. - (1) An appeal from any original order made under this Act shall lie-

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate Officer not being the Collector,- to the Collector; or

(b) if the order was made by the Collector,- to the Commissioner-

Provided that no appeal shall lie from any order setting aside a sale on an application made u/s 28:

[Provided further that no appeal against an order passed u/s 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid forty percent of the amount determined under that section or such amount as the appellant admits to be due from him, whichever is greater.]

(2) Every such appeal must be presented, in case (a), within fifteen days, or in case (b) within thirty days, from the date of such order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorise-

(i) any Sub-divisional Officer; or

(ii) any officer appointed under clause (3) of Section 3 to perform the functions of a Certificate Officer;

to exercise the appellate powers of the Collector under sub-section (1)

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause(a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

In terms of Section 62 of the said Act, revision can also be filed before the competent authority.

10. Since efficacious alternative statutory remedy is available, placing reliance of the judgment rendered in the case of United Bank of India Vs. Satyawati Tondon and Others, , the learned Single Judge has rightly dismissed the writ petition. The Hon'ble Supreme Court in paragraph-55 of the said judgment (United Bank of India Vs. Satyawati Tondon and Ors.) held as under:

Para-55: It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing order which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

11. Without exhausting the statutory remedy, the Writ Court cannot entertain the writ petition. The learned Single Judge has rightly dismissed the writ petition and we do not find any infirmity, warranting interference.

12. The Letters Patent Appeal is dismissed. The appellant is at liberty to work out his remedy in accordance with law.

We make it clear that we have not expressed any opinion on the merits of the case and competent authorities are to dispose of the matter after considering the case on its own merit.