
(2012) 09 JH CK 0197

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 1521 of 2006

Sheo Prasad Thakur @ Shivjee Thakur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 4 JLJR 586

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajeeva Sharma and Sarfaraz Akhtar, for the Appellant; Rajesh Kumar, Amit Kumar and M.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh

1. Heard Learned Counsel for the parties. Petitioner has challenged the certificate proceeding including order dated 21.11.2005 pursuant to which petitioner was arrested in Certificate Case No. 105 of 1996-97 in connection with Requisition dated 8.8.1996 for recovery of Rs. 3,30,901.60/- with interest and incidental costs as against the agricultural loan for supplying tractor, cultivator, hood and trailer.

2. Contention of the petitioner is that his late father, Gajadhar Thakur had made an application in the month of April, 1991 for grant of loan for purchasing the tractor, trailer, hood and cultivator for agricultural purpose for which he submitted various documents showing himself as owner of the lands and deposited the margin money in the bank. Bank, thereafter, granted loan of Rs. 1,40,000/- to the petitioner's father and petitioner had also signed as guarantor on the papers executed by his father with the bank. Certain drafts were made to be deposited with the dealer and subsequently, the father of the petitioner received a Swaraj Tractor Engine without the important parts of the tractor i.e.

trailer, cultivator and hood. A complaint case was filed alleging the criminality against the dealer and the Manager of the Bank, which was registered as Borio P.S. Case No. 188 of 1991. For recovery of the aforesaid dues respondent no. 3, Branch Manager, S.B.I. filed a requisition in Certificate Case No. 105 of 1996-97 before the Sub Divisional Certificate Officer, Sahibganj for recovery of Rs. 3,30,901.60 along with costs, charge and interest. The said requisition is at Annexure-17 to the writ petition and Annexure-e to the counter affidavit. It is submitted by the counsel for the petitioner that petitioner further filed objection petition before the Certificate Officer stating that criminal case being Borio P.S. Case No. 188 of 1991 is pending in which cognizance has been taken against the proprietor of "Ma Chanda Industries" and Branch Manager, S.B.I., but the said objection was rejected. It was further submitted on behalf of the petitioner that his father also filed petition in the court of certificate officer stating that the bank did not file the requisite court fee and process fee Suddenly on 13.7.1998, the police reached the house of the petitioner's father to execute distress warrant, but he was not present there and after coming to know about the aforesaid facts his father died out of shock on 14.7.1998. Thereafter, respondent no. 3 filed a substitution petition for substitution of the present petitioner in place of his deceased father. Thereafter, notices were issued on 23.5.2000. It is submitted that petitioner's application before the Certificate Officer was rejected and subsequently, bailable warrant was ordered to be issued against the petitioner vide Annexure 29. Petitioner was arrested on 18.12.2005 and provisionally released on bail on the condition that all the dues must be deposited within a month. It was the contention of the petitioner that no certificate has been prepared and signed by the Certificate Officer, Sahibganj pursuant to the requisition and more over, the obligation under the agreement was not discharged by the bank and the contract was never concluded.

3. Respondent- Bank have appeared and filed their counter affidavit in which it has been stated that the bank draft against the loan was issued in favour of the supplier as agricultural loan to the petitioner's father and the borrower received the tractor on 4.6.1991 and the trailer was not received due to some defect but ultimately received on 24.2.1992 as per the office record. Respondents have denied that the supplier has not supplied the trailer and accessories. When the borrower failed to take interest in depositing the amount bank filed certificate case against the guarantor and the present petitioner on 8.8.1996 for recovery of the due amount of Rs. 3,30,901.60. Notices were issued upon borrowers, who appeared and filed petitioner for stay which was rejected by the Certificate Court on the same day. However, borrower never filed objection petition as per section 9 of the Public Demands Recovery Act within time and distress warrant was issued on 4.2.1997 (Annexure-22). However, in the meantime the borrower, Gajadhar Thakur died on 14.7.1998 and his legal heirs, the present petitioner, guarantor and one Raj Kishore Thakur were substituted by Annexure-24 and 25 and notices were issued. Upon notice the legal heirs filed objection petition dated 11.7.2000. Bank also filed rejoinder on 5.3.2001. Since legal heirs never showed

any interest for hearing of the case, learned court rejected the petition of the certificate debtor (Annexure-28) and bailable warrant was issued on 21.11.2005, where after the present petitioner being the certificate debtor was arrested on 18.12.2005 and produced before the Sub Divisional Officer, Sahebganj. From the reference of the order passed after production of the petitioner after his arrest dated 18.12.2005(Annexure-30), it is submitted that upon the undertaking of the certificate debtor, the certificate court granted him 1 month time to deposit the due amount. Instead of honouring his undertaking petitioner has moved this Court by way of filing the writ petition. The submission made in para 42 of the writ application that no certificate in Form 2 has been prepared and signed by the certificate officer has been denied by the respondent in their statement made in the counter affidavit at para 50.

4. Learned Counsel for the respondent, therefore, submits that in the matter of recovery of outstanding demand of a financial institution like bank, the borrower has failed to repay the loan amount whereby in the certificate proceeding he was arrested and he gave undertaking to make the deposit within 1 month, but has failed to do so. It is further submitted by referring to the judgment of the Hon"ble Supreme Court in the case of Prestige Lights Ltd. Vs. State Bank of India, that the petitioner has not come before this Court with clear hands under Article 226 of the Constitution of India. Counsel for the respondent has further relied upon the judgment of the Hon"ble Supreme Court in the case of United Bank of India Vs. Satyawati Tondon and Others, and submitted that for matters relating to fiscal statute the Hon"ble Supreme Court has clearly held that when there is specific procedure provided for realization of dues which are due to the bank and financial institutions containing provision for filing objection and remedy of further appeal, the defaulter/borrower/ certificate debtor in such case is not be permitted to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, para 55 of the said judgment is quoted herein below:-

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 orders 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.

5. I have heard Learned Counsel for the parties at length and gone through the relevant materials on record. The certificate proceeding has been initiated, pursuant to the requisition made by the respondent- bank before the Certificate Officer for realization of Rs. 3,30,901.60/- together with interest and incidental costs against the supply of agricultural equipments like tractor, trailer, cultivator and hood. Petitioner was substituted after death of this father and thereafter, notices were issued to him. He appeared and his objection was rejected. He was found to be not participating in the proceeding before the Certificate Court,

therefore, distress warrant was issued and he was arrested. The petitioner, thereafter, filed an undertaking before the certificate officer that he will deposit the amount within 1 month, thereupon the warrant was withdrawal temporarily. Thereafter, writ petitioner has moved this Court. Petitioner has taken plea that criminal case was lodged against the dealer as well as Branch Manager, which is pending before the competent court. However, the quantum of loan which was disbursed to the petitioner was not denied. The loan in question were also not paid within the time as per the terms and conditions of agreement of loan agreed between the bank and petitioner's father in which petitioner was one of the guarantor. Certificate proceedings have been initiated for realization of the aforesaid dues. In course of certificate proceeding this petitioner had given an undertaking to deposit the loan amount. Coercive steps were taken for deposit the loan amount and petitioner was arrested on account of distress warrant issued against him. From the judgment referred to herein above by the counsel for the respondent, it is apparent that petitioner had a adequate remedy before the certificate officer to file his proper objection and upon rejection he may move the appellate forum u/s 60 of Public Demand Recovery Act. Since, the question raised in the writ petition relates to realization of outstanding dues of the bank-financial institution for which the P.D.R. Act, provides for complete procedure as well as remedy of appeal, therefore this Court is not inclined to give any relief in the present case, in view of the judgment relied upon by the bank in the case of United Bank of India Vs. Satyawati Tondon and Others, . However, petitioner is allowed liberty to raise his objection before the certificate officer, who shall consider the same and pass a reasoned order in accordance with law and, thereafter, proceed to take steps for realization of dues, if any in an expeditious manner. This writ petition is disposed off, however with the aforesaid liberty.