(2003) 05 PAT CK 0043

In the Patna High Court

Case No : L.P.A. No. 358 of 2003

Shyama Charan Sinha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Citation : (2003) 2 BLJR 1146 : (2003) 3 PLJR 112

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Ram Janam Prasad and Sanjay Kumar Mishra, S.N. Pathak, for the Appellant; Ram Priya Sharan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan C.J. and R.N. Prasad, J.—Shyama Chandra Sinha who was the Deputy General Manager with the Bihar State Co-operative Bank Limited, Patna filed CWJC No. 11221 of 2002, Shyama Chandra Sinha v. The State of Bihar and Ors. upon a grievance that the Bank had educated a sum of Rs. 30,000/- from his post retirement benefits and this could not be done.

2. This amount needs to be explained. While an employee of the bank Shyama Chandra Sinha stood a guarantor to a principal debtor. This, in effect, under the law meant that should the principal debtor not pay, the guarantor was always there and the loan which was given by the bank was safe and it was safer still as the Deputy General Manager of the Bank had stood guarantee,

3. The learned Judge declined to interfere in the recovery which was made from the petitioner. Aggrieved the petitioner has filed the present Letters Patent Appeal.

4. Before the Court a novel argument has been made that this amount cannot be recovered as it is time barred. It appears that the petitioner has neither principles nor any ethics as a guarantor or a banker. Firstly, as a banker he should not have stood guarantee to a customer when he arranged the loan.

Secondly, if the loan had not been paid within a reasonable time, as a guarantor more so since he was an officer of the Bank, he should have himself discharged this liability as a guarantor by either calling upon the principal debtor to clear the loan or clear it himself in the capacity of a guarantor.

5. The petitioner stands before a Court of equity which the High Court is and would not like to interpret the circumstance that limitation bars the adjustment of a loan or recovery from a banker guarantor. The petitioner has come to the High Court with unclean hands, He has violated a contract with his bank when he was in a fiduciary capacity as the Deputy General Manager. When a person is in a fiduciary capacity it is more an act of faith in addition to a contract. Then, as a banker in the same bank which gave the loan as long as the guarantor banker was available, the liability was acknowledged and extended. In the circumstances of the present case it was continuing guarantee which would continue to apply, unaffected by limitation. Otherwise, the petitioner could be booked for fraud.

6. The petitioner''s friend, the principal debtor ran away and now the petitioner would like to do likewise, and desires the Court to help him. As the petitioner stood as a guarantor and was an officer of the Bank, as an agent of the Bank also, the Bank had a double guarantee that the loan is assured, Looked at from a different angle, this is an irregular loan which the petitioner had arranged to grant as an officer of the Bank. He is responsible to make it up. The petitioner cannot get away from this act of faith.

7. Dismissed.

