

(2005) 08 PAT CK 0068
In the Patna High Court
Case No : Civil Revision No. 1317 of 2003

State Bank of India

APPELLANT

Vs

Kishore Kumar Sah

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 43, 46, 5, 60
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2006 Patna 17 : (2005) 3 PLJR 707

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : S.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—In this Revision Application u/s 115 of the Code of Civil Procedure, 1908 (in short, CPC) the challenge at the instance of the petitioner-State Bank of India has been against the order of the trial Court recorded on 15-7-2003 in Title Suit No. 142 of 2003 at the instance of the borrower, whereby, the petition for cancellation of the recovery of the certificate issued in favour of the petitioner in purported exercise of powers contained in Section 5 of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the Act) by the competent authority against the borrower-opposite party herein, came to be accepted mainly on the plea of fraud.

2. After having heard the submissions of learned Counsel for the petitioner-Bank and considering the relevant legal settings and the mechanism employed in the Act, it is evidently clear that the impugned order of the trial Court is unjust, unreasonable and contrary to the provisions of the Act for the following reasons :

1. The plea of fraud came to be raised for the first time in the petition.
2. Such a plea was conspicuously absent in objection filed by the opposite party borrower in terms of the provisions of section 9 of the Act.

3. It is amply clear from the plain perusal of the provision under Sub-clause (a) of Section 43 that in any case when the certificate-debtor, the opposite party herein, has omitted in accordance with Section 9 of the Act, to file a petition denying the liability or any such petition denying the liability on the ground upon which he claims to have certificate cancelled or modified and cannot satisfy the Court that there was good reason for omission, no civil suit shall lie against the grant of recovery of certificate.

3. Section 43 of the Act reads as here-under:

Suit in Civil Court to have certificate cancelled or modified -- The certificate-debtor may, at any time within six months --

(1) from the service upon him of the notice required by Section 7, or

(2) if he files, in accordance with Section 9, a petition denying liability from the date of the determination of the petition, or

(3) if he appeals, in accordance with Section 60, from an order passed u/s 10 from the date of the decision of such appeal,

bring a suit in a Civil Court to have the certificate cancelled or modified and for any further consequential relief to which he may be entitled :

Provided that no such suit shall be entertained --

(a) in any case, if the certificate-debtor has omitted to file, in accordance with Section 9; a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or

(b) in the case of a certificate for a demand mentioned in Article 1, or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate Officer --

(i) within thirty days from the service of the notice required by Section 7, or

(ii) if he has filed, in accordance with Section 9, a petition denying liability -- then within thirty days from the date of the determination of the petition, or

(iii) if he has appealed in accordance with Section 60 then within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase money, with such interest, if any, as the Court may allow.

4. It is evident and unambiguous that in a Civil Suit the relief of cancellation of grant of certificate is inhibited by certain conditions and one of them is provided in sub-clause (a) of Section 43 of the Act.

5. There is no manner of doubt from the plain perusal of the said provision that It is imperative for the borrower or the certificate-debtor to raise a ground or a justifiable reason for omission to the satisfaction of the Court which is not present in the case on hand.

6. It will be also material to refer at this juncture the provision of Section 46 of the Act which reads as hereunder :

General bar to jurisdiction of Civil Courts, save where fraud alleged -- Except as otherwise expressly provided in this Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate Officer as he may determine :

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

7. The provision of Section 46 only bars a civil suit between the certificate-holder and the certificate-debtor or their representatives except as per the proviso a suit is permissible only and only on the ground of plea of fraud.

8. To raise a plea of fraud is very easy. So lightly advanced plea of fraud has to be established seriously which is absent in the present case. There is nothing clearly incorporated in the impugned order of the trial Court that the certificate-debtor was capable to place on record for the satisfaction of the Court a justifiable ground. The omission of such a vital point in the objection u/s 9 while questioning the liability speaks volumes about the conduct of the certificate-debtor. On the contrary, the legitimate and permissible inference which can be raised is that it is nothing but an after-thought.

9. After having given anxious thoughts and considering the factual matrix emerging from the record of this case, as well as, the content and the colour of the impugned order it leaves no manner of doubt in the mind of this Court that the impugned order is suffering from the vice of illegality, and also non-application of mind to the relevant provisions.

10. In the result, this Revision Application has a reasonable ground as provided in the provision of Section 115 of the CPC entitling this revisional Court to quash and set aside the impugned order. There is a justification for so and, therefore, the impugned order is quashed and set aside while dismissing the suit being Title Suit No. 142 of 2003 with full costs of both the forums.

11. Accordingly, this Revision Application is allowed at the admission stage itself upon merits on consensus.