

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4301 of 2015

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Manish Giri Son of Chandan Giri Resident of village- Paharpur, P.S.- Paharpur,
District- East Champaran

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Transport Department, Govt. of Bihar, Patna
2. The Secretary, Transport Department, Govt. of Bihar, Patna
3. The Joint Commissioner cum Secretary, Regional Transport Authority, Muzaffarpur
4. The General Manager, State Bank of India, Patna
5. The Regional Manager, State Bank of India, Motihari, East Champaran
6. The Branch Manager, State Bank of India, Paharpur, East Champaran
7. The Certificate Officer, Motihari

.... Respondents

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Appearance :

For the Petitioner : Smt. Sushmita Mishra, Advocate
For the State : Mr. Satyendra Kumar Jha, A.C. to G.P.3
For S.B.I. : Mr. Kaushlendra Kumar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 27-03-2015

Heard learned counsel for the petitioner and the State Bank of India.

This application has been filed for quashing the Certificate Case No.166 of 2014-15 against the petitioner pending before respondent no.7, Certificate Officer, Motihari for recovery of a sum of Rs.27,30,165/- about which the petitioner has not received any notice under Section 7 of the Public Demand Recovery Act. However, he got knowledge about the same through a notice issued under the signature of DLSA, Motihari for appearance before the National Lok



Adalat on 14.02.2015. Further relief sought is for a direction to the respondent nos.3 to 6 to release two buses of the petitioner which have been seized by them by using their musclemen on 25.02.2015 under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Act”) and without issuance of any notice under Section 13(2) of the SARFAESI Act.

A counter affidavit has been filed on behalf of the Bank.

Petitioner submits that the seizure list of the buses has been prepared without making any inventory as a copy of the same handed over to the petitioner’s driver does not contain bus number etc., thus, the entire proceeding should be quashed and buses should be ordered to be released. It appears that vide order dated 14.08.2014 passed in C.W.J.C. No.835 of 2014, the coercive measure for recovery was stayed upon payment of certain amount by the petitioner. However, he was directed to clear the entire debts in instalments which he has miserably failed to do. On initial payment having been made, the bus was directed to be released and that was released also to the satisfaction of the petitioner which appears from Annexure-C which has been signed by the petitioner himself, however, the liberty was granted to the Bank to take any action including seizure of buses for recovery of loan amount due against the

petitioner if he fails to carry out the direction. Stand of the Bank is that he failed to pay any amount thereafter.

In such a situation, this Court would not be in a position to grant relief as mentioned in paragraphs 1 and 2 of the writ petition. However, at the same time, it is startling as to why and how the Bank can proceed for recovery of same amount by initiating two separate proceedings, one by auction sale of the buses concerned and second by initiating a certificate proceeding under Public Demand Recovery Act for realization of a sum of Rs.27,30,165/-.

Learned counsel for the Bank submits that, if the petitioner wants to clear the debt, there would be no objection as the Bank is only interested in liquidation of debt.

In such a situation, the auction sale concerned, which is going to be held on 30th March, 2015, is stayed.

In view of the fact that the Bank would not be doing public business on 30th and 31st March, 2015, the petitioner would be required to pay Rs.10,00,000/- by 3rd of April, 2015. On such payment by draft, the vehicles which were seized would be released in the condition in which it was seized. Thereafter, a calculation sheet should be given by the Branch Manager, State Bank of India, Paharpur, east Champaran, i.e., the respondent no.6 to the petitioner setting out the balance amount which is to be paid by the petitioner on

3rd April, 2015. The petitioner would be required to visit the Branch and received the same. The Branch Manager concerned will also fix installments for payment of the rest amount within a period of three months. That amount will also carry interest in accordance with law which would be payable on the balance amount. However, it is made clear that if the petitioner does not pay the aforesaid amount of Rs.10,00,000/- on 3rd April, 2015 to the Bank, the Bank would not be required to fix any instalments and would be at liberty to proceed for auction sale.

It is further made clear that this order has been passed on the submission having been made on behalf of the petitioner that he is ready to clear the debt of the Bank. In case, the petitioner fails to make any payment of the instalment fixed by the Bank then the Bank would again be at liberty to take steps for auction sale or any step for recovery of debt.

The Bank will withdraw the certificate case after payment of the entire amount.

This disposes of the writ application.

(Dr. Ravi Ranjan, J)

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