IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1464 of 2009

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Ramadhar Singh, son of late Nandlal Singh of village & P.O. Naili, P.S. Chandi, Disrict Nalanda and at present Mohalla New Rampur, P.S. Bahadurpur, P.O. Mahendru, District and Town Patna

.... Petitioner

Versus

1. The Punjab National Bank through Chief Regional Manager, Patna
2. The Chief Regional Manager, Punjab National Bank, Patna
3. The Senior Regional Manager, Punjab National Bank, Patna
4. Deputy General Manager, Punjab National Bank, Patna
5. Assistant General Manager, Circle office, Patna
   All at Chanakya Palace, R.Block, Patna
6. Chief Manager, Punjab National Bank, East Gandhi Maidan, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Madan Pd.Singh, Adv.
Mr. Arun Kumar Singh, Adv.

For the Respondent/s : Mr. Sharad Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

5 09-01-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application bereft of all niceties can be found from the following extract of paragraph no.1 of the writ application, which reads as follows:

> "This application is for a writ of prohibition restraining the respondent no.6 (Chief Manager, P.N.B. East of Gandhi Maidan Branch) from deducting the pension amount from the petitioner's A/C No. 03041000301166496 and transferring the same to the loan A/C No. 2310209 and further for a writ of Mandamus commanding the respondents to credit the deducted amount to the petitioner's account with penal interest from the date of deduction to the date of actual recrediting or issue such appropriate writ/writs/direction/ directions or

pass such other order or orders which your Lordship deem fit and proper."

3. Mr. Madan Prasad Singh, learned counsel appearing on behalf of the petitioner, in support of the aforementioned prayer has basically concentrated on two aspects. Firstly, he submits that the petitioner was a mere guarantor and therefore, the action on the part of the officials of the Bank to straightway make recovery from the petitioner without there being any effort to realize the amount from the principal debtor was wholly without jurisdiction. He has submitted that in any event the Bank has recovered a huge amount much beyond the liability of the petitioner as a guarantor and he has quantified such amount to be Rs.64,000/-. He, therefore, has summed up his submission that this Court should direct the authorities of the Bank to refund the aforementioned sum of Rs.64,000/- with interest from the date such excess amount was realized by the Bank from the petitioner.

4. In this case a counter affidavit has been filed and on the basis of such counter affidavit the learned counsel for the Bank has explained that it does not lie in the mouth of the petitioner to question the jurisdiction of the Bank, especially when he himself had given in writing on 15.7.2000 that any overdue amount for which he was standing as a guarantor could be debited from the

Saving Bank account without prior reminder or notice. To that extent he has relied on Annexure 'A', the undertaking given by the petitioner. Secondly, he has relied on the judgment of the Apex Court in the case of Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala, reported in (2009)9 SCC 478, with specific reference to paragraphs no. 10, 16 and 18 to contend that the amount of loan can be very well recovered from the guarantor.

5. Proceeding further he has also straightway questioned the alleged realization of excess amount of Rs.64,000/- from the petitioner by explaining that the petitioner himself in the writ application had confined his amount to Rs.5500/- only. To that extent he has referred to paragraph no.6 of the writ application as well to Annexure 1, the representation dated 3.2.2005. According to him, the Bank has not realized even a single paise which can be said to be an excess amount.

6. In reply, Mr. Singh relies on paragraph no.8 of the writ application to contend that it is not correct to say that the petitioner has only claimed the excess amount of Rs.5500/- and in fact there is also mention of Rs.6000/- more. According to him, in fact even after deduction of Rs.6000/- further deductions were made in the months of June, 2008 onwards from the saving Bank account of the petitioner.

7. In the considered opinion of this Court both the petitioner and his learned counsel have a wholly misconceived notion about the Writ of Prohibition. A Writ of Prohibition does not lie in the matter where a person has given in writing by becoming guarantor to realize the money from him. The whole concept, therefore, in this writ application with the solitary prayer, as quoted above, is itself misconceived.

8. That apart for such grievance of a loanee or a guarantor who having a saving Bank account and has been allegedly subjected to illegal recovery of any amount, the remedy lies from the Banking Ombudsman. The petitioner had to move the Banking Ombudsman and had to explain that the authorities of the Bank had wrongly deducted the excess amount. That having been not done, the remedy under Article 226 of the Constitution of India cannot become the substitute.

9. This Court even if it goes to the core of the issue would find the petitioner to be bound by his own undertaking, inasmuch as the petitioner with his wide open eyes and his own handwriting with signature had given undertaking on 15.7.2000 which reads as follows:

"To
The Sr.Manager
Punjab National Bank,

East Gandhi Maidan Branch,
Patna.

Sir,

Reg. Sanction of Rs.75,000/- for the purchase of computer.

I have gone through the sanction letter dated 10.7.2000 vide which terms and conditions have been communicated by you. I further agree to undertake as under:

- In case of any overdue in the a/c, you are at your full liberty to debit the instalment/ overdue amount from my S.F. A/c No. 11664 without prior reminder notice.

This letter of undertaking is irrevocable.

Sd/-

Yours faithfully,"

10. Can after this undertaking any person including the petitioner question the jurisdiction of the Bank to deduct the amount from his account? The petitioner was a guarantor and he had made it clear in writing that any amount overdue could be recovered form his account. The Apex Court in the case of Bishwanath Jhunjhunwala (supra) has also held permissibility of recovery of loan amount from the guarantor. Thus, the first submission of the learned counsel for the petitioner must fail and is, accordingly, rejected.

11. Coming to the second aspect that there is an excess amount drawn which was recovered by the authorities of the Bank,

first of all this Court must record here that there is absolute lack of pleadings much less any authentic document to show that the Bank had recovered a sum of Rs.64,000/- in excess from the petitioner. To that extent it would be relevant to quote paragraphs no. 6 and 8 of the writ application which are only two paragraphs referred to by the learned counsel for the petitioner in support of the claim of excess recovery made from the petitioner, which reads as follows:

> "6. That on the aforesaid protest petition (Annexure 1) of the petitioner, his A/C was unlocked but the deducted amount of Rs.5500/- (five thousand five hundred only) was not transferred to the petitioner's account.
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> 8. That instead of recrediting the said deducted amount in the January 2005, the Bank again deducted Rs.6000/- (six thousand) from the petitioner's pension amount on 1.2.2008 and transferred the same to the loanees account. The petitioner made protest against the this action of the Bank, on which no deduction was made from March to May 2008 but again from June 2008 deduction has been started and is continuing. The petitioner made a representation dt. 6.10.2008 to respondent no.5 with a copy to other respondents to stop deductions and credit the deducted amount with interest failing which he could claim interest, damage and loss which he suffered mental, physical and financial."

12. Let it be noted that as against those paragraphs the

respondents have filed their counter affidavit and they have fully explained that not a single paise in excess has been recovered from the petitioner. Such counter affidavit was filed way back on 13.1.2010 with a copy thereof supplied to the petitioner but there is no denial of any of the fact mentioned in the counter affidavit, rather a new case has been sought to be made out with regard to recovery of the amount under the Public Demand Recovery Act.

13. Once this Court would find that there is no denial to the stand taken by the respondents in the counter affidavit, there would be no material left for this Court to come to a conclusion that Rs.64,000/- was recovered from the petitioner.

14. In that view of the matter this Court will not find it possible to issue any direction to the respondent Bank to refund any amount to the petitioner.

15. That being so, this application fails and is hereby dismissed.

(Mihir Kumar Jha, J)

surendra/-

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