IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.791 of 2010

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Ram Lakhan Jha, son of late Mahabir Jha, resident of Village Kachhua, P.S. Jalley, District Madhubani.

.... Appellant/s

Versus

1. The State of Bihar
2. The Collector, Darbhanga
3. The District Transport Officer Darbhanga
4. United Bank of India through the Branch Manager United Bank of India, Branch Bharwara, P.S. Singhwara, District Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vishwanath Pd. Sinha, Sr. Advocate.
Mr. Prabhash Ranjan Thakur,
Mr. Yugal Kishore, Advocates.

For the Respondent/s : Mr. Dr. Binod Bihari Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-10-2015

Heard the parties.

2. This appeal is directed against the judgment and order dated 21.8.2010 passed by the 2nd Additional District Judge, Darbhanga in Insolvency Case No.1 of 1996 by which he has rejected the application to declare him insolvent holding that application of insolvency has been filed with the malicious intention with sole motive to deprive the creditor of amount of loan which was given to him for the purposes of purchasing the bus.

3. From the record it appears that a petition was filed under Sections 7, 10 and 11 of the Provincial Insolvency Act to declare

the appellant as insolvent. The appellant is an ex-service man who retired from the post of driver from Indian Arm Force (military Service) was getting pension amount of Rs.1,000/- per month. He has further stated that he has four sons, four daughters and two wives All the sons and daughters are well settled and married. The appellant is living separately from rest of the other family members. He obtained loan from United Bank of India i.e. opposite second party to purchase the bus. Accordingly a bus was purchased vide registration no. 4991 but due to want of working capital and other unavoidable reasons, he could not get road permit to ply the bus. In 1993 a Certificate Case No. 12 of 1983-1984 was filed against the appellant before the Certificate Officer, Darbhanga for realization of loan amount and on the request of opposite first party the said bus was seized by the order of the Certificate Court through L.N.M.U. Police station. For realization of road tax the D.T.O., Darbhanga i.e. opposite party no.3 filed requisition of certificate against the appellant before the District Certificate Officer, Darbhanga vide Certificate Case No.55 of 1986-1987. He made unsuccessful requests several times to release the said bus on that account he was unable to pay the loan amount as well as road tax. The said bus remained stand rotting in the police station, that eroded the capacity to pay the principal amount as well as interest amount as mentioned in the last part of Schedule A and Schedule B. The appellant has only 1 Katha ancestral land having hardly value of Rs.500/- and save and except military pension for his lively hood, there is no other source of income to pay the said loan either in near future or it does not appear to the appellant that he would pay the said debt in his lift time.

4. Opposite second party has appeared and filed its reply stating that petition is not maintainable at all. The claim made by the appellant is completely false and concocted. The bus was always remained plying on road in spite of that, due to dishonest intention the appellant has not paid the loan amount to the Bank which is outstanding against him. As bus was plying on road without any valid paper which led to seizure of the said vehicle. Bank has filed a certificate case vide Certificate Case No.12 of 1983-1984 for realization of loan amount. The D.T.O. Darbhanga has also filed two certificate cases against the appellant vide Certificate Case Nos. 55 of 1986-1987 and 21 of 1992-1993 for realization of road tax. Bank has taken a plea that appellant is getting pension of Rs.1,000/- per month but denied that he was living separately from other family members and the properties were partitioned amongst the family members rather

he purchased the benami land in the name of his sons from the income of the said vehicle and with view to consume the loan amount with malicious intention with present case has been filed. It has been submitted that Bank has a liberty to recover the amount of the loan either from the principal debtor or guarantors as both are equally liable to pay the loan amount.

5. The court below has framed altogether nine issues. He has recorded that appellant has admittedly took a loan amount from the United bank of India of Rs.1, 25,615/-. The aforesaid loan was not granted only because he was an ex-military man and having a driving licence rather the loan was granted on fact that as the appellant gave two guarantors, had mortgaged their land in favour of Bank against of that loan amount. With regard to issue no.3 it has been said that opposite second party has filed a requisition of certificate vide Certificate Case No.12 of 1983-1984 against the appellant before the Certificate Officer, Darbhanga for realization of loan amount.

6. Issue no.5 is related to seizure of bus by the opposite party and also source of livelihood. While considering this issue startling fact has been recorded by the court below that vehicle was seized after repeated direction of certificate office. When on direction, the bus was inspected by the Motor Vehicle Inspector,

Darbhanga who submitted the report in which he has recorded that all the physical structure has already been changed even tyres were old, gear box, pump, dynamo, shelf etc. were not found in the vehicle. The said certificate case was filed in the year 1983 and order for verification was passed on 4.3.1989 which itself shows dishonest action of the appellant. It has been recorded that during the pendency of certificate case the appellant continued to ply the bus without any valid document till seizure. It has further been recorded the receipt of exact pension amount by the appellant has not been brought on record and now Government of India has taken a policy decision for one rank pension which will substantially enhanced pension of the appellant as well as joint family landed property are sufficient to liquidate the loan amount.

7. In such view of the matter, now it cannot be said that appellant gets a meager amount of pension.

8. Issue no.6 deals with the pension and financial capacity of the appellant to pay the loan amount. It has been found that he had 79 decimals of land, on account of ulterior motive appellant has shown artificial partition without any valid paper looking to attending facts and circumstances the court has arrived to a finding that they have not separated but for the purpose of this

case he has taken this plea. This Court feels that as the appellant has substantial landed property of 79 decimals which on valuation comes to 19 Kathas of land. This land as well as pension amount are sufficient to declare the appellant is not an insolvent person. The Insolvency Act is not meant to help the dishonest person.

9. In such view of the matter this Court does not find any merit in this appeal. Accordingly this appeal is dismissed.

10. Office is directed sent back the lower court records to the court below forthwith.

(Shivaji Pandey, J)

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