

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12995 of 2015

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Rameshwar Prasad son of Late Jhari Prasad, resident of village Koldiha, Police Station/ Post Office Sirdalla, District Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Nawada Cooperative Bank, Nawadah, through its Managing Director, Nawadah cooperative Central Bank, Nawadah.
3. The Registrar, Cooperative Society, Bihar, Patna.
4. The Managing Director, Nawada Cooperative Bank, Nawadah.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Prashant Sinha, Advocate
 Mr. Awadhesh Kumar, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG-9
 Mr. Anisul Haque, AC to AAG-9
For the Respondent-Bank: Mr. Purushottam Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-09-2015

Heard Mr. Prashant Sinha, learned counsel appearing for the petitioner, Mr. Anisul Haque, Assisting Counsel to AAG-9 for the State and Mr. Purushottam Jha, learned counsel appearing for the Bank.

The petitioner by way of this writ petition prays for a writ in the nature of certiorari for quashing the award dated 28.1.2015 / 07.4.2015 passed by the Joint Registrar, Nawadah-cum-Additional Registrar, Cooperative Societies, Bihar, Patna in Award Case No. 129 of 2011 whereby the petitioner has been directed to deposit the alleged defalcated amount together with 6 per cent interest payable

per annum.

Mr. Prashant Sinha, learned counsel appearing on behalf of the petitioner questions the order on two grounds, namely:

- (a) That it is beyond the jurisdiction of the prescribed authority to adjudicate on a disciplinary matter while exercising powers under Section 48 of the Bihar Cooperative Societies Act, 1935; and
- (b) The order has been passed behind his back and thus is violative of the principles of natural justice.

This matter was heard on 26.8.2015 when the State Government was directed to produce the record of the case in Award Case No. 129 of 2011 which has since been produced.

A counter affidavit has been filed by Mr. Purushottam Jha appearing for the bank in which it is stated that although this petitioner along with several others were charged with defalcation of amount of Rs. 62,89,980/- collectively and Rs. 5,23,500/- individually as manifest from enquiry report placed at Annexure-2 but none of these persons including the petitioner, have responded to the notice issued by the Bank nor they have chosen to participate in the award case. According to Mr. Jha, it is the conduct of the writ petitioner in not choosing to participate either in the departmental proceedings so initiated by the bank or before the Registrar that there was no other option but to pass the order impugned which would suffer from no

infirmity.



I have heard learned counsel for the parties and I have perused the records. In consideration of the rival arguments, certain relevant facts have come to notice of this Court. An order was passed on 28.9.2010 against the petitioner charging him with the defalcation as already aforementioned and requiring him to deposit the same and by the same order the service of the petitioner was terminated. The order is placed at Annexure-4 and is dated 28.9.2010. The petitioner questioned the order before this Court in CWJC No. 3842 of 2011 and which was allowed in the light of the similar orders passed in a batch of other writ petitions as well as order passed in the Letters Patent Appeal and the order of termination dated 28.9.2010 was set aside. The matter was remitted to the Bank authorities to conclude the departmental proceedings afresh in accordance with law and which departmental proceeding is yet pending for conclusion.

The facts on record reflect that the Bank had initiated twin proceedings i.e. for recovery of the defalcated amount as well also for termination of the services. Thus twin proceedings were initiated by the Bank one affecting the business of the Society and the other for disciplinary action. Insofar as the recovery proceedings is concerned, since it was based upon enquiry report and notices had been issued to the petitioner to deposit the same which recitals also finds mention in



the order of termination placed at Annexure-4, it sufficiently confirms that the petitioner had full knowledge about the recovery proceedings. Since the petitioner did not take steps for deposit of the defalcated amount that the Bank having no other option invoked the jurisdiction of the Registrar under Section 48 of the 'Act' for recovery of the amount and which was registered as Award Case No. 129 of 2011.

Though it was argued by Mr. Sinha that by quashing of the order of termination, the entire matter had to be initiated afresh but considering that the two proceedings were operating in different sphere, in my opinion, there was no infirmity in the initiation of proceedings in Award Case No. 129 of 2011. The issue which next comes for consideration is whether the order so passed in the award case on 07.4.2015 is capable to be affirmed.

I have perused the records of the proceedings and I have found that although there are several orders of the Registrar indicating issuance of notice but neither there is anything on record which confirms whether the notice indeed were issued and was served or that the petitioner refused to accept the same. On the contrary, there is a returned notice available on the record of the proceedings in which the process server's report mentions that no such address was found. Meaning thereby that the notice was never served on the petitioner. The infirmity does not stop rather what I find from the impugned

order is that although the Registrar has mentioned in his order that the writ petitioner appeared through counsel and filed his show cause but the show cause so filed is not on the record of the proceedings.

In the circumstances discussed where the notice issued to the petitioner has returned unserved with a mark of the process server that the address was not found and there is nothing on record of the proceedings to show any show cause filed on behalf of the petitioner although such is observation of the Joint Registrar, in my opinion, the ex parte order cannot be upheld.

For the reasons aforementioned, the order dated 28.1.2015 / 07.4.2015 of the Joint Registrar(Marketing)-cum-Additional Registrar, Cooperative Societies, Bihar, Patna passed in Award Case No. 129 of 2011 is set aside and the matter is remitted back to the Joint Registrar for its consideration and disposal afresh in accordance with law and after an opportunity of hearing to the petitioner. The petitioner shall appear along with a copy of this order before the Joint Registrar on or before **01.10.2015** and whereafter he shall proceed to dispose of the matter in the manner stipulated hereinabove.

The writ petition is allowed with the direction aforementioned and considering that the matter is very old the Registrar should dispose of the same expeditiously and preferably within three months from the date of receipt / production of a copy of

this order. It is made clear that if the petitioner does not choose to appear on 01.10.2015 and / or fails to cooperate in the disposal of the proceedings, the Registrar shall be at liberty to proceed ex parte.

The record so produced by Mr. Anisul Haque, A.C. to AAG-9 is being returned to him for its being handed over to the authority concerned.

S.Sb/-

(Jyoti Saran, J)

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