IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18138 of 2009

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Nil Kamal (Advocate) S/O Late Raj Kishor Prasad Room No. 03, Lawyers Association, High Court, Patna and resident At C-03, B-Block, Vaishnavi Plaza, Dwarika Mandir Lane, West Boring Canal Road, Patna

.... Petitioner/s

Versus

1. The Chairman, State Bank of India, Corporate Centre, Nariman Point, Mumbai
2. The General Manager, State Bank of India, Patna
3. The Deputy General Manager, State Bank of India, Vigilance, Local Head Office, Patna
4. The General Manager, State Bank of India, Strassed Assats Resolution Centre, 2nd Floor, Main Branch Building, Zonal Office, Patna
5. The Branch Manager, State Bank of India, Bihar School Examination Board, Patna
6. The Then Loan Manager Namely Upendar Prasad @ Upendar Kumar, State Bank of India, Bihar School Examination Board, Patna
7. The Managing Director & Builder, Vaishnavi Architect & Engineering Pvt. Ltd. Aparajeeta Complex, Fraser Road, Patna

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Nil Kamal, Advocate (in person)
For the Respondent Nos. 1 to 6 : Mrs. Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

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4 12-03-2015 Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India questioning the validity and correctness of notices issued by the Officers/functionaries of the State Bank of India, as contained in Annexure-4 series, asking the petitioner to pay back the personal loan amount of Rs.2,50,000/- taken by him.

3. The petitioner, a practising Advocate, who is appearing in person, submits that, in fact, he had not taken any loan from the Bank. According to him, one Upendra Kumar, the then Loan Manager of the Bank in collusion with one Anil Kumar

@ Anil Sharma manipulated the records and had obtained personal loan in the name of the petitioner. Therefore, according to him, impugned notices as contained in Annexure- 4 series issued by the respondent Bank are fit to be quashed. He has raised various issues of facts to show that the loan amount was not taken by him from the Bank, rather it was taken by some one else.

4. A counter affidavit has been filed on behalf of the respondent nos. 1 to 6 controverting the claims raised on behalf of the petitioner and asserting therein that, in fact, it was the petitioner who had approached the Bank for grant of personal loan of Rs.2,50,000/-. The petitioner is said to have submitted loan application in the Bihar School Examination Board, Patna Branch of the Bank on 06.04.2005 and loan was sanctioned to him on 08.04.2005 for marriage of his daughter. According to the respondents, the term loan amount was required to be returned in 48 Equated Monthly Instalments. It is the case of the respondents that the petitioner signed the agreement dated 08.04.2005 for sanction of the loan amount. It has also been asserted that the personal term loan amount taken by the petitioner was transferred to his savings Bank Account, which was withdrawn by him by issuance of two cheques bearing Nos. 801701 and 801702 dated 09.04.2005 for Rs.1,30,000.00 and Rs.1,20,000.00 respectively. It has further been asserted that the petitioner paid back some amount in the loan account on some dates, but thereafter, the instalments was not paid, as a result of which the loan account of the petitioner was declared as Non-Performing Asset (NPA) on 23.05.2008. Therefore, the notices were issued to him, as contained in Annexure-4 series, requesting him to re-pay the loan amount, failing which as per agreement the petitioner shall be subjected to a certificate proceeding. Learned counsel appearing on behalf of the respondents further submits that, in fact, a certificate proceeding has already been initiated against the petitioner under the provisions of the Bihar and Orissa Public Demand Recovery Act, 1914, as amended by the Bihar Act. In support of the above contentions, various documents have been brought on record by way of Annexures to the counter affidavit filed on behalf of the respondent nos. 1 to 6.

5. After having heard the parties, this Court finds that the entire claims raised on behalf of the petitioner is based on disputed questions of fact, which cannot be effectively gone into in a proceeding filed under Article 226 of the Constitution of India. The claims and counter claims raised by the parties in the present proceeding require evidence and only thereafter issues of fact can be effectively and properly decided. As per learned counsel appearing on behalf of the respondent Bank, a certificate proceeding has already been initiated against the petitioner. In the certificate proceeding, the petitioner is entitled to have filed objection controverting/objecting the demand made by the Bank.

6. For the reasons recorded above, the relief sought for in the present proceeding cannot be granted to the petitioner. Consequently, the writ petition has to fail and is, accordingly, dismissed.

7. However, the petitioner shall be at liberty to approach the appropriate Forum/Court for getting the entire disputed question of facts decided in accordance with law by producing the materials/documents/evidences in support of such claims and for grant of appropriate relief. He shall also be at liberty to appear in the pending certificate proceeding and take appropriate steps. If any such lis is brought by the petitioner before the appropriate Forum/Court for grant of an appropriate relief, then the same shall be decided on its own merit without being prejudiced or influenced by the present order.

(Birendra Prasad Verma, J)

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