

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.21302 of 2011

ORDER:

Heard learned counsel for the petitioner and learned Standing Counsel.

The petitioner prays for Mandamus declaring the action of respondent-bank in trying to seize the Tractor and Tractor bearing Nos.AP 16 AS 5315 and AP 16 AS 5314 through Collection Agents as illegal and arbitrary.

The admitted circumstances of the case are that in the year 2007 the petitioner borrowed a sum of Rs.4,50,000/- from the respondent herein. The petitioner claims to have paid few installments. On account of failure of crop and periodical repairs to the vehicles referred to above, the petitioner could not pay the installments. It is also admitted that the advance of loan *inter alia* is against the hypothecation of the vehicle referred to above.

The grievance in the writ petition is that the respondent is sending Collection Agents and threatening the petitioner illegally and trying to seize the subject vehicles. Apparently the grievance is against sending the Collection Agents visiting the petitioner or against seizure of hypotheca.

Learned counsel for the petitioner has substantially reiterated the contentions urged in writ affidavit. Learned Standing Counsel opposes the maintainability of writ petition and further contends that the power of respondent-bank to take possession of

hypotheca is no more *res integra* in view of the decision of this Court in **STATE BANK OF INDIA V. S.B. SHAH ALI (DIED) AND OTHERS**^[1]. It is further stated that the assistance of private persons if taken by the bank cannot be termed as Collection Agents and the invocation of jurisdiction of this Court is unwarranted.

I have perused the material available on record. The cause of action for filing the writ petition is that the Collection Agents are being sent by the bank to take possession of hypotheca. On this aspect of the matter the respondent-bank is joining issue with the petitioner and asserts its rights under the contract of hypothecation. It is also not the case of the petitioner that under the hypothecation agreement such power is not available to the bank. On the ground that arbitrarily or illegally they are doing it the jurisdiction of this Court is entertained. From the material available on record and in my considered view the jurisdiction of this Court is invoked where there is no cause of action. If the respondent acts well within the power under the contract it is certainly entertained to take possession of hypotheca. If the respondent deviates from the agreed terms the remedies of the petitioner are elsewhere.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

S.V. BHATT, J

February 27, 2015

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