IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.509 of 2015
Along with
Interlocutory Application No. 2274 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 18331 of 2014

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Anirudh Giri s/o Vivekanand Giri, r/o Village Mathauli Khash, P.S.- Uchkagaon , Dsitrict- Gopalganj.

.... Appellant/s

Versus

1. The State Bank of India through its competent Officer, Gopalganj, District Gopalganj
2. The Regional Manager, State Bank A.D.B. Branch, Gopalganj , District Gopalganj
3. The Chief Manager, State Bank of India , A.D.B . Branch , Gopalganj
4. The Branch Manager, State Bank of India, A.D.B. Branch, Gopalganj.
5. Ramesh Sah, Proprietor of Neel Kamal Auto Agency , Haziapur, Balwan Tractor Agency Gopalganj, District Gopalganj

.... Respondent/s

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Appearance :

For the Appellant : Mr. Ranjan Kumar Srivastava, Advocate
For the SBI : Mr. Kaushlendra Kumar Sinha with
Mr. Sunil Kumar Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 02-08-2016

Re.: Interlocutory Application No. 2274 of 2015

The application is for condonation of delay of 42 days in filing of the appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 42 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 509 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 22nd October, 2014 whereby, the writ petition filed by the appellant was dismissed. The learned Single Bench found that if the appellant wants to clear his liability of loan, he may approach the Bank but he cannot get any relief from the Court for waiver of the loan.

As per the counter affidavit filed before this Court, the appellant made an application in the year 2005 for purchase of Tractor. The Bank sanctioned a loan for a sum of Rs.2,88,000/- . Later security documents i.e., Hypothetical Agreement etc. were executed. Hypothetical Agreement contemplates right of the Bank to possess the vehicle and to recover its dues. The relevant clause reads as under:

> "10. Right to possession:
> In the event of default, the Bank will have a right to take over possession of the securities charged and sell them and recover its dues. The borrower hereby authorises the Bank to act as their attorney/agents for all intents and purposes for effectual implementation of the aforesaid action."

It is also averred in the counter affidavit that the appellant did not make any payment towards the loan advanced except the payment received by the Bank under the Agricultural Loan Waiver Scheme. Since there was overdue amount, the Bank re-possessed the vehicle in terms of the said clause on 20th May, 2012. It is thereafter the Tractor was sold on 14th March, 2013 after serving notice on 24th February, 2013. The appellant is said to have submitted representation on 28th August, 2014. It is thereafter the jurisdiction of this Court was invoked which stands dismissed by the learned Single Bench.

The grievance of the appellant is that the vehicle has been sold without notice and for an inadequate price.

In the counter affidavit, the Bank relies upon the circular issued by the Reserve Bank of India on 24th April, 2008 wherein the procedure for taking over of the property mortgaged in hypotheticated to Bank was circulated and also when the Bank can re-possess the vehicle. The relevant Clause reads as under:

> "**Taking possession of property mortgaged/ hypotheticated to banks**
>
> (xii) In a recent case which came up before the Honourable Supreme Court, the Honourable Court observed that we are governed by rule of law in the country and the recovery of loans or seizure of vehicles could be done only through legal means. In this connection it may be mentioned that the Securitization and Reconstruction of Finance Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Security Interest (Enforcement) Rules, 2002 framed thereunder have laid down well defined procedures not only for

enforcing security interest but also for auctioning the movable and immovable property after enforcing the security interest. It is, therefore, desirable that banks relies only on legal remedies available under the relevant statutes while enforcing security interest without intervention of the Courts.

(xiii) Where banks have incorporated a re-possession clause in the contract with the borrower and rely on such re-possession clause for enforcing their rights, they should ensure that the re-possession clause is legally valid, complies with the provisions of the Indian Contract Act in letter and spirit, and ensure that such repossession clause is clearly brought to the notice of the borrower at the time of execution of the contract. The terms and conditions of the contract should be strictly in terms of the Recovery Policy and should contain provisions regarding (a) notice period before taking possession (b) circumstances under which the notice period can be waived (c) the procedure for taking possession of the security (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property."

We have heard learned counsel for the parties and find that no interference is called for in the present Letters Patent Appeal.

Though there is clause of re-possession of vehicle but such clause has been commented adversely by the Hon'ble Supreme

Court in the case of **Citicorp. Maruti Finance Ltd. v. S. Vijayalaxmi** reported as **AIR 2012 SC 509** and in the case of **Manger, ICICI Bank Ltd. v. Prakash Kaur** reported as **AIR 2007 SC 1349.**

The fact remains that the appellant did not raise any grievance in respect of possession of the vehicle which was taken on 20th May, 2012 and even after the vehicle was put to sale. The first representation was made on 28th August, 2014 i.e., after more than two years and three months of the possession of the vehicle. Therefore, we do not find that the re-possession of the vehicle can be permitted to be disputed by the appellant at this stage.

Though the RBI circular has contemplated procedural safeguards and that such procedural safeguards have possibly not taken by the Bank but the fact remains that the appellant has raised no dispute after the vehicle was possessed or sold and made representation only on 28th August, 2014. We do not find that the appellant can be permitted to dispute the action of sale after such a long period when third party interest have come in. The appellant was not vigilant and was sleeping over his rights. Therefore, we do not find that he can be granted any indulgence in the proceeding before this Court.

In respect of inadequate price of the receipt on account of sale of vehicle again, the said question cannot be permitted to be raised as the appellant is a defaulter who has not paid a single installment after the loan was taken in the year 2005. We do not find equitable jurisdiction of this Court can be permitted to be raised by a rank defaulter.

Consequently, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

The appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

AFR/NAFR	NAFR
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