IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20457 of 2010

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1. State Bank Of India having its one of the Branch at Nai Sadak known as Patna City branch through its Branch Manager.

.... Petitioner/s

Versus

Samir Kumar, son of Vinod Narain, resident of Thauganj Gali, P.S.- Chowk, P.O.- Patna City, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh

For the Respondent/s : Mr. Bijendra Narayan Sharma

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 25-01-2016

Heard Mr. Rakesh Kumar Singh for the petitioner and the Counsel for the respondent no. 2.

Respondent took loan from the petitioner Bank. An agreement was signed by them. The agreement (Annexure-1) declares that the loanee shall not raise any jurisdictional issue if a certificate proceeding under Bihar and Orissa Public Demand Recovery Act (for short 'the Act') is initiated for recovery of the loan. As the respondent defaulted in payment of loan, a proceeding was initiated against the respondent under the said Act vide Certificate Case No. 2 of 2003-04. The respondent loanee filed Insolvency Case No. 01 of 2006 to declare him insolvent. An application was filed in the said proceeding for granting stay of the proceeding before the Certificate Officer. The petitioner Bank filed rejoinder thereto. On hearing both the sides, the learned Court below by order dated 22.03.2007 granted the interim relief to the applicant-respondent and the certificate proceeding was stayed. Against this order, the writ petition has been filed.

Mr. Rakesh Kumar Singh submits that both the parties have agreed that if there is any Bank debt on the loanee, the same can be realized through the certificate proceeding. He has also drawn attention of the Court to the provisions in Section 8 of the Provincial Insolvency Act, 1920 which reads thus:-

> "8. **Exemption of corporation, etc., from insolvency proceedings**.- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."

The petitioner relied on ***A.I.R. 2001 Allahabad 289*** wherein the ambit and scope of the aforesaid provision of law was considered and held that Bank is Government Company and, therefore, exempted from insolvency proceeding.

Learned counsel for the respondent, on the other hand, supported the impugned order. It is submitted that the respondent at the cost of social humiliation filed the suit for declaring him insolvent. If the Court declares as such, then he cannot be compelled to pay off the dues/debt.

Considering the submissions of the parties as also the provision contained in Section 8 as interpreted in the aforesaid case, I am of the view that the Trial Court erred in passing the said order. Moreover, there is an agreement between the parties (Annexure-1) wherefrom it appears that any such proceeding, if filed, would not be objected by the loanee.

Considering thus, the application is allowed. The order dated 22.03.2007 passed by learned A.D.J-X, Patna in Insolvency Case no. 01 of 2006 is set aside.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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