

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22045 of 2012

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Gorakh Nath Upadhyaya son of Late Kanhaiya Upadhyaya resident of Village-
Baina, P.O.- Kewdhi, P.S.- Kudra, District- Kaimur

.... Petitioner

Versus

1. The State Bank of India Through Its General Manager, State Bank of India,
Head Office, West of Gandhi Maidan, Patna
2. The Branch Manager, State Bank of India, Agriculture Development Branch,
Bhabhua, District- Bhabhua

.... Respondents

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Appearance :

For the Petitioner : Mr. Raghunandan Kumar Singh, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-10-2016

Heard learned counsel for the petitioner.

2. The present writ petition has been filed for quashing the letter dated 10.05.2012 (Annexure-4) issued by the respondent no. 2 by which the petitioner was informed of the Bank's decision to seize the vehicle in question for default of the petitioner in payment of the outstanding dues of Rs. 1,87,377/-; and for directing the respondents to come forward with the total amount of loan outstanding against the petitioner.

3. Learned counsel for the petitioner states that an aggregate amount of Rs. 2,92,728/- was demanded by the respondent-Bank in terms of its letter (Annexure-1) which was payable in instalments upto 30.06.2009, as enumerated therein. It is stated that the petitioner has made the payment in excess of the amount so



required on various dates, amounting to Rs. 3,50,830/- upto 30.06.2009 as detailed in paragraph 9 of the writ petition. It is therefore submitted that subsequent demand notice dated 25.08.2011 alleging the outstanding amount of Rs. 1,87,377/- on the face of it is arbitrary, erroneous and unsustainable and consequently, the decision to seize the petitioner's tractor is wholly illegal.

4. None appears on behalf of the respondents when the matter is called. A perusal of the order of this Court dated 11.04.2013 shows that the respondent-Bank had appointed an agent for recovery of the tractor by letter dated 10.05.2012 in view of which the interim relief was granted to the petitioner. Thereafter by orders dated 18.06.2013, 10.07.2013, 24.07.2013, 13.08.2013, 29.08.2013 and 16.09.2013, time was granted as prayed by the respondent-Bank, for filing a counter affidavit which till date, however, has not been filed.

5. Having regard to the nature of grievance of the petitioner as well as the materials on record, this Court is of the view that the petitioner being an agriculturist, who had got a tractor after obtaining loan from the respondent-Bank, has made out an adequate case for grant of relief. The petitioner has made a specific statement that he was directed to deposit the loan amount in instalments in accordance with Bank's letter (Annexure-1) by 30.06.2009, pursuant to which the petitioner made payment on various dates in excess of the required amount. Even *prima facie*, there could be no justification for

the subsequent demand of Rs. 1,87,377 raised by the respondent-Bank in its letter dated 25.08.2011 and the decision to seize the petitioner's tractor in default of payment thereof.

6. Despite liberal indulgences being granted to the respondent-Bank on a number of occasions as far back as in 2013, no counter affidavit even after lapse of three years since then has been filed and to aggravate the matter, the respondent-Bank is not represented today. This Court, therefore, is of the view that the Bank is unable to controvert the stand of the petitioner which must thus be accepted as correct.

7. In the above circumstances, and in the interest of justice, the notice dated 25.08.2011 demanding an amount of Rs. 1,87,377/- to be paid by the petitioner (Annexure-3) together with letter dated 10.05.2012 for the purpose of seizure of the petitioner's tractor (Annexure-4) are hereby quashed. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.10.2016
Transmission Date	N.A.