

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2128 of 2012

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Birendra Kumar Das son of Sri Sitaram Das, resident of village-Maheshpur,
Post Office-Korha, Police Station-Korha, District-Katihar

.... Petitioner

Versus

1. The State of Bihar
2. The District Co-operative Officer-cum-Certificate Officer, Katihar
3. The Managing Director, Katihar District Central Co-operative Bank Limited,
Katihar
4. The Branch Manager, Central Co-operative Bank, Korha, District-Katihar

.... Respondents

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Appearance :

For the Petitioner : Mr. Jibendra Mishra, Advocate

For the State : Mrs. Namrta Mishra GA 6

Mr. Alok Ranjan, AC to GA 6

For the Bank : Mr. Satyendra Kr. Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-09-2016

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing the
order dated 23.11.2011 passed by the District Co-operative Officer-
cum-Certificate Officer, Katihar, Respondent No. 2 in Certificate Case
No. 02/2008-09 whereby and whereunder a process of attachment of
the properties of the writ petitioner has been issued (Annexure-7); for
holding the entire certificate proceeding bearing Certificate Case No.
02/2008-09 pending before Respondent No. 2 to be bad, illegal and
wholly without jurisdiction; and for connected reliefs.

3. Learned counsel for the petitioner contends that the
impugned order dated 23.11.2011 in Certificate Case No. 02/2008-09

is wholly illegal and without jurisdiction. He refers to his earlier writ petition in CWJC No. 5957 of 1997 (*Birendra Kumar Das vs. The State of Bihar & Ors.*) which was disposed of by order dated 29.08.2001 with the following observations –

“7... The question for consideration is as to whether the said proceeding can be initiated in respect of the loan by the Respondent-Bank in absence of written instrument in terms of item 15 of 1st Schedule, which, in my opinion, can appropriately be examined by the Certificate Officer. It is needless to point out that the aforementioned provisions have been declared intra vires by a decision of this Court in the case of Sarwar Mal Choudhary v. State Bank of India and others, reported in 1986 PLJR 660.

8. In this view of the matter, this Court finds it to be fit and proper if the said question is reconsidered by the Certificate Officer and, thus, does not feel inclined to go into any other question raised on behalf of the petitioner. It is made clear that before doing so the Certificate Office shall give an opportunity of hearing to the petitioner as also the Respondent-Bank and further allow the parties to raise all questions including the question mentioned hereinbefore.

9. In the result, writ application is allowed and the order as contained in Annexure-3 is set aside. The matter is remitted back to the Certificate Officer for fresh consideration in accordance with law.”

4. It is submitted that the matter was remitted back to the Certificate Officer for reconsideration on the limited issue whether the certificate case could be initiated in absence of a written instrument in terms of item 15 of the 1st Schedule to the PDR Act. There was thus no warrant to close the ongoing Certificate Case No. 595/1994-95 without a decision on the said issue on the one hand, while on the other to start a fresh proceeding in Certificate Case No. 02/2008-09. In other words,

the Certificate Officer did not decide the issue for which the matter was remanded by this Court and therefore there was no occasion to terminate the pending Certificate Case No. 595/1994-95 and to initiate a fresh certificate proceeding relating to the very same demand.

5. Learned counsel for the State opposes the writ petition and invites attention to Annexure-A to the supplementary counter affidavit filed on behalf of the respondent no. 2, to submit that a detailed reasoned order was passed by the Certificate Officer on 26.07.2007 in Certificate Case No. 595/1994-95 by which the liability of each of the two partners was fixed at Rs. 1,10,000/- each, and the Certificate case had been closed. It is submitted that this order dated 26.07.2007 having not been challenged by the petitioner has attained finality, and the petitioner cannot now question the recovery of the said amount through Certificate Case No. 02/2008-09.

6. Having heard the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. It is a matter of record that this Court in CWJC No. 5957 of 1997 had remitted the matter for reconsideration on a limited issue to the Certificate Officer without however quashing the Certificate Case No. 595/1994-95, nor did it direct the Certificate Officer to close the case. The Certificate Officer has clearly exceeded his authority in closing Certificate Case No. 595/1994-95 by order dated 26.07.2007. A perusal of the order further discloses that the issue for which the

matter had been remanded by this Court was not dealt with and the order was passed in respect of other issues. Moreover, no reason appears to have been assigned for having initiated a fresh proceeding in Certificate Case No. 02/2008-09 for recovery of the same dues.

7. In the above circumstances, the certificate proceeding in Certificate Case No. 02/2008-09 together with order dated 23.11.2011 passed therein is hereby quashed. So also, the part of the order dated 26.07.2007 in Certificate Case No. 595/1994-95 by which the said certificate proceeding has been closed is hereby set aside, and thus the proceedings in Certificate Case No. 595/1994-95 stand revived. The Certificate Officer shall now take steps to comply with the directions of this Court as contained in its order dated 29.08.2001 passed in CWJC No. 5957 of 1997 and proceed in accordance with law.

8. The writ petition stands allowed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
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