IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18175 of 2015

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1. Mahendra Prasad Jaiswal S/o Late Jagarnath Prasad R/o Vill & P.S.- Mohania, Dist- Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. Bank of Baroda Through Its Chairman, Bank of Baroda Head Office- Baroda, Add.- Baroda Corporate Centre, Building Nariman Point, Mumbai.
2. Zonal Manager, Bank of Baroda, West Boaring Canal Road, Patna- 800001.
3. Regional Manager, Bank of Baroda, West Boaring Canal Road, Patna- 800001.
4. Branch Manager, Bank of Baroda, Branch Brahuli, P.S.- Pusauli, Dist- Kaimur at Bhabhua.
5. Ravi Prasad Singh, S/o Vindhyachal Singh, Vill+P.O.+P.S.- Mohania, Dist- Kaimur at Bhabhua.
6. Guru Prasad Singh, S/o Vindhyachal Singh, Vill+P.O.+P.S.- Mohania, Dist- Kaimur at Bhabhua.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Pancham Lal Jaiswal
For the Respondent/s : Mr. Shanjeev Shankar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 08-09-2017

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

In the present writ petition, petitioner has made a prayer to take the money of loan which was taken by him after mortgaging his 10 decimals of land to the Bank of Baroda. He has obtained loan of Rs.7,50,000/-.

From the record it appears that petitioner has taken a loan of aforesaid amount for running business of Oil, Sugar and Flour (Kirana wholesale business) vide account no.4/235. It was business of partnership. There were three partners as per the petitioner, i.e. Petitioner, Ravi Prasad Singh (respondent no.5) and Guru Prasad Singh (respondent o.6) and they were running Shiv Shakti Traders. Parterres have committed fraud with the petitioner caused loss in business.

Learned counsel for the petitioner submits that petitioner has mortgaged 10 decimals of land along with TDR of Rs.2,50,000/-. Prayer has been made to sale out the property, adjust the amount of the dues from return of sale of property is worth crores and he has taken only hardly loan of Rs.7,50,000/- out of which he has TDR of Rs.2,50,000/-. So after adjustment of Rs.2,50,000/- total dues comes to Rs.5,00,000/-. After adjustment rest amount be returned to the petitioner.

From the counter affidavit it appears that loan was taken for running the shop in the name of M/s Maa Mundeshwari Traders.

Learned counsel for the respondent submits that Bank of Baroda has no concerned with partnership firm as the documents reflects partners of Shiv Shakti Traders are petitioner, Nagendra Prasad Jaisawal (brother of the petitioner) and Ravi Pratap Singh. The loan was not taken for Shiv Shakti Traders but for Maa Mundeshwari Traders. The loan was taken in 2012. When the petitioner has not paid the amount the account was declared NPA, Bank has started a proceeding under SARFAESI ACT and had gone to take possession then it transpired that Indrasan Ram come forward and has made his claim that land was sold to him by Bal Kuar and he is in possession of the property and no point of time neither Mahendra Prasad Jaisawal nor his brother Nagendra Prasad Jaisawal was in possession of the property. It also appears that Indrasan Ram filed a title suit vide Title Suit No.680 of 2013 for declaration the mortgage deed is void and is not binding upon him.

Learned counsel for the petitioner submits that the said title suit has been dismissed for default but he has filed an application for mutation which is pending. He has further submitted that though earlier title suit filed by Indrashan Ram was dismissed as withdrawn but learned counsel for the Bank informed to this Court that fresh title suit has been field by Indrashan Ram against the Bank as well as against the petitioner borrower which has been numbered as Title Suit No.626 of 2017. The petitioner has submitted that the Bank ought to have been careful while granting loan and he has no knowledge that Bal Kuar had sold the land to Indrasan Ram.

Thought petitioner has purchased the land but and he never came in possession, in such situation, the petitioner should not have given the property on mortgage. The counsel for the Bank has submitted that petitioner has adopted the metholodgy to obtain loan, has cheated four more Bank which is reflected from the reply of the counter affidavit and as such this petitioner be dismissed.

This Court is of the view that petitioner has not come out with the clean hand rather he has suppressed the fact.

Accordingly this writ petition is dismissed. However, the Bank will be at liberty to recover the amount as permissible in law.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.9.2017
Transmission Date	NA