IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21332 of 2011

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Rabindra Mishra son of Darbeshwar Mishra Resident of Village-Gangapur, P.S.-Sarairanjan, District-Samastipur.

.... Petitioner/s

Versus

1. Land Development Bank through its Branch Manager, Bihar State Co-operative Land Development Bank through the Branch Manger, Samastipur.
2. Managing Director, Bihar State Co-operative Development Bank, Samastipur.
3. Branch Manager, Bihar State Co-operative Development Bank, Samastipur.
4. State of Bihar through the Certificate Officer, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar
For the Bank : Mr. Girjanand Prasad
For the State : Mr. Pramod Kumar Singh, A.C. to S.C. 16

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

6 20-02-2017 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the Bihar State Co-operative Land Development Bank as well as learned counsel for the State.

The present application has been filed for setting aside the Demand Notice dated 12.08.2011 passed in Certificate Case No. 29 of 2010-11, whereby and whereunder the petitioner has been issued a notice under the Public Demand Recovery Act, for recovery of a sum of Rs. 63,282/- issued from the Certificate Officer, Samastipur, on a requisition made by the respondent Bihar State Co-operative Land Development Bank.

The facts which led rise to the present application is that the petitioner took an agriculture loan of Rs. 18,000/- on 13.06.1995 for agriculture purpose for setting up a Thresher and Pumping Set from the Land Mortgage Bank, Samastipur. The aforesaid loan amount was released by the Bank for ten years.

Learned counsel for the petitioner submits that after taking loan, the petitioner deposited amounts from time to time and by the year 2005, a sum of Rs. 20,300/- had been deposited with the Bank at periodical intervals. He further submits that a sum of Rs. 2,300/- (Two thousand three hundred) has been paid by the petitioner over and above the amount taken by way of loan. Learned counsel for the petitioner submits that suddenly in the year 2011, the petitioner received a notice under Section 7 of the Public Demands Recovery Act which was sent to the petitioner for depositing a sum of Rs. 63,282/- towards the loan amount, which according to the petitioner, he had already liquidated by the year 2005. He further submits that between the year 2005 to 2011, the petitioner had no notice nor had he received any demand. As such, the case of the petitioner as having been filed by way of certificate proceeding under the Public Demands Recovery Act is not maintainable as being barred by Law of Limitation. The further contention of the petitioner is that as per the Section 65(2) of the Bihar and Orissa Public Demands Recovery Act, 1940, it has been envisaged that the provisions of Limitation Act shall apply to all proceedings under the Act as if certificate case filed hereunder were a decree of the Civil Court. He further submits that the dues being of the year 1995, it was hit by the aforementioned section and the requisition for initiation of certificate proceeding filed beyond the period of limitation of three years is not maintainable in the case of the petitioner. He thus submits that it is a fit case where the entire proceedings and the notice as received by the petitioner be quashed.

Learned counsel appearing on behalf of the respondent-Bihar State Co-operative Land Development Bank, however, submits that the petitioner is a recalcitrant borrower and has been evading the return of money which he has borrowed for the agriculture purposes and has not re-paid the loan which he ought to have re-paid by the year 2005. In the counter affidavit filed by the respondent, it has been specifically averred that the notice for re-payment of the bank loan was intimated to the petitioner on 09.07.2006, 24.09.2008 and in 2010, but still, the petitioner failed to re-pay the loan. He further submits that having no other alternative remedy, the respondent-bank filed a requisition before the certificate Officer for recovery of the money belonging to the

Bank, the same being in the nature of public demand. Learned counsel appearing on behalf of the Bank further urged that the present application under Article 226 of the Constitution of India was not maintainable as instead of appearing before the Certificate Officer and without filing his objection under Section 9, the petitioner has chosen to rush to this Court seeking the remedy under the extraordinary jurisdiction even though an alternate remedy for redressal of his grievance is available. Under such facts and circumstances, the petitioner's case is wholly untenable on both the facts and law and is fit to be dismissed.

Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the Bank, it appears that the case of the petitioner is based on sound rationale as Section 65(2) of the Bihar and Orrisa Public Demands Recovery Act, 1940 clearly bars any proceeding beyond a period of three years in respect of the aforementioned contention to counter the objections filed by the Bank before this Court. In this regard, learned counsel for the petitioner has placed before me a judgement of this Court reported in 2007(4) PLJR 590 (M/s Lal Chand Panna Lal & Ors. V. The State of Bihar & Ors.) wherein at paragraph No. 13, such a demand has been dealt with in the following terms:-

> "In the counter affidavit it has specifically been stated that the demand relates to the period 10.05.86 to August, 1988 and September, 1988 to November, 1997.

> Section 65 Sub-section (2) of the P.D.R. Act, 1914 provides: that the provisions of Limitation Act shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court. The limitation as provided is of three years. The requisition for initiating Certificate proceeding was filed on 09.09.2005 much beyond the period of limitation. Inspite of that the Certificate Officer has signed a Certificate under Section 6 of P.D.R. Act that recovery is not barred by any law. This objection raised by the petitioner has not been answered or denied specifically in the counter affidavit. The Certificate proceeding is apparently barred by limitation. If the statute has casted a duty upon the statutory authority to act in a particular manner, he must act in that manner only, and his act must be justifiable under the provisions of the Act. The applicability of the Limitation Act under the P.D.R. Act makes it obligatory for the Certificate Officer to verify before issuance of Certificate that the certificate proceeding is not barred by limitation."

Furthermore, on the submissions made in the paragraph No. 7 of the counter affidavit itself, it can be seen that the respondent-Bank first made its demand from the petitioner only in the year 2006 and not before this, which is beyond the period of limitation. The loan so sanctioned by the Bank was in the year 1995 which is said to have been liquidated in 2005, but the Bank took steps towards recovery of the loan only in 2010, which is much beyond the period of limitation as prescribed by law.

So far as the question of availability of alternative remedy is concerned, any proceeding which is without jurisdiction as is envisaged under the Bihar and Orrisa Public Demands Recovery Act, 1940 would itself make the remedy under Article 226 of the Constitution of India available for the petitioner. As such, the action of the Certificate Officer proceeding under Section 6 of the Limitation Act is wholly illegal. In this connection, learned counsel for the petitioner has placed reliance on Paragraph No. 10 and 11 of 2008(4) P.L.J.R. 191 (Chandeshwar Prasad Singh @ Chandeshwar Singh vs. The Muzaffarpur Central Co-operative Bank Ltd. & Anr.), which is as hereunder:-

"**Placitum: Bihar and Orrisa Public Demands Recovery Act, 1914-Section 6 read with Section 5 of Limitation Act, 1963-recovery of money due after 25 years-if the claim is not enforceable in civil court the bar cannot be circumvented by resorting to Public Demands Recovery Act-Section 6 says that if Certificate Officer, is satisfied that the demand is recoverable and the recovery is not barred by law, he can proceed-in the instant case recovery of money due after 25 years is barred by law of limitation-therefore, in terms of Section 6, the law bars recovery and Certificate Officer had no jurisdiction to proceed in the matter-certificate proceedings quashed.**

10. Learned counsel for the respondent very fairly submitted that if a Suit was to be filed today by the respondent-Bank for recovery of the said money, the same would be barred on the facts of it and the provision of Section 5 of the Limitation Act would not apply. If that be the position, two things arise. Firstly can a person be permitted to circumvent the provision of the bar of limitation and resort to Public Demands Recovery Act, where the Certificate Officer is not a Court, as defined for the purposes of Limitation Act and thus avoid the bar of Limitation and secondly whether in view of provision of Section 6 of the Public Demands Recovery Act, such a plea is at all available to the respondent. Section 6 of the Public Demands Recovery Act reads thus:-

> "6. Filing of certificate on requisition. - On receipt of any such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee if any paid under Section 5, sub-section (2); and shall cause the certificate to be filed in this office."

11. First, where the law restricts the remedy to a Court of law, then it should not be so interpreted that in another proceeding solely for the purpose of recovery it can be permitted; that would be circumventing the law. If the

claim is not enforceable in Civil Court the bar cannot be circumvented by resorting to Public Demands Recovery Act. Therefore, this part of the submission cannot be accepted. Secondly, it is in view of this principle that Section 6 of the Public Demands Recovery Act, as quoted above, says that the Certificate Officer, if he is satisfied that the demand is recoverable and the recovery is not barred by law, he can proceed. Here, recovery of money due after 25 years is barred by law of limitation. Therefore, in terms of Section 6, the law bars recovery and thus the Certificate Officer had no jurisdiction to proceed in the matter once he found so. If one refers to the certificate as appended to the writ petition as issued by the Certificate Officer, one would find that he had to certify that the recovery was not barred, he has so certified without even bothering to look or enquire into the very basic fact. In that view of the matter, in the facts of this case, which are not in dispute, the recovery being barred by law, the proceedings being wholly without jurisdiction, the same are quashed in toto."

It is thus evident that where, the law itself restricts the remedy to a Court of law, then any action taken by such a Court of law would be clearly without jurisdiction and necessitate and warrant interference under Article 226 of the Constitution of India.

As such, the impugned Demand Notice dated 12.08.2011 in Certificate Case No. 29 of 2010-11 being wholly untenable on both facts and law is held to be illegal and arbitrary and is hereby quashed.

However, in the facts and circumstances, there shall be no order as to costs.

(Anjana Mishra, J)

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