

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24379 of 2013

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1. M/s Saraogi Oxyen Ltd., B/9 Industrial Area, Hajipur, Registered Office at Flat No. 51, Jhelum Apartment, Rajendra Nagar, P.S. Kadamkuan, District Patna through its Director Kailash Chand Jain, son of Late Madan Lal Jain Resident of Jhelam Apartment, Rajendra Nagar, P.S. Kadamkuan, District Patna
 2. Kailash Chand Jain son of Late Madan Lal Jain, resident of Jhelam Apartment, Rajendra Nagar, P.S. Kadamkuan, District Patna

.... Petitioners

Versus

1. The State of Bihar through its Chief Secretary
2. The District Magistrate, Vaishali, Collectorate at Hajipur, Bihar
3. The Certificate Officer, Vaishali, Collectorate Hajipur, Distt. Vaishali, Bihar
4. The Bihar State Power (Holding) Company Limited Through Its Chairman-Cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna
5. The North Bihar Power Distribution Company Ltd., through its Managing Director, its Head Office at Vidyut Bhawan, Bailey Road, Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Suraj Samdarshi, Advocate.
For the State : Mr. Vivek Prasad, Advocate.
For the Resp. Nos. 4 & 5 : Mr. Sanjay Kumar Giri
Mr. Pratyeesh Prasad Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30-08-2018

The present writ petition has been filed for the following
reliefs –

“(i) For a direction to the respondent authorities to bring on record the letter no. 2060 dated 06.11.2013 as also an order dated 04.11.2013 passed by the respondent Certificate Officer, whereby and whereunder the respondent Certificate Officer has issued distress warrant against the petitioner no. 2 being a Director of the Company petitioner no. 1.

(ii) For a direction that for realization of dues of a Company, incorporated under the provisions of the Company Act, the Director of the Company cannot be made liable to pay the same, as the same has to be recovered from the assets of the Company till proceeds of the assets of the Company.



(iii) For a direction to the respondents not to take any coercive steps against the petitioner no. 2, who is being proceeded against, by virtue of being the Director of the Company petitioner no. 1.

(iv) For grant for any other relief/reliefs which the petitioner may be found deemed entitled to in the facts and circumstances of the case.”

2. Learned counsel for the petitioners submits that a Director of a Company cannot be made personally liable for the dues of the Company as is being sought to be done in the present case. The proposition of law is no longer *res integra* and stands well settled in terms of the decision reported in the case of *Kanhaiya Lal Vs. The State of Bihar & Ors.*, 2002 (2) PLJR 553, in which it was observed as follows-

“8. Though, as fairly stated by the counsel for the Board, the Board merely wanted the name of the appellant to be included in the proceeding so as to complete description of the certificate-debtor i.e. the company, the impugned order has been passed on the premise as if by putting the signature on the agreement the appellant had become the ‘consumer’ and made himself liable for the certificate dues. This reasoning of the Collector has to be rejected for the simple reason that signature by the appellant was merely in the capacity of Managing Director but on behalf of the company which cannot make him personally liable for the dues which is subject matter of the proceeding. In that view of the matter, all that is required to be done is to clarify the position that notwithstanding the mention of the appellant’s name in the description of the Certificate-debtor he would not be held personally liable for the certificate dues which is the subject matter of the impugned



proceedings. That should be treated for a limited purpose to fully describe the certificate-debtor as “through Kanhaiya Lal Managing Director of the mill” and nothing beyond.”

3. Learned counsel for the respondents appears and fairly accepts that the principle laid down in Kanhaiya Lal’s case (supra) would be applicable in the present case.

4. Having regard to the nature of the grievance of the petitioner and in view of the law laid down authoritatively in Kanhaiya Lal’s case (supra) this Court has no hesitation in holding that the petitioner no. 2 cannot be proceeded against in his personal capacity for recovery of the dues of the company in the certificate proceedings. The impugned letter No. 2060 dated 06.11.2013 for execution of the distress warrant against the petitioner is hereby quashed. However, it will be the duty of the petitioner no. 2 who is the Director of the Company to co-operate in the certificate proceeding as and when so called upon to do so.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	NAFR
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