

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2264 of 2018

=====

Shaokat Ali, S/o Basir Rahman, Resident of Village - Bela Shanti Kutir, P.S. Nanpur, District- Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Land and Revenue Department, Govt. of Bihar at Patna.
2. The Commissioner, Division Muzaffarpur, District Muzaffarpur.
3. The Collector, District Sitamarhi.
4. The District Certificate Officer, District- Sitamarhi.
5. The Branch Manager, Syndicate Bank, Branch Kamaldah, District- Sitamarhi.

... Respondents

=====

Appearance :

For the Petitioner : Mr. Saghir Ahmad,
Mr. Shailendra Kr. Dwivedi, Advocates
For the State : Ms. Sanghmitra Ghosh AC to GP15
For the Bank : Mr. Saddharth Harsh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 15-03-2018

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

2. This matter has been taken up out of turn on the request of the petitioner who was taken in custody on 05.11.2017 for failure to make payment of the outstanding dues in respect of which Certificate Case No. 309 of 2016-17 was initiated.

3. Learned counsel for the petitioner submits that coercive action taken against the petitioner for recovery of the dues by way of putting him behind bars, without first disposing of the objection petition filed by him under Section 9 of the Bihar & Orissa Public Demand Recovery Act, 1914 (for short, "PDR Act"), is wholly arbitrary



and illegal. It is stated that the said objection petition has been filed on 26.09.2017 (Annexure-2) but the same remains pending. It is stated that the petitioner is a guarantor in respect of the agricultural loan for purchase of a tractor which was taken by his deceased mother.

4. Learned counsel for the respondent-State as well as the Bank appear and have been heard. It is pointed out from the copy of the order sheet in the certificate case that the objection petition claimed to have been filed by the petitioner is not reflected therein nor did the petitioner raise this issue when he was produced before the Certificate Officer on 05.11.2017 which casts doubt about the filing of such objection petition.

5. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ petition. It is by now well settled that mere default in payment of money due by a person, cannot invite the harsh punishment of jail custody. Reference in this behalf may be made to a decision in *Dashrath Sharma Vs. The State of Bihar & Ors* reported in 2005(3) PLJR 686.

6. In the view of the matter, let the petitioner be released from the civil prison forthwith.

7. The claim of the petitioner of having filed an objection petition under Section 9 of the PDR Act cannot be disbelieved merely on the ground that the same is not reflected in the order sheet. There



appears to be some gap in its recording, as evident from the first entry in the order sheet on 23.03.2017 directing issuance of notice under Section 7 of the PDR Act and to place the matter next on 24.04.2017, whereas the file was not put up until as late as on 31.10.2017 when the next order sheet entry appears. It is during this interregnum, that the petitioner claimed to have filed objection petition on 26.09.2017 after service of notice under Section 7 of the PDR Act upon him.

8. This Court is inclined to accept the petitioner's submission that the objection under Section 9 of the PDR Act was filed on 26.09.2017 though not taken on record. Accordingly, let the petitioner furnish a copy of the objection petition before the Certificate Officer, Sitamarhi (respondent no. 4) within a period of one week from the date of receipt/production of a copy of this judgment for appropriate disposal of the same in terms of Section 10 of the PDR Act in accordance with law. Upon compliance by the petitioner within the stipulated date and cooperation in the matter of disposal of the objection petition, the respondent shall not take any coercive action against the petitioner in Certificate Case No. 309 of 2016-17 until disposal of the objection petition.

9. The writ petition accordingly stands disposed of.

10. Let the office communicate a copy of this judgment to learned GP 15 as well as to Mr. Siddharath Harsh, learned counsel appearing on behalf of the respondent-Bank without delay.



B.T/Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.03.2018
Transmission Date	N.A.

