

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5859 of 2017

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Kamlesh Kumar Sinha s/o Late Hit Narayan Lal, Resident of
Village/Mohalla- Ramdhanpur, P.S.- Kotwali, District- Gaya.

... .. Petitioner/s

Versus

1. Vijaya Bank Through Its Manager, Gaya Branch Fateh Bahadur Shivala Road, Gaya, 823001.
2. Debts Recovery Tribunal, Patna through its Registrar, Bihar, Patna.
3. Recovery Officer, Debts Recovery Tribunal, Patna.
4. Tata Motors Limited, through its Manager, Service Branch, Kolkatta (W.B.)
5. Rajeshwar Singh, S/o Late C.P. Singh, at 304, A.P. Colony, Gaya- 823001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr.Umapati Jha, Advocate
For Resp. No.4	:	Mr. Dayavant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 22-08-2019 Heard learned counsel for the petitioner and learned
counsel for the Bank.

Although the writ application has been filed against the judgment dated 23.11.2015 passed in O.A. Case No. 256 of 2014 by the Debts Recovery Tribunal, Bihar, Patna (in short the ‘DRT’), at the outset, learned counsel for the petitioner submits that he understands the difficulty in challenging the impugned judgment in a writ jurisdiction, therefore he is not pressing his argument against Annexure ‘5’ i.e. the impugned order rather he would request this court to consider that it is a case in which the loan amount was advanced by the then Bank Manager in



collusion with respondent nos. 4 and 5 and the amount was given to the respondents, even though the truck in question was never delivered to the petitioner.

Learned counsel for the Bank submits that the judgment under challenge was passed on 23.11.2015. It is an appealable judgment under Section 20 of the Recovery of Debts due to Banks and Financial Institution Act, 1992 before the Debts Recovery Tribunal within a period of 45 days from the date of the judgment. No appeal was preferred against the impugned judgment and this writ application has been preferred after about 1 ½ year before this court. It is submitted that there being an efficacious remedy available to the petitioner, he having failed to avail the same cannot be allowed to invoke the extraordinary writ jurisdiction of this court at a belated stage.

It is further submitted that so far as the question of fraud is concerned, that cannot be gone into by this court under Article 226 of the Constitution of India because question of fraud is essentially a question of fact which may require an adjudication after adducement of evidences by the parties concerned.

Having heard learned counsel for the petitioner and the Bank, this court finds substance in the submission of learned



counsel for the Bank. The writ application is bound to fail on both the grounds firstly that the judgment being appealable, no appeal was preferred by the petitioner within the given period and after 1 ½ year a writ application has been filed which is certainly not a substitute for the alternative remedy of appeal. Secondly, the question of fraud cannot be looked into by this court in the present jurisdiction.

The writ application has, thus, no merit. It is dismissed with liberty to the petitioner to seek his remedy whatsoever may be advised in accordance with law.

(Rajeev Ranjan Prasad, J)

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