

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4566 of 2019

SHRI BIRENDRA KUMAR SINGH @ Birendra Kumar Proprietor M/S
Ram Janki Rice Mill S/o-Late Ram Prasad Singh Resident of -Village-Post
Office-Aajwan, PS Nubatpur Dist-Patna, Bihar

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, Government of Bihar, Patna
2. Debts Recovery Tribunal, Bihar, Patna through the Presiding Officer, Debts Recovery Tribunal, Bihar Patna, A.B and F Wings, Karpuri Thakur Sadan, Ashiana Digha Road, Patna-800025
3. The Recovery Officer, Debts Recovery Tribunal, Bihar, Patna A.B. and F Wings Karpuri Thakur Sadan, Ashiana Digha Road, Patna-800025
4. The Registrar, Debts Recovery Tribunal, Bihar, Patna A,B,and F Wings, Karpuri Thakur Sadan Ashiana Dgha Road, Patna-800025
5. The Chairman, Madhya Bihar Gramin Bank Head Office- Shri Vishnu Commercial Complex Beside National Highway Petrol Pump New Bypass NH-30 Ashochak, Patna, 800016
6. The General Manager, Madhya Bihar Gramin Bank Head Office-Shri Vishnu Commercial Complex Beside National Highway Petrol Pump New Bypass NH-30 Ashochak Patna, 800016
7. The Regional Manager, Regional Office, Madhya Bihar Gramin Bank, Kankarbagh road no 2, Patna-800020
8. The Branch Manager, Branch Office, Madhya Bihar Gramin Bank, Naubatpur-801109, Patna
9. The Authorized Officer-Cum-Branch office, Madhya Bihar Gramin Bank, Naubatpur-801109, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Madhuri Lata, Advocate
For the Respondent/s : Mr.Subash Chandra Yadav (Gp15)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 19-07-2019 Heard learned counsel for the petitioner and learned
counsel for the Bank as also for the State.

The petitioner in the present case is aggrieved by and
dissatisfied with the order dated 24.12.2018 passed by the



Presiding Officer, Debts Recovery Tribunal, Patna (hereinafter referred to as the 'Tribunal') in M. A. No. 02 of 2018 and by the ex-parte judgment dated 17.10.2017 passed in O. A. Case No. 247 of 2017. The petitioner has also prayed for quashing of the proceeding of the recovery case being R.P. No. 675 of 2017 which is pending before the Recovery Officer of the Tribunal.

Learned counsel for the petitioner submits that in this case, because the Bank had dispatched the notices by registered post giving an incorrect PIN Code, those notices were not served upon the petitioner. It is one of her contentions that on perusal of the various orders enclosed with the writ application it would appear that even before expiry of 30 days time from the date of dispatch of the speed post, the Bank had moved for an order seeking substituted service of notice by publication in the Newspaper and the same was permitted by the Presiding Officer of the Tribunal, this, according to the petitioner, is not a correct procedure adopted by the Tribunal and in no case the Tribunal could have permitted the Bank to go for substituted service of notice before expiry of the 30 days time from the date of dispatch of the speed post.

Learned counsel submits that substituted service by publishing the notice in daily Newspaper 'Danik Bhashkar' was



done but it was in English and therefore, the petitioner being a non-matriculate could not come to know about the notice. On these grounds the petitioner has sought for setting aside the impugned order.

Learned counsel for the Bank has opposed the writ application. It is submitted that in this case the petitioner was running a Rice Mill. He had obtained financial assistance from the Bank on account of Term Loan and Cash Credit facility but then having availed the financial assistance, the petitioner failed to re-pay the loan. As a result thereof the Bank had to initiate action by filing an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'Act of 1993') for recovery of a sum of Rs. 34,01,262/- up to 28.02.2017 together with pendentielite and future interest at the contractual rate.

Learned counsel submits that the present writ application has been filed by the Proprietor of the firm alone whereas it would appear that before the Tribunal one Sri Jagdish Verma, who was the guarantor, was also a party defendant no. 3. He has not joined the petitioner in this case and has not come out with any grievance as regards service of notice. It is stated that in accordance with the established procedures notices were



dispatched on the address mentioned in the impugned order. It is not the case of the petitioner that the address mentioned in the impugned order on which notices were sent are not correct. His only case is that the PIN Code bearing on the receipt of the speed post is not correct. However, this aspect of the matter has been considered by the Presiding Officer of the Tribunal while hearing the review application preferred by the petitioner being M. A. No. 02 of 2018. It has been found that those notices issued to the parties defendants were never returned unserved.

It is further submitted that the submission of learned counsel for the petitioner that steps for substituted service of notice was taken even before expiry of 30 days time from the date of dispatch of the notices is totally irrelevant and the same cannot be a ground to say that the substituted notice issued by publication in the Newspaper has lost its efficacy. It is submitted that even after the notice published in the Newspaper, none of the defendants appeared before the Tribunal.

Learned counsel has contested the submission of the petitioner that because of incorrect PIN Code the notice cannot be said to have been served. It is his submission that the complete address was available on the notice. The petitioner never took trouble to find out from the postal authorities as to



whether those notices were served elsewhere. No application under the Right to Information was filed to get such information, moreover, these issues have lost its relevance after publication of the notice in the Newspaper.

Having heard learned counsel for the petitioner and the Bank as also the State, this Court finds that in this case, the fact that the petitioner had availed financial assistance from the Bank is not in dispute. The address on which the notices were issued to the petitioner and his firm are also not in dispute. The only dispute is with regard to PIN Code which is said to be incorrect. On going through the order passed in the Miscellaneous application, this Court finds that the Presiding Officer of the Tribunal has taken note of the submissions of the petitioner and upon finding that the notices were not returned back to the Tribunal and that due to non-appearance of the defendants in O. A. the notice was published in the Newspaper namely, Dainik Bhaskar on 01.08.2017, he refused to entertain the plea of the petitioner for recall of the order. This Court finds no illegality or infirmity in the said order. The petitioner has not come out with any plea explaining the reason as to why he did not find out the correct information from the postal department if he was taking a plea before the court that notices were not



served upon him. Further this Court is also of the view that once the notice has been published in the Newspaper, the petitioner cannot be allowed to get rid of the certificate amount and recovery on the ground that he is non-matriculate, therefore could not pay attention to the notice. This Court would also taken note of the fact that the guarantor was also a party to the proceeding as his name has also appeared in the substituted notice but he has not joined the petitioner in the present proceeding.

This Court is, thus, not willing to set aside the impugned order on the ground of non-receipt of notice. The impugned judgment dated 17.10.2017 is an appealale judgment before the Debts Recovery Appellate Tribunal under the provisions of the Act of 1993. This Court leaves it open for the petitioner to seek his remedy, if so advised, against the Original order / judgment and the certificate issued by the Tribunal.

The writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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