IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12633 of 2019

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Ramjee Sharma Son of Ramdeo Singh resident of Village- Karpi Dih, Police Station- Karpi in the district of Arwal.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Magadh Division, Gaya.
2. The Commissioner, Magadh Division, Gaya.
3. The District Magistrate-cum- Collector, Arwal.
4. The District Certificate Officer, Arwal.
5. South Bihar Gramin Bank through its Chairman, Sri Vishnu Commercial Complex, near Highway Patrol Pump, New Bypass, Patna.
6. The Branch Manager, South Bihar Gramin Bank, Karpi in the District of Arwal.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar, Advocate
For the Bank	:	Mr. Mahesh Nr. Parbat, Sr. Advocate
		Mr. Ved Prakash Srivastava, Advocate
For the State	:	Mr. Shilpi Keshri, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 21-11-2019 Heard learned counsel for the parties.

This writ application has been preferred for quashing of the Certificate Case No. 10 of 2017-18 which has been initiated on the request of the Branch Manager, South Bihar Gramin Bank, Karpi, District – Arwal (respondent no. 6) for realization of a sum of Rs. 7,47,849/- from the petitioner.

It appears that in the Certificate Case the petitioner has appeared and filed his show cause vide Annexure '7' to the writ application. He has complained before the

Certificate Officer that his Tractor was seized on 17.05.2015 and till date the same has been lying in the possession of the Bank. He has also made a statement in his show cause as contained in Annexure '7' to the writ application that he would be ready to pay the amount under agreement and his vehicle should be made available to him.

Earlier on 19.09.2019, when this court was informed that the petitioner had availed a loan amount of Rs. 3,00,000/- (three lakhs) against which he had deposited a sum of Rs. 1,30,000/- and he had shown his willingness to deposit the balance principal amount of Rs. 1,70,000/- for the purpose of interim relief, this court directed that on the petitioner depositing Rs. 1,70,000/- within four weeks with the Bank as per his own undertaking the warrant of arrest issued against the petitioner shall not be executed.

The respondent Bank was also directed to prepare a calculation sheet after receipt of the offered amount of Rs. 1,70,000/- and such calculation sheet was required to be filed before this court.

A counter affidavit has been filed on behalf of the Bank. In paragraph '9' of the counter affidavit the respondent Bank admits that the Tractor was seized by the Recovery Agent. The date of seizure disclosed by the petitioner has not been disputed. Bank has further disclosed that the loan account became NPA on 16.07.2015.

It has been further stated that the seized tractor of the petitioner was auction sold on 21.07.2015. Although in the counter affidavit a statement has been made that the auction was held after giving notice to the petitioner, with the counter affidavit no material has been brought on the record to show that either an individual or public notice of sale was issued/published by the respondent Bank. The Tractor was sold for a sum of Rs. 94,000/- in the year 2015 to one Rajnish Kumar son of Suresh Kumar of village & P.O. - Mahabalipur, District – Patna and the said amount has been said to be transferred in the loan account.

Apparently, to this Court, it appears that the seizure of the Tractor was done prior to declaration of the account as NPA and then the same was sold without giving any notice of auction to the petitioner but having reached to that conclusion this court is not willing to exercise it's extraordinary writ jurisdiction when it is found that after seizure of the Tractor in question, the petitioner neither proceeded to make good the default in the account nor took any steps towards release of the Tractor in question for a period of almost four years.

This court finds that the claim of the petitioner that he had deposited a sum of Rs. 1,00,000/- with the Bank has been seriously disputed by the Bank and in the counter affidavit a plea has been taken that the receipt showing deposit of Rs. 1,00,000/- as contained in Annexure '5' to the writ application is a forged receipt. This being the position, the court finds no reason to interfere with the Certificate Proceeding at this stage. Petitioner is permitted to raise all such pleas which are available to him before the Certificate Officer and for that purpose he can file any submissions/documents before the Certificate Officer within a period of four weeks from today, thereafter the Certificate Officer shall proceed to consider the objection of the petitioner and determine the liability in terms of Section 10 of the Bihar and Orissa Public Demand Recovery Act, 1914.

Learned counsel for the petitioner disputes the statement of the Bank and submits that he would take appropriate steps against the Officer who had received the amount from him but has not credited in his account.

Since this court finds that vide Annexure '7' to the writ application the petitioner has appeared and filed his show cause before the Certificate Officer, the Court is of the opinion that even before determination of the liability of the petitioner the Certificate Officer could not have issued a distress warrant against him. To that extent the action of the Certificate Officer cannot sustain.

This court, therefore, directs that till a decision is arrived at by the Certificate Officer on the objection of the petitioner the execution of the distress warrant against the petitioner shall remain stayed.

The Writ Application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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