IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.712 of 2022

M/s Kamdhenu Dairy through its proprietor Vishwanath Prasad aged about 68 years (Male) Son of Late Rameshwar Prasad, resident of Village - Silaunjha, P.O. - Basarhi, P.S. - Bodh Gaya, District - Gaya.

... ... Petitioner/s

Versus

1. Punjab National Bank through its Managing Director cum Chief Executive Officer, Head Office, Plot No. 4, Sector - 10, Dwarka, New Delhi -110075.
2. The Zonal Manager, Punjab National Bank, Bihar Zone, Second Floor, Chanakya Towers, R. Block, Patna - 800001.
3. Sri Mantu Sharma, the Senior Branch Manager, Punjab National Bank, Bodh Gaya Branch, Gaya.
4. Sri Ravi Bhushan Kumar, the Chief Manager cum Authorised officer, Punjab National Bank, Gaya Circle, Gaya.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shailesh Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Priya Ranjan, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 03-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

(i) For issuance of a writ of certiorari for quashing of 'Possession Taking Notice' dated 15.12.2021 (Annexure-7) and Public Notice dt. 15.12.2021 (Annexure-7/1) issued under signature of the Authorised Officer, Punjab National Bank, Gaya Zone, Gaya whereby and where under in arbitrary manner the respondents have forcibly took possession of the petitioner's land bearing Khata no. 189, Plot no. 368, area 36 decimals and Khata no. 189, Plot No. 88, area 1 acre, 21 decimals respectively situated at Mauza- Silaunj, P.S. Bodh Gaya, District- Gaya without any prior notice of taking possession and by ignoring the request application of the petitioner dated 10.12.2021 to give three months time to meet out the payment of due loan amount.

(ii) For issuance of a writ of mandamus for commanding the respondents to make free the aforementioned land of the petitioner from their illegal possession, recalculate the loan amount at the rate of reasonable interest and divide the balance amount in installments so the petitioner may able to pay the balance amount of loan within reasonable period.

(iii) For issuance of a writ of mandamus to take appropriate action against the respondents authorities for their whimsical and arbitrary action in taking forceful possession of land of the petitioner in haste without affording the reasonable opportunity to meet out the financial liability of the petitioner which caused a huge loss of the social status of the petitioner.

(iv) For issuance of any other relief / reliefs which may deem fit and proper of the facts and circumstances of the case and for which the petitioners may entitle.

On 27th of January, 2022 we had passed the following order:-

"Petitioner is ready and willing to pay the entire amount as arrived at in terms of the One

Time Settlement entered into with the respondent bank. However, the only indulgence he seeks is to pay the amount within a period of six months in equal monthly installments, as also the amount of interest as per the banking norms/agreement accrued from the date of One Time Settlement.

To establish his *bona fide*, the petitioner is also ready and willing to deposit a sum of Rs.10,00,000/-(Rupees Ten Lacs only) within the next 48 hours.

Let the petitioner do so.

The deposit shall be subject to the outcome of the present petition and without prejudice to the respective rights and contentions of the parties.

Shri Kumar Priyaranjan, learned counsel for the Bank to obtain instructions in this regard.

List on 03.02.2022."

Today, petitioner has moved an application seeking extension of time to deposit the amount in terms thereof. He wants four weeks' time to do the needful, but on the terms settled at some point of time. Also, he has expressed his willingness to deposit the entire amount as settled by the Bank, within a period of six months.

However, this option is not available with the petitioner, more so in view of the stand taken by the Bank in its counter affidavit, and relevant portion whereof we reproduce as under:-

> "5. That even the bank is ready to take liberal view in the matter considering the present situation and bank invites the borrower / petitioner to enter into fresh compromise on fresh outstanding as per extent guideline / circular of the Bank. Fresh outstanding as on date is Rs. 65,56,701.62/-. After 31.01.2022 again interest of Rs. 70,000/- (approx.) will be added and fresh compromise will be done on the outstanding balance of the date of compromise.
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> 6. That another payment method is, the petitioner can make payment before 31.03.2022 as per old existing compromise application by depositing rest compromise dues of Rs. 54.40 lakh along with interest since 24.09.2021 to 31.03.2022. Calculated interest since 24.09.2021 to 31.03.2022 is Rs 3,00,000/-."

It is for the petitioner to elect the option given by the Bank, reproduced supra.

This Court cannot amend the contractual terms, more so with regard to payment/waiver of interest and repayment of the amount.

We have entertained the petition only for the reason that at this point in time, Debt Recovery Tribunal is not functional for non-appointment of the Presiding Officer.

It is only in the interest of the petitioner, notwithstanding the hardships highlighted in the application that the petitioner approaches the Bank giving his option electing the choice given to him by the Bank.

Further, we are hopeful that if the petitioner were to give a fresh proposal of waiver of interest in terms of option, indicated in Paragraphs 5 and 6, reproduced supra, the Bank would favourably consider the same, more so in view of the current economic hardship and circumstances having arisen out of Pandemic Covid-19. However, we clarify that the terms, contractual in nature, are to be settled *inter se* the parties and have not been so done by this Court, though, our sympathy would be with the petitioner, considering the fact that he is a farmer. All these aspects shall be considered by the Bank.

We direct the petitioner to make himself available in the office of Respondent No. 4, namely, Shri Ravi Bhushan Kumar, the Chief Manager cum Authorised Officer, Punjab National Bank, Gaya Circle, Gaya on 14th of February, 2022 when he shall give his option in terms of Paragraph 5/6, reproduced supra. Also, he shall submit his proposal for waiver of the interest or granting further time to repay the amount. Any which way, it is for the parties to arrive at a decision, which is just, fair, reasonable, and mutually acceptable to the parties.

We clarify that we have not expressed any opinion on the merits of the case. All issues are left open.

In the aforesaid terms, the present petition stands disposed of.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	07.02.2022
Transmission Date	