

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.7711 of 2011

Rasananda Mohapatra

Petitioner

Mr. J. R. Deo, Advocate

-versus-

***Mayurbhanj Central Co-
operative Bank, (Evening
Branch), Baripada Town,
Mayurbhanj and Others***

Opposite Parties

Mr. Narendra Kishore Mishra, Advocate for Bank

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M. S. RAMAN

ORDER (ORAL)

17.03.2022

Order No.

- 09.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** The brief facts of the case are that the Petitioner i.e. Mr. Rasananda Mahapatra availed a loan of Rs.3,15,000/- from the Opposite Party No. 1 i.e. Mayurbhanj Central Co-Operative Bank to buy a Tata Sumo vehicle registered as OR 11A 2220 on 17.03.1998 by hypothecating the said new vehicle and also by mortgaging certain immovable properties .The Petitioner was able to pay the installments of the loan amount regularly for one year. However, he started defaulting from the year 1999.
 - 3.** Due to the inability of the Petitioner to repay the loan amount, he entered into an agreement dated 09.02.2000 with certain Jagdish Prasad Saha. The

Opposite Party No. 2 i.e. S.K. Jalaudin, Branch Manager of Mayurbhanj Central Co-operative Bank stood as witness to the said agreement. The Agreement provided that the Petitioner would hand over the possession of the vehicle to the Jagdish Prasad in return of his promise to repay back the remaining loan amount to the O.P No. 1-Bank. Further, pursuant to the said agreement, the said vehicle was handed over to Jagdish Prasad. Jagdish Prasad Saha died and subsequently his legal heirs have been impleaded under Opposite Parties no. 3 to 6.

4. Despite the said arrangement, there was continuing default in the payment of installments, and consequently, the Bank initiated a recovery proceeding against the present Petitioner. The Opposite Party No.1-Bank approached the Deputy Registrar, Co-operative Society under Section 68 of the Odisha Cooperative Societies Act, 1962 for recovery of amount. The Deputy Registrar, Co-operative Society vide order dated 20.03.2004 directed the Petitioner to deposit a sum of Rs. 5,00,928/-. As on 15.03.2022, the principal amount outstanding was stated to be Rs.24,49,270/- and the interest as on the same date being Rs.41,84,574.24/- as per the affidavit dated 17.03.2022 filed by the Opposite Party No.1-Bank. Thus, the total amount payable is Rs.66,33,844.24/- as on 15.03.2022.

5. The Petitioner has approached this Court with prayers to quash the order dated 20.03.2004 and direct the Opposite Party No.7 i.e. Inspector-in-Charge, Baripada to seize the vehicle registered as OR 11-A-2220 and to direct the bank to consider the proposal of OTS.

6. Heard learned counsel of both the parties at length.

7. It is undisputed that the original loan agreement was entered between petitioner i.e. Mr. Mohapatra(Debtor) and Opposite Party No.1 i.e. Mayurbhanj Central Co-operative Bank, (Evening Branch), Baripada. The said agreement was never terminated by the said parties. The petitioner/Debtor did enter into an arrangement with a third party i.e. Mr. Jagdish Prasad Saha, however, the said arrangement was behind the back of the Bank. It cannot be said that the petitioner/ debtor vide the arrangement made by the third party can recuse or absolve himself from the obligations to repay the debt to the Opposite Party No.1/Bank. Further, the doctrine of privity directs us to enforce the agreement made between original parties and not recognize any third party. Moreover, the inclusion of Opposite Party No.2 i.e. S.K. Jalaudin, Branch Manager of Mayurbhanj Central Co-operative Bank as a witness to the arrangement made between Petitioner and third party

i.e. Jagdish Prashad has no effect to the present dispute as he acted in his personal capacity and the Bank cannot be bound in any manner by his personal acts.

8. In keeping the above law in mind, we dispose of this writ petition by directing the petitioner to repay back all the outstanding liabilities including interest to the Opposite Party No.1/Bank.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

March 17th, 2022
Cuttack

AKPradhan

