IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13771 of 2013

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Gupta Singh Son Of Chhedi Singh Resident Of Village- Narsinha, P.S.- Aurangabad And District- Aurangabad ... Petitioner

Versus

1. The State Of Bihar
2. The Zonal Manager, State Bank Of India, Bihar, Patna
3. The Branch Manager, State Bank Of India, Branch Aurangabad

... Respondents

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Appearance :

For the Petitioner : Mr.Anirudh Kumar Verma, Adv.
For the Bank : M/s Anjani Kumar Mishra & V.B. Pandey, Advs.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

9 27-06-2023 Heard the parties.

This writ petition is filed for the following reliefs :

"……… for directing the concerned Respondent to return Mahindra Tractor bearing Chasis and Engine No. NGM 28980 which was taken forcibly without according opportunity or noticing and the same was provided by the bank on loan on 08.06.2004 and further for fixing easy monthly installment to repay the rest amount of loan."

The brief facts for the purpose of deciding the present case are that the petitioner has approached the respondent-Bank for disbursal of vehicle loan for purchase of a tractor. The loan amount was sanctioned by the Bank on 8th June, 2004, for an amount of Rs.2,45,000/-. After the execution of the loan security document and also the hypothecation agreement, the sanctioned loan amount was released in favour of the dealer of the tractor M/s Narayan Auto, G.T. Road, Aurangabad, Bihar, and the vehicle was hypothecated to the Bank.

Thereafter, when the petitioner was irregular in payment of the EMI and there was no response from the petitioner asking him to pay the loan amount, the respondent-Bank has issued notice to the petitioner, dated 14.11.2012, appointing a recovery agent for recovery of the vehicle/loan amount. After issuance of the notice by the Bank the petitioner seems to have paid an amount of only Rs.8,000/- on 03.12.2012. When there was no response from the petitioner even after issuance of the notices, dated 05.11.2012 and 09.11.2012, the recovery agent appointed by the Bank have taken possession of the vehicle and after duly publishing the auction sale notification on 22.02.2013, the vehicle was sold in a public auction on 23.02.2013 even though the offset price was fixed at Rs.1,55,000/- and the auction was conducted by the Bank and the vehicle was sold for an amount of Rs.1,57,786/-, thereafter, the petitioner was directed to an amount of Rs.98,377.56 as the outstanding due loan amount after crediting the sale proceeds of the vehicle.

In the counter affidavit filed by the respondents, the official respondents while admitting that the Bank has extended the loan for the purpose of purchase of the tractor. The official respondents have denied that they have taken the vehicle forcibly and the petitioner was regularly paying the outstanding due amount. It is stated by the respondents that inspite of issuing several notices to the petitioner, the petitioner has ignored the same and as a result of which outstanding due amount for the petitioner has become non-profitable asset (NPA) for the Bank and, therefore, respondent-Bank had to take necessary steps for recovery of the loan amount. It is, further, stated that the petitioner knowing fully well that the vehicle was being put to auction for recovery of the loan amount and they have taken all necessary steps and followed fair procedure while conducting the auction and the amount realized in the public auction was credited to the loan account of the petitioner.

In the second supplementary counter affidavit filed by the respondents it is specifically denied that the Bank officials or the recovery agent have taken the vehicle forcibly and on the other hand the petitioner himself has cooperated in handing over the vehicle to the recovery agent, therefore, the allegation made by the petitioner that the vehicle was taken away forcibly is without any basis. If the fact of taking forcible possession was true as the petitioner has remedy of filing a first information report (FIR) before the concerned Police Station complaining that the recovery agent has taken the vehicle forcibly but the no FIR has been lodged.

Admittedly, in the present case the loan amount was sanctioned in the month of June, 2004, for an amount of Rs.2,45,000/- for purpose of purchasing the vehicle and another amount of Rs.25,000/- was sanctioned for agricultural activities and, admittedly, the petitioner has only paid Rs.1,07,000/- towards the re-payment of the loan amount.

A perusal of the Bank's statement filed by the petitioner itself shows that the rate of interest chart by the Bank was 14.45% per annum and the statement does not show that the petitioner was regularly paying the monthly EMIs. Once the petitioner has taken the loan, he is duty bound to re-pay the loan amount as per the terms and conditions entered in the Bank. The petitioner has consciously entered into a loan agreement with the Bank for grant of loan and has also hypothecated the vehicle to the Bank for which a separate hypothecation agreement has been entered. In spite of several notices to the petitioner, the petitioner did not bother to re-pay the loan amount and has paid an amount of Rs.8,000/- only on 03.12.2012. Thereafter, also the Bank has kept quite for a period of two months waiting for the petitioner to re-pay the loan amount and, thereafter, only has auctioned the vehicle on 23.02.2013. If the petitioner in order to show his bonafide out to have paid some substantial amount towards the loan amount even though he had more than three months before the vehicle was auctioned. But for reasons best known he has paid an amount of only Rs.8,000/-.

Banks are having fiduciary relationship with the account holders of that particular Bank. The account holders deposit their har earnest money in the Bank under the trust that the money will be safe in the Bank. The Banks are able to render services to the customers and also pay the interest to the customers by disbursing loans to needy individuals and charging them higher interest. Unless and until the loan taken by the debtors is repaid fully in a time bound manner, the Bank will not be in a position to cater to the needs of the customers and in case the debtors fail to re-pay the loan amounts the Bank will be in financial distress and ultimately collapse.

This Court does not find any irregularity with the procedure followed by the Bank in repossessing the vehicle and putting the same to auction. The petitioner having entered into a loan agreement and hypothecated the vehicle was legally bound to have repaid the loan amount within the stipulated time.

This Court does not find any merit in the present writ petition which warrants an interference and the writ petition is **dismissed** accordingly.

(A. Abhishek Reddy , J)

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