

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17705 of 2017

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Lal Jha son of Sri Mahesh Nath Jha resident of Mohalla - Kabraghat, P.S. -
L.N.M.U. Campus, District - Darbhanga.

... .. Petitioner/s

Versus

1. The Assistant General Manager, Bankig and Ors
2. The Regional Business Office, State Bank of India, 2nd Floor, Darbhanga Branch Campus, Laheriasarai
3. The Chief Manager, State Bank of India, DMCC, Darbhanga.
4. The Banking Ombudsman, State of Bihar and Jharkhand, Reserve Bank of India, South Gandhi Maidan, Pa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kripa Nand Jha, Adv.
For the SBI Bank	:	Mr. Satya Vrat, Adv.
For the Respondent/s	:	Mr. K.K.Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date: 12-07-2023

The present writ petition is filed for the reliefs:

“That this is an application for issuance of an appropriate writ/writs, order/orders, direction/directions for commanding the respondent authorities to release the FD of Rs.11,70,000/- stand in the name of petitioner which was pledged for issuance of bank guarantee in favour of 3rd party to utilize the said bank guarantee in obtaining licence of liquor shop situated within the district of Darbhanga for a period from 1.4.2015 to 31.3.2016 and validity of bank guarantee is up to 30.6.2016, but despite expiry of validity period the respondent bank authority has not released the fixed deposit amount in favour of petitioner who only provided the bank guarantee for running the liquor shop under licence and for no other



purpose, but still the respondent bank has kept the FD amount provided by the petitioner.”

Learned counsel for the petitioner has stated that the respondent-bank has withheld the FD which was given for the purpose of bank guarantee of an amount of 11,70,000/- and the said bank guarantee was given for the purpose of running a liquor shop which was in the name of one Deepika Devi. That after the closure of the liquor shop, the Excise Department had issued a Memo dated 20.07.2016 bearing Memo No. 915 discharging the said Deepika Devi from all liabilities and also released the bank guarantee. But, the authorities have not returned the FD amount. Even though, the petitioner had made several requests, the authorities have not returned the FD till date. Therefore, prayed this Hon'ble Court to direct the bank to return the FD duly taking into account the memo issued by the Excise Department.

In the counter-affidavit filed by the respondent no. 3 while admitting that the petitioner had placed the FD for the issuance of bank guarantee for the purpose of license of liquor shop for the period 01.04.2015 to 31.03.2016. The authorities concerned have not released the bank guarantee/FD as the Excise Superintendent had directed the bank not to release the bank guarantee till release order from the District Magistrate was issued. Further, it is stated that the Deputy Commissioner



Commercial Tax/In-charge, Dharbhanga Circle, Dharbhanga had directed the bank to forfeit the bank guarantee and the said amount may be sent against the commercial tax dues which were due from the said Deepika Devi. Even though, the bank directed the petitioner to get the clearance from the Commercial Tax Department to enable them to release the FD but the petitioner till date has not submitted any document from the concerned Commercial Tax Department. The Hon'ble Supreme Court in Civil Appeal No. 9087-9089 of 2016 dated 15.09.2016 under similar circumstances has held that the bank guarantees if any given cannot be withheld at the instance of a third party to the contract. Admittedly, in this case the Commercial Tax Department is not party to the transaction entered between the bank and the petitioner if the Commercial Tax Department is due any amounts either from the petitioner or from the said Deepika Devi, they are free to take necessary action for recovery of the same but the bank officials cannot be expected to act at the behest of the Commercial Tax Department or any third party.

In view of the aforementioned reasons, the present writ petition is allowed. The respondent-bank is directed to release the FD in favor of the petitioner as expeditiously as possible preferably within a period of four weeks from the date of the



receipt of a copy of this order. It is made clear that this order does not preclude the Commercial Tax Department to proceed against the said Deepika Devi, if any amounts are due to the Department.

With the above observations, the present writ petition is allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.07.2023.
Transmission Date	N/A

