

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7402 of 2016

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Bam Shankar Pathak Son of Krishna Deo Pathak resident of Mohalla - Sipahi
tola, P.O. and P.S. - Purnea, Distt - Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Certificate Officer-cum-Executive Officer, Bettiah at West Champaran.
3. Sub-Divisional Officer-cum-Certificate Officer, Bettiah at West Champaran.
4. Branch Manager, State Bank of India, Mainatand, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohammed Abu Haidar
For the Respondent/s : Mr.Manikant Mishra- Gp25

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY**

ORAL ORDER

7 18-07-2024 1. The Writ petition is filed for issuance of appropriate Writ or directions commanding the respondents to quash the proceedings of Certificate Case No. 275 of 2015-16 initiated against the petitioner by the respondent Sub-Divisional Officer-cum-Certificate Officer and also to quash the notice dated 15.01.2016 issued by the Sub-Divisional Officer-cum-Certificate Officer, Bettiah. Wherein the petitioner should file show-cause notice as to why he should not be sent to civil prison and also to quash the notice dated 28.09.2015, wherein the petitioner is directed to repay the amount of Rs. 4,33,143/-.

2. The brief facts of the case are that the petitioner



has taken loan as an employee of the Bank (since dismissed) under the Public Demand Recovery Act, 1914. The petitioner availed staff or personal loan of Rs. 7,00,000/- (Seven Lakhs) and agreement between the parties were arrived. In view of the sudden dismissal of service of the petitioner, he could not repay the loan. The petitioner also challenged the order of his dismissal from service which was pending. Later, petitioner received the legal notice sent by the Bank, through Certificate Officer, which is under challenged.

3. It is specific contention of the Learned counsel for the petitioner that there is no agreement between the petitioner and the respondent Bank for recovery of the same and, therefore, prayed to quash the notice dated 15.01.2016 issued by the Certificate Officer, Bettiah. On 23.08.2016, this Court has directed the respondent not to take any coercive action against the petitioner.

4. Heard the Learned counsel for the petitioner as well as the Learned counsel for the State and for the Standing counsel for the S.B.I..

5. A detailed counter affidavit was filed by the State Government. The contents of the counter affidavit disclose that after issuing Certificate Case No. 275 of 2015-16, the Sub-



Divisional Officer-cum-Certificate Officer, Bettiah Sadar vide order dated 28.09.2015 served notice along with the copy of the Certificate under Section 7 of Bihar and Orissa Public Demand Recovery, Act, 1914 to the Certificate Debtor for his appearance, but the Certificate Debtor/petitioner did not appear before the Sub-Divisional Officer-cum-Certificate Officer, Bettiah, Sadar. Further, the Sub-Divisional Officer-cum-Certificate Officer vide order dated 15.01.2016, issued notice in Form-17 for appearance of the petitioner on 05.02.2016.

6. In spite of the receipt of the notice dated 15.01.2016, the Writ petitioner has preferred this writ petition, challenging the show cause notice.

7. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents and perused the records. It is pertinent to mention that Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914, which reads as follows:-

“7. Service of notice and copy of certificate on certificate debtor. - When a certificate has been filled in the office of a certificate officer under section 4 or section 6, he shall cause to be served



upon the certificate-debator, in the prescribed manner, a notice in the prescribed manner, a notice in the prescribed form and a copy of the certificate.”

8. Further Section 9 of the said Act gives ample opportunity to the petitioner to make his submissions within 30 days of the Service of the Notice. Further, under Section 10 of the Act, denotes that there shall be hearing and determination on such petitions.

9. Admittedly, the present Writ petition is filed against the show cause notice issued by the Sub-Divisional Officer-cum-Certificate Officer, Bettiah.

10. It is the contention of the Learned counsel for the petitioner that notice is also not in the form as prescribed under the Act.

11. Having regard to the above submissions made by the Learned counsel for the petitioner as well as the Learned counsel for the respondent, it is evident that the present writ petition is filed against the Notice issued by the Sub-Divisional Officer-cum-Certificate Officer, Bettiah to the petitioner. The contention of the petitioner that there is no agreement between



the Bank and the petitioner. The petitioner cannot be taken into consideration as the petitioner himself has stated in the Writ petition that at the time of availing loan the petitioner has entered into an agreement.

12. Admittedly, there is an alternative remedy available for the petitioner to file his objections under Section 9 of Bihar and Orissa Public Demands Recovery Act, 1914. Without filing any objections before the concerned authority, the present writ petition was filed. Therefore, without going into the merits or demerits of the case, the writ petition is disposed of granting liberty to the petitioner to file his objection under Section 9 of the Act before the 3rd respondent (within a period of four weeks) from today. On such objections being filed, the authority shall consider the case on merits and shall pass necessary orders under Section 10 of the Act.

13. It is needless to say that the before passing any order, the concerned authority shall give an opportunity of hearing to the petitioner. Any order passed shall be communicated to the petitioner. During the course of pendency of the proceedings and before passing of the final order the authority shall not take any coercive action against the petitioner.



14. The entire exercise shall be completed expeditiously, as possible, preferably within a period of eight weeks from filing of the objections by the petitioner.

15. With the aforesaid observations, the Writ petition is disposed of.

(G. Anupama Chakravarthy, J)

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