

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1674 of 2018

Saroj Kumar Singh Son of Sri Vindhyachal Singh, Resident of Veer Menson, Chhatrapati Road, P.O.- Sonapur, P.S.-Sonapur, District-Saran. Presently Residing at Flat No.-303, Third Floor, Mahesh Complex, Near Kachchi Talab, Saristabad Road, P.O.-G.P.O., P.S.-Gardanibagh, District-Patna.

... .. petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Home Department, Government of Bihar, Patna
3. The Chairman, State Bank of India, State Bank of India Bhawan, Madam Cama Road, Mumbai, Pin Code-400021
4. The General Manager, State Bank of India, State Bank of India Bhawan, 11th Floor, Madam Cama Road, Mumbai, Pin Code - 400021
5. The Deputy General Manager Customer Service Department, State Bank of India, State Bank of India Bhawan, 16th Floor Madam Cama Road, Mumbai, Pin Code - 400021
6. The General Manager, State Vabk of India, 5th Floor, Local Head Office West Gandhi Maidan, Patna. Pin Code - 800001
7. The Regional Manager, State Bank of India, Regional Business office-1, Administrative Office, Khanjarpur, Bhowesh Beatson Road, Bhagalpur, Pin Code - 812002
8. The Regional Manager, State Bank of India, Regional Business Office-2, Munger.
9. The Branch Manager, State Bank of India, Munger Branch Branch Code 136, Raj Bati Bari Bazar, District – Munger, Pin Code - 8`201
10. The Branch Manager, State Bank of India, Sonapur Branch, Sonapur, District-Saran. Pin Code-841101.
11. Ajay Prasad Singh, Son of Late Jugeshwar Singh, Resident of Village-Alawalpur, P.O.-Alawalpur, P.S.-Gauricha, District-Patna.

... .. respondent/s

Appearance :

For the petitioner/s	:	M/s Jagjit Roshan Apul Rajiv Ranjan Jayant Kumar Ray, Anjani Kumar, Advocates
For the State	:	M/s Md. Nadeem Seraj-GP 5 Shalini, AC to GP 5
For the Bank	:	Mr. Sanjeev Kumar, Advocate



CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 22-07-2025

1. The petitioner has filed the instant application for the following reliefs:

“(i) Issuance of writ or in the nature of writ of Mandamus directing the respondent no. 3 to 10 to credit Rs. 3,14,000/- (Three Lacs and Fourteen Thousand only) which was Post retiral benefit / Gratuity Amount / Pension Amount of the petitioner and which has been realized in an arbitrary manner against the law / Rule / Regulation / Agreement and without any intimation, communication or demand and moreover without invoking Guarantee within Limitation Period.

(II) Issuance of writ for declaring the action taken by the respondents by which respondents had set hold Rs. 3 lakh (Post retiral benefit / Gratuity Amount) and further realized Rs. 3,14,000/- without any intimation, communication or demand in an arbitrary manner against the Law / Rule / Regulation /Agreement which is against the Principle of Natural Justice.

(III) Issuance of writ or in the nature of writ of Mandamus directing the



respondent no 3 to 10 to supply all the relevant documents on the basis of which action has been initiated against the petitioner.

(IV) Issuance of writ or in the nature of writ of Mandamus directing the respondent no. 3 to 10 to pay interest for the period for which the aforesaid amount has been set hold/realized

(V) Issuance of direction to the respondents further not to Set Hold/Realization of any further amount from the account of petitioner unless there is any admission or acknowledgment, any judgment, award or order for the appropriate authority till the final adjudication of this case.

(VI) Grant such other order/orders, relief/reliefs as your Lordships may deem fit and proper.”

2. The short facts of the case are that the petitioner, was posted as Head Constable in Bihar Police, at Munger from 2008 to 2012. In December 2011, he availed a personal loan of Rs.5,00,000/- from State Bank of India (SBI), Munger Branch, for his daughter's marriage, which



he repaid in full through 60 EMIs. Sri Ajay Prasad Singh (respondent No. 11), a fellow Constable posted at Munger, approached the petitioner to stand as guarantor for his personal loan of Rs.5,26,179/-, and he availed from the same branch on 29.12.2011. Relying on their professional relationship, the petitioner agreed and executed a Deed of Guarantee on the said date, in favour of Sri Ajay Prasad Singh.

3. It is submitted in the petition that the borrower defaulted in repayment, and the loan account was classified as a Non-Performing Asset (NPA) on 31.12.2012. It is further submitted that the Bank neither invoked the Guarantee within the limitation period nor issued any prior notice, demand, or communication to the petitioner until a Legal Notice dated 28.08.2017 was received by him on 06.09.2017 i.e., almost five years later after the NPA of the borrower. According to the petitioner it is in violation of clauses 7, 8, 11, and 14 of the Loan Agreement and Guarantee Deed, which mandate issuance of demand and notice



before invoking the guarantor's liability.

4. It is contended by the Learned counsel for the petitioner that after the superannuation of the petitioner on 31.03.2017, post retiral benefits were credited to his SBI Sonapur Branch account in the month June 2017, including gratuity and provident fund. On 29.06.2017, without any prior notice or explanation, a Set Hold was placed on the amount of Rs. 3,00,000/- by the SBI Munger Branch. Subsequently, a total of Rs.3,14,000/-, including part of his pension, was debited from his account.

5. It is further contended that the petitioner made several representations and replied to the legal notice, requesting copies of the loan agreement, sanction letter, acknowledgment by the borrower, any communication made regarding the default and including the NPA classification, but the Bank failed to provide such documents. It is further contended that the recovery is not only barred by limitation but also violative of Principles of Natural Justice, as



neither notice was served nor demand was made within the prescribed period.

6. The Learned counsel for the petitioner submitted that the Bank acted arbitrarily and in connivance with the borrower, failed to invoke the guarantee in time, and unlawfully attached his post-retirement benefits, causing mental and financial distress. It is further submitted that the Bank's actions are illegal, arbitrary, *mala fide*, and in breach of the contractual obligations under the Loan and Guarantee Agreements.

7. A detailed counter affidavit was filed on behalf of respondent Nos. 3 to 10. It is averred that both the petitioner and respondent No. 11 (Ajay Prasad Singh) were Police Constables posted in Munger, and both availed personal loans from the State Bank of India, Munger Branch, on the same date, i.e., on 29.12.2011. The petitioner took a loan of Rs.5,00,000/- for his daughter's marriage. While Ajay Prasad Singh took a loan of Rs.5,26,179/-. It is contended that both individuals



stood as mutual guarantors for each other's loan accounts.

8. It is further averred that the petitioner repaid his loan amount in full, but Ajay Prasad Singh defaulted. The petitioner, as guarantor, failed to fulfill his obligation under the Deed of Guarantee to ensure repayment or bring the borrower before the Bank. The Bank asserts that both parties appeared to have conspired to misuse the banking system by taking mutual loans and acting as guarantors for each other, with the ulterior motive of evading liability.

9. The Learned counsel for the respondent Bank submitted that multiple oral and written communications were made to both the borrower and the guarantor (petitioner), but both avoided all contact and made themselves untraceable after transferring from Munger. It is further contended that the petitioner's claim that no notice or intimation was given is false and misleading.

10. It is further submitted on behalf of



the Bank that due to repeated defaults, the loan account was declared Non-Performing Asset (NPA) on 31.12.2012 and after several unsuccessful attempts to contact the borrower or the petitioner, the Bank traced the petitioner's savings account at SBI Sonapur Branch and, in June 2017, placed a Set Hold of Rs.3,00,000/- to recover a portion of the outstanding loan, invoking the guarantor's co-extensive liability under the law.

11. It is further submitted that the respondents deny any arbitrariness or *mala fide* intention, asserting that their actions were in accordance with banking norms and contractual obligations. They also reject the allegation of connivance with the borrower, emphasizing that the petitioner knowingly and voluntarily signed the Deed of Guarantee and is legally liable for the outstanding dues of the borrower. It is further submitted that the conduct of the petitioner was evasive, and the Bank argues that recovery proceedings were initiated only after exhausting all available remedies.



12. Heard Learned counsel for the petitioner and Learned counsel for the respondent Bank and perused the records.

13. The Learned counsel for the respondent Bank submitted that the Bank has the right to set off the amount without prior notice. It was further contended that, a suit cannot be filed after the period of limitation, and the Bank retains the right to set off the amounts due. In support of this contention, the Learned counsel relied upon the decision reported in **AIR 1992 Supreme Court 1815 (Punjab National Bank & Ors. v. Surendra Prasad Sinha)**.

14. The Learned counsel for the petitioner relied on the judgments reported in **AIR 1991 Andhra Pradesh 258 (Canara Bank v. M/s Taraka Prabhu Publishers Pvt. Ltd.)** and **(2025) 1 SCC 456 (BRS Ventures Investments Ltd. v. Srei Infrastructure Finance Limited & Anr.)**.

15. In **Canara Bank (supra)**, their



Lordships have held as follows:

“10. Sri S. Venkata Reddy, learned counsel appearing for the petitioners, has placed reliance on Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180 and contended that the action of the 1st respondent Bank in transferring the amount deposited by the 1st petitioner in its current account to its loan account for set off is in flagrant violation of the fundamental rights of the petitioners guaranteed to them under Art. 19(1)(a) of the Constitution of India, as also it affects the fundamental rights of the petitioners under Art. 21 of the Constitution of India. The principle decided in the above said case by the Supreme Court is that there can be no estoppel against the Constitution which is the paramount law of the land and the source and sustenance of all laws. It was further held that there can be no waiver of fundamental rights and that no individual can barter away the freedoms conferred upon him by the Constitution. In the above said decision the Supreme Court was considering the effect of an undertaking given before the High Court by the petitioners, who were the but and pavement dwellers to the effect that they did not claim any fundamental right to put up huts on pavements or public roads and will not obstruct the demolition of the huts after certain date. It must be stated that it is



beyond any shadow of doubt that the petitioners cannot draw any sustenance from the ratio of the above decision in so far as the present case is concerned. In the instant case the petitioners have borrowed loan from the Bank which they have failed to repay and consequent upon which the bank is trying to exercise the right of set off in terms of the contractual obligations assumed by the petitioners by transferring the amounts deposited by them in the current account to the loan account. It would be extremely far fetched to say that having borrowed the loans the petitioners' current account cannot be interfered with for the discharge of the loans as it would result in the deprivation of the rights of the petitioners guaranteed to them under Art. 19(1)(a) and Art. 21 of the Constitution of India as they would be prevented from carrying out their profession. The correct way to look at the controversy arising in this case is not as to whether the petitioners have given up their fundamental rights available to them under the Constitution by entering into a contract with the respondent Banks but to see whether the respondent Banks have right to claim set off of the amounts deposited in the current account by transferring them to the loan account in order to realise the loans advanced to the petitioners which they have failed to discharge. We are of the view that this matter



falls within the domain of the law of contract and the right of set off claimed by the Banks cannot be denied on the pretext that the transfer of the amounts in the current account will result in the negation of the activities of the petitioners in publishing the newspapers. weeklies etc. In National Thermal Power Corpn. Ltd. v. M/s. Bhanu Construction Co. Pvt. Ltd. Hyderabad, AIR 1989 Andh Pra 140, the view taken is that in case of encashment of bank guarantee given by the National Thermal Power Corporation Ltd., which was challenged as being wrongful or unwarranted, the proper remedy for the petitioner was to approach a civil court and not to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India. It may be mentioned that in that case also the argument advanced was that enforcement of bank guarantee would result in the closure of business of the petitioner Construction Company. The Division Bench took the view that such an argument is not available to the petitioner in a writ petition as it was a matter arising out of a contract and the proper remedy available to the petitioner is to file a suit against the National Thermal Power Corporation Limited which was enforcing the bank guarantee against the petitioner. A similar view has been taken in Writ Appeals Nos. 768 and 769 of 1986 dated 6-10-1987 upholding the action initiated by the Banks therein for the recovery of the loans



from the defaulting Small Scale Unit.

11. The next case on which square reliance is placed by the learned counsel for the petitioners is *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*, (1989) 3 SCC 293 (AIR 1989 SC 1642), wherein it was held that all actions including contractual dealings of the statutory authorities are deemed to be subject to judicial review and if such a statutory authority has not acted in public interest or in a manner which is mala fide or arbitrary, then such proceedings can be interfered with under Arts. 32 and 226 of the Constitution. The question arising for consideration in this case is whether the respondents in any manner are acting in an illegal or an arbitrary manner or whether the action taken by them is mala fide or for a collateral purpose due to which it can be held that the action of transferring the amounts from the current account to the loan account by the respondent Bank is vitiated in the eye of law. We find it extremely difficult to accede to this argument of the learned counsel that enforcement of doctrine of set off for the amounts to be realised by the bank which is also in the ultimate analysis in public interest is an action which is arbitrary or exercise in a mala fide manner. A logical extension of this argument would lead to somewhat astounding principle wherein it



would be open for person to wriggle out of their contractual obligation by pleading that their fundamental rights are affected if the terms of the contract are enforced against them. We have no hesitation in rejecting this argument advanced by the learned counsel for the petitioners for the reasons which we have stated about in extenso.

12. For all the above reasons, W.P. No.6601/90 is dismissed. No costs, Consequently W. A. No.682/90 is allowed. No costs.

Petition Dismissed."

16. In view of the principle the Court finds merits in the petitioner's claim that the recovery effected by respondent Bank was in violation of the Principle of Natural Justice and the terms of the Guarantee deed. The Bank failed to issue prior notice or demand before involving the petitioners liability. Furthermore, the limitation for recovery of amount is 3 years, Bank cannot recover amounts from the petitioner for a time barred debt. The respondent Bank has classified the loan account of Ajay Prasad Singh as NPA on 31.12.2012. Limitation starts from that date. The Bank has to file Money suit for recovery within 3



years from 31.12.2012.

17. Accordingly, the writ petition is allowed. The respondent Bank is hereby directed to re-credit the amount of Rs. 3,14,000/- to the account of the petitioner forthwith.

18. Interlocutory Application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2025
Transmission Date	

