IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4438 of 2023

==

Bambam Mishra Son of Lakhan Lal Mishra Vill.- Tilakpur, P.S.- Sultanganj, Dist.- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar through Home Commissioner, Government of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. District Magistrate, Bhagalpur.
4. Tata Motors Finance Limited, at T.M.F.L., at Bhatta Buxar, P.S. K. Hat, P.O. Purnea- 854301 through Branch Manager.
5. Senior Superintendent of Police, Bhagalpur.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Ratan Kumar Kumar, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad (Sc8)
		Mr. Anil Kumar, AC to SC 8
For the Res. No 4	:	Mr. Dhananjay Kashyap, Adv.

==

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 28-07-2026

1. The Writ petition is filed for the following reliefs:

> *That this is an application for directions to Sr.S.P. Bhagalpur to seize the vehicle from the Respondent No. 4, the Financing Company TATA Motors Finance Limited, Bhagalpur and release the truck No. BR-10-GB-3945 of this petitioner, seized illegally and wrongly on the road by the goons of*

finance company on the ground that some installment of loan advanced was due.

2. The brief facts, culled out from the Writ petition, are that the petitioner purchased a truck for a sum of Rs. 44,00,000/- in the year 2019, out of which Rs. 35,00,000/- was financed by the respondent No. 4 as loan. According to the agreement, the petitioner was required to pay interest, @ 7.5% on the loan amount of Rs. 35,00,000/-. It is further contended in the Writ petition that the petitioner had paid ten installments, as on the date of seizure, i.e., 10.12.2021, and could not pay the remaining installments due to the COVID-19 pandemic. During the COVID-19 period, the Government of India and the Reserve Bank of India granted various reliefs to businessmen, including a moratorium.

3. It is the contention of the Learned counsel for the petitioner that, due to the loss of business, the petitioner could not repay the installments, on account of which respondent No. 4

seized the petitioner's vehicle with the help of goons. Therefore, it is prayed that the Senior Superintendent of Police be directed to seize the vehicle from respondent No. 4 and hand over the same to the petitioner.

4. In support of his case, the Learned counsel for the petitioner relied on the judgment of this Court in the case of *Sujay Kumar v. UCO Bank*, wherein this Court relied upon the judgment of the Hon'ble Supreme Court in *Shanti Devi v. ICICI Bank Limited*, wherein certain guidelines and directions were issued. It is further contended by the Learned counsel for the petitioner that the petitioner's vehicle was seized by the goons of the Finance Company without obtaining any order from the Debt Recovery Tribunal.

5. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondent-State and respondent No. 4.

6. This Court has gone through the judgment of the Hon'ble Apex Court in ***ICICI Bank v. Shanti Devi Sharma and Others***, reported in

2008 7 SCC 532, wherein their Lordships have held as follows:

> *13. A more comprehensive version of these Guidelines was recently released on 24-4-2008. The Guidelines expressly reference to the 5-5-2003 Guidelines at (i)(x) with regard to the methods by which recovery agents collect security interests. In addition, the 24-4-2008 Guidelines further referred Para 6 of "the Code of Bank's Commitment to Customers" (bcsbi Code) pertaining to collection of dues. The bcsbi Code at Para 6, inter alia, provides:*
>
> > *"6. All the members of the staff or any person authorised to represent our Bank in collection or/and security repossession would follow the guidelines set out below:*
> >
> > *1. You would be contacted ordinarily at the place of your choice and in the absence of any specified place at the place of your residence and if unavailable at your residence, at the place of business/occupation.*
> >
> > *2. Identity and authority to represent would be made known to you at the first*

instance.

3. Your privacy would be respected. 4. Interaction with you would be in a civil manner.

5. Normally our representatives will contact you between 0700 hrs and 1900 hrs, unless the special circumstances of your business or occupation require otherwise.

6. Your requests to avoid calls at a particular time or at a particular place would be honoured as far as possible.

7. Time and number of calls and contents of conversation would be documented.

8. All assistance would be given to resolve disputes or differences regarding dues in a mutually acceptable and in an orderly manner.

9. During visits to your place for dues collection, decency and decorum would be maintained.

10. Inappropriate occasions such as bereavement in the family or such other calamitous occasions would be avoided for making calls/visits to collect dues."

***14.** As noted above, this Code as well as others have been incorporated into the 24-4-2008 Guidelines:*

"(ix) A reference is invited to (a) Circular DBOD.Leg. No. BC.104/09.07.007/2002-03 dated May 5, 2003 regarding Guidelines on Fair Practices Code for Lenders; (b) Circular DBOD. No. BP. 40/21.04.158/2006-07 dated November 3, 2006 regarding outsourcing of financial services; and (c) Master Circular DBOD.FSD.BC.17/24.01.011/2007-08 dated July 2, 2007 on credit card operations. Further, a reference is also invited to Para 6 of 'the Code of Bank's Commitment to Customers' (BCSBI Code) pertaining to collection of dues. Banks are advised to strictly adhere to the guidelines/code mentioned above during the loan recovery process."

15. *RBI has expressed its concern about the number of litigations filed against the banks in the recent past for engaging recovery agents who have purportedly violated the law. In the letter accompanying its 24-4-2008 Guidelines on engagement of recovery agents, RBI stated: "In view of the rise in the number of disputes and litigations against banks for engaging recovery agents in the recent past, it is felt that the adverse* *publicity would result in serious reputational risk for the banking sector as a whole."*

RBI has taken this issue seriously, as evidenced by the penalty that banks could face if they fail to comply with the guidelines.

16. *The relevant portion of the guidelines formulated by RBI is set out as under:*

> *"3. Banks, as principals, are responsible for the actions of their agents. Hence, they should ensure that their agents engaged for recovery of their dues should strictly adhere to the above guidelines and instructions, including the BCSBI Code, while engaged in the process of recovery of dues.*
>
> *4. Complaints received by Reserve Bank regarding violation of the above guidelines and adoption of abusive practices followed by banks' recovery agents would be viewed seriously. Reserve Bank may consider imposing a ban on a bank from engaging recovery agents in a particular area, either jurisdictional or functional, for a limited period. In case of persistent breach of above guidelines, Reserve Bank may consider extending the period*

of ban or the area of ban. Similar supervisory action could be attracted when the High Courts or the Supreme Court pass strictures or impose penalties against any bank or its Directors/officers/agents with regard to policy, practice and procedure related to the recovery process.

5. It is expected that banks would, in the normal course ensure that their employees or agents also adhere to the above guidelines during the loan recovery process."

17. *We deem it appropriate to remind the banks and other financial institutions that we live in a civilised country and are governed by the rule of law.*

18. *Looking to the gravity of the above allegations, we expect that the matter will be investigated as expeditiously as possible and, in any event, it must be concluded within a period of three months and, thereafter, the Deputy Commissioner of Police concerned is directed to submit the report of the investigation in the High Court.*

19. *In the facts and circumstances of this case we direct* *the appellant to pay costs of this litigation to the respondents which is quantified as Rs 25,000. The costs be paid within three weeks. We direct that the matter be listed before the High Court after the report of the Deputy Commissioner of Police is filed.*

7. However, this Court finds that the said decision was rendered while dealing with the provisions of the SARFAESI Act, 2002, wherein the recovery agents of the bank had high-handedly seized the vehicles.

8. On the other hand, the Learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in the case of ***S. Sobha v. Muthoot Finance Ltd.,*** reported in **MANU/SC/0115/2025**, wherein Their Lordships have held as follows:

3. The Division Bench of the High Court is right in taking the view that Muthoot Finance Ltd. is not a "State" within the meaning of Article 12 of the Constitution and therefore not amenable to writ *jurisdiction of the High Court Under Article 226 of Constitution.*

7. Applying the above test, the Respondent herein cannot be called a public body. It has no duty towards the public. It's duty is towards its account holders, which may include the borrowers having availed of the loan facility. It has no power to take any action, or pass any order affecting the rights of the members of the public. The binding nature of its orders and actions is confined to its account holders and borrowers and to its employees. Its functions are also not akin to Governmental functions.

8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny *under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.*

9. Admittedly, the dispute is between the petitioner and respondent No. 4, wherein the petitioner's vehicle was alleged to have been seized by respondent No. 4, due to non-payment of dues. The petitioner is seeking a direction to the Senior Superintendent of Police to seize the vehicle from respondent No. 4 and hand over the same to the petitioner. Prior to approaching this Court, the petitioner did not make any complaint/report before the Senior Superintendent of Police seeking action against respondent No. 4. There is no such averment either in the Writ petition, nor has any document been filed before this Court to establish that the petitioner had preferred a complaint/report before the Senior Superintendent of Police alleging inaction on his part.

10. Therefore, this Court is of the considered view that such type of relief cannot be sought to direct the Senior Superintendent of Police to seize the vehicle from a private

respondent. The dispute is purely civil in nature between the petitioner and respondent No. 4, for which several alternative remedies are available to the petitioner. Therefore, this Court is of the opinion that the Writ petition is not maintainable against the private respondent, who does come under the purview of Article 12 of the Constitution of India, as neither has any fundamental right of the petitioner been infringed nor has any principle of natural justice been violated. Further, in the absence of any complaint/report before the Senior Superintendent of Police, this Court cannot direct the police authorities to seize a vehicle from a private respondent in a civil dispute.

11. In view of the aforesaid discussion, the Writ petition is dismissed as its devoid of merits.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.08.2026
Transmission Date	