IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18227 of 2008

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Raj Nair, D/o Sri Krishanan Nair, resident of Road No.3, Rajendra Nagar, P.S. Rajendra Nagar, Patna at present Principal St. Joseph School Rajendra Nagar, Patna

.... Petitioner

Versus

1. The State of Bihar through Registrar, D.R.T., Patna
2. Vijaya Bank having its registered office at Bangalore and one of its Branch Mahatma Gandhi Road Secunderabad, Andhra Pradesh through its Branch Manager
3. The Debts Recovery Tribunal, Patna
4. M/s Deccan Paints Ltd., No.1 Lal Bahadur Malhotra Marg, Trimalgherry, per its Director Sri K.Ravi Kumar
5. Smt. A Shashi Kumar, W/o late shashi Kumar, Occ: Household business, resident of 13, Vayapuri, Secunderabad
6. Sri M. Prabhakaran son of K. Nedungadi, Director M/s Deccan Paints Ltd., resident of 9, Vasavi Colony, Secunderabad
7. Sri K. Ajit Kumar, son of not known to the petitioner, Major, Director of M/s Deccan Paints Ltd. R.O.14, Vayapuri, Secunderabad
8. Mrs A.P.State Financial Corporation, per its Managing Director, P.B.No.165, 5.9.194, Chirag Ali Lane, Hayderabad
9. Mrs. Sugadha Kumar, W/o late K. Ravi Kumar, Occ: Household resident of Flat No.3, Building No.5-A Brindavan Society near Kirti Stores, Thane West, Mumbai

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra
Ms. Sarita Kumari

For the Respondent/s : Mr. (Ga2)
Mr. Mani Shankar Narayan
Mr. Vishundeo Narayan
Mr. Chandra Shekhar Jha

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

6 20-01-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:

> "(i) For quashing the order dated 12.2.2007 passed in O.A.No.1056/99 arising out of Old O.A.No. 972 of 1997-Debts Recovery Tribunal Bangalore, whereby and whereunder the original application filed by the respondent

Vijaya Bank was allowed, declaring that the petitioner being the guarantor is jointly responsible and liable to pay a sum of Rs.27,96,372/- to the bank alongwith future interet @ 30% per annum with quarterly rests from the date of application till the date of realization. Further the applicant bank was entitled to pay the balance cell proceeds of the schedule property if any after adjustment of the dues of the first charge holder the defendants A.P. State Financial Corporation Hyderabad.

(ii) For quashing the order dated 25.10.2007 passed by the Recovery Officer, Debts Recovery Tribunal, Patna who on receipt of the certificate from the presiding officer, Debts Recovery Tribunal at Hyderabad for its execution at Patna because some property of the petitioner is situated at Patna has initiated a recovery proceeding vide R.P.Case No. 31 of 2007 and ordered to issue notice for realization of the amount of Rs.27,96,372/- alongwith pendent elite and future interest @ 30% per annum with quarterly rest.

(iii) For issuance of an appropriate writ in the nature of certiorari alongwith the notice issued by the Recovery Officer, Debts Recovery Tribunal, Patna dated 8.2.2008 only to extent to the petitioner, whereby and whereunder the petitioner on the one hand and the respondent no.2 to 8 on the other hand have been required to pay Rs.26,03,87,126/- against the determined principal amount of Rs.27,96,372/-.

(iv) For passing an ad interim order of stay of the further proceedings pursuant to the impugned order aforementioned as your Lordships may deem fir and proper in the facts and circumstances of the case and any other order or orders as your Lordships may deem fit and proper.”

When this case has been taken up after service of notice on all the respondents, the respondents have raised the question of maintainability of the writ application on the ground of petitioner not exhausting the statutory alternative remedy.

Mr. Sanjeev Kumar Mishra, learned counsel for the petitioner, does not find any answer, inasmuch as the order passed by the Debt Recovery Tribunal, Hyderabad was appealable before the Debt Recovery Appellate Tribunal and the order passed by the Recovery Officer, Debt Recovery Tribunal, Patna was also appealable before the Presiding Officer of the Debt Recovery Tribunal.

The only submission of Mr. Mishra is that the property sought to be auctioned actually does not belong to the petitioner that the authority of the Bank has been dishonest in only initiating action against the petitioner who is the guarantor.

In the considered opinion of this Court the preliminary objection raised by the respondents with regard to maintainability of the writ application has to be upheld in view of the statutory alternative remedy. The issue as to whether the property belongs to the petitioner or not or whether the Bank could have preferred an action against the guarantor leaving the principal debtor are definitely not the matter going to the root of jurisdiction so as to allow the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. At the end of the day it was for the Bank to choose the person from whom it could have recovered the amount.

Be that as it may, this Court without expressing any firm opinion on either of the aforementioned two aspects raised by the learned counsel for the petitioner having found the writ application to be not maintainable would dismiss it only on account of the petitioner not exhausting the statutory alternative remedy.

Nothing said in this order, however, will come in the way of the petitioner in filing the appeal before the appropriate appellate forum and if it is done so within a period of 45 days from today, the appellate court keeping in view that this writ application had remained pending from 15.12.2008 and till today, would definitely give due consideration in condoning the delay in filing of the appeal which now the petitioner proposes to do so.

Subject to the aforementioned limited observation, this application is dismissed.

(Mihir Kumar Jha, J)

surendra/-

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