IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8319 of 2010

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1. Sri Anand Kumar S/O Sri Bharat Prasad R/O Mohalla- Idgah Road, P.S. Alamganj, Patnacity, Distt.- Patna
2. Sri Bharat Prasad S/O Late Sheo Lall R/O Mohalla- Idgah Road, P.S. Alamganj, Patnacity, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. District Certificate Officer, Patna Sadar, Patna
3. Union of India through Secretary, Ministry of Finance, Govt. of India, New Delhi
4. The Presiding Officer, Debt Recovery Tribunal, 396, East Boring Canal Road, Patna
5. Allahabad Bank having its Head Office At 2 Netaji Subhash Road, Kolkata
6. Branch Manger, Allahabad Bank, Muradpur Branch, P.O. Bankipur, P.S. Pirbahore, Distt.- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Advocate
For the Respondent Nos. 1 & 2 : Mr. D.K.Sinha, AAG 2
For the Respondent Nos. 3 & 4 : Mrs. Kanak Verma, CGC
For the Respondent Nos. 5 & 6 : Mr.Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 09-04-2015

Heard the parties.

2. The two petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the impugned judgment dated 21.12.2009 (Annexure-17) passed in PT Case No. 04 of 2006 by the learned Debts Recovery Tribunal, For the State of Bihar at Patna, whereby the claim of the respondent Allahabad Bank with respect to recovery of its due debts has been allowed with costs and all the defendants including the petitioners have been held liable to pay the loan and interest to the extent indicated in the impugned judgment with pendenute lite and future interest at the contractual rate till the realization of the entire sum due and recoverable amounting to

Rs.11,60,783.12.

3. Learned counsel appearing on behalf of the petitioners has assailed the validity and correctness of the impugned judgment primarily on the ground that the learned Debts Recovery Tribunal, Patna had no jurisdiction to decide the case and therefore, the impugned judgment is liable to be set aside by this Court. In support of his above contention, he has cited certain judgments of the Hon'ble Apex Court.

4. The matter has been contested by the respondent nos. 5 and 6 as also other respondents. One of the contentions raised on behalf of the respondent Bank is that the impugned judgment is appealable under Section 20 of The Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (in short "Act, 1993"). It is pleaded that in the light of the judicial pronouncements of the Hon'ble Apex Court, the petitioners may be relegated to the statutory appellate Forum and only thereafter if they do not succeed there, they will be at liberty to challenge that order.

5. On behalf of the respondent-State of Bihar and its functionaries, the maintainability of the present writ petition has been challenged on the ground of non-joinder of necessary parties. It is pleaded that before the learned Debts Recovery Tribunal, Patna altogether 8 persons including the petitioners were the defendants, but out of them, six persons have not been impleaded as party respondents in the present proceeding. Therefore, it is contended that on the ground of non-joinder of necessary parties, the writ petition is liable to be dismissed.

6. In the present case, there is no dispute that one Pithora Shyam Raja, the Proprietor of M/s Shakti Sales, Ashok Raj Path, Muradpur, Patna was borrower of the loan amount from the respondent Allahabad Bank. It is also not in dispute that these two petitioners stood guarantors for the loan being sanctioned in favour of the aforesaid borrower. It is further not in dispute that borrower defaulted in making payment of the instalments of loan amount and therefore, the respondent Bank instituted a Certificate proceeding before the Certificate Officer. It is an admitted fact that the aforesaid certificate proceeding was transferred way back to the learned Debts Recovery Tribunal, Patna in terms of Section 31 of the Act,1993 vide order dated 23.07.1998 (Annexure-10) to the writ petition. It is admitted by the parties that once the aforesaid order was passed, the records of the certificate case was transferred to the learned Debts Recovery Tribunal, Patna. It was subsequently re-numbered as PT Case No. 04 of 2006. The petitioners entered their appearance in the aforesaid case, but the question of jurisdiction of the learned Tribunal was never raised. Only objection raised on behalf of the petitioners was that the liability was of the borrower and not of the guarantors. It further appears that original borrower Pithora Shyam Raja died during the pendency of the case before the learned Debts Recovery Tribunal, whereafter his heirs were substituted, who were impleaded as defendant nos. 2 to 6. On the basis of the materials produced by the parties, finally by the impugned judgment dated 21.12.2009 the claim of the respondent Bank has been allowed, as indicated above. It is relevant to mention here that so far as defendants nos. 1 to 6 are concerned, who are either proprietary firm or the heirs and legal representatives of deceased Proprietor Pithora Shyam Raja, have neither challenge the validity and correctness of the impugned judgment nor they have been impleaded as party respondents in the present proceeding.

7. The orders passed by the Debts Recovery Tribunal are appealable in terms of Section 20 of the Act, 1993 before the Debts Recovery Appellate Tribunal. So far as these petitioners are concerned, indisputably, they did not raise the question of jurisdiction before the learned Debts Recovery Tribunal, Patna till the final disposal of the case. In fact, they waited for a favourable order and once the impugned judgment has gone against them, they have filed the present writ petition without availing the remedy of statutory appeal in term of Section 20 of the Act, 1993 raising the question of jurisdiction of the learned Tribunal.

8. The Act, 1993 as also The Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 are the special Act enacted by our Parliament for achieving the special object in view of pendency of huge loan amount of different Banks in our country. These special Acts have created self contained mechanism for challenging the order of the Debts Recovery Tribunal and only after the statutory remedies are exhausted by the parties, the power of judicial review in term of Article 226 of the Constitution of Indian is required to be exercised. The issues raised herein on behalf of the petitioners are no longer res integra. In the case of ***United Bank of India Vs. Satyawati Tondon [(2010) 8 SCC 110]*** it has been clearly held that in such cases the High Court must insist that before availing Article 226 of the Constitution of India, the person concerned must exhaust the remedy available to him under the relevant statute. In paragraph 55 of the aforesaid judgment, the entertainment of the writ petition at the initial stage by the High Courts has been deprecated.

9. In identical circumstances, this Bench had occasion to consider the scheme and scope of the provisions of the Act, 1993, particularly, Section 20 of the Act, 1993 in ***CWJC No. 13773 of 2009***

(M/s Basuki Exports Vs. The State Bank of India) and its analogous matter. By judgment dated 12.03.2015, after considering the scheme and scope of the Act, 1993 and after considering various judgments of the Hon'ble Apex Court, this Bench relegated the petitioners of those cases to the appellate Forum and at this stage, the writ petitions were dismissed.

10. So far as the present case is concerned, it has to fail on two grounds; firstly the petitioners have not exhausted the remedy of appeal under Section 20 of the Act, 1993 and secondly, all the necessary parties have not been impleaed as party respondents.

11. For the reasons recorded above, this writ petition is dismissed, but without costs. The order of stay passed by this Bench on 18.03.2015 is hereby vacated.

12. However, if so advised, the petitioners shall be at liberty to avail the remedy of appeal before the Debts Recovery Appellate Tribunal by raising all the issues, which have been raised in the present writ petition. If such an appeal is filed on behalf of the petitioners after impleading all the necessary parties within a period of four weeks from today, then the learned Debts Recovery Appellate Tribunal shall consider the appeal on merit and shall not dismiss the same on the ground of limitation, as on a bona fide legal advice, the present writ petition was filed on 11.05.2010 and that remained pending before this Court till date.

(Birendra Prasad Verma, J)

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