IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20000 of 2010

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Vijay Kumar Singh, S/O late Thithar Prasad Singh, R/O Village & P.O. Telghi, P.S. Kharik, Distt. Bhagalpur

.... Petitioner/s

Versus

1. The State Bank of India, through Chairman R/O Bombay, Nariman Point Mumbai - 400021
2. The General Manager, SBI, Patna
3. The DGM, Zonal Office, Bhagalpur
4. The AGM, (DBD) Main Branch, SBI, Bhagalpur
5. Mr. Sanjay Jha, the Branch Manger (DBD), Main Branch, SBI, Bhagalpur
6. Mr. Vishwajeet Mishra, Field Officer (DBD) Main Branch, SBI, Bhagalpur
7. M/S AAA Capital Services Private Limited, through the Respondent No.5
8. Mr. S.K. Roy, S/O (not known to the petitioners) through the Respondent No. 6

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Binod Kumar Singh
For the Respondent/s : Mr. S.D.Sanjay, Sr.Adv.
Mr.Alok Kumar Agrawal

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 28-04-2015 Heard the parties.

The matter at issue is the action taken by the respondent State Bank of India and its functionaries, who are the respondents in the present writ petition, under Section 13(4) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short ‘SARFAESI Act’) against M/S Prachi Exim India Ltd., Bhagalpur (hereinafter to be referred to as ‘the Company’) of which the petitioner claims to be one of the Directors.

The petitioner claiming to be one of the Directors of the Company has filed this frivolous and unwanted writ petition with a very vague prayer indicated in paragraph no.1 of the writ petition that the respondent Bank and its functionaries may be restrained from taking any action under the SARFAESI Act, purportedly with respect to the secured assets of the Company.

It is not in dispute that the respondent Bank issued a notice under Section 13(2) of the SARFAESI Act against the Company, the borrower of the Bank, on account of default in payment of secured debts and consequential classification of its account as non-performing asset. However, despite the aforesaid notice issued to the Company in writing, it failed to discharge its liability to the secured creditor within the period prescribed, as a result thereof, the respondent Bank took action under Section 13(4) of the SARFAESI Act against the said Company.

The Company and its some of the partners, being aggrieved by the action taken by the respondent Bank under Section 13(4) of the SARFAESI Act, approached this Court in CWJC No.9527 of 2007, which was finally heard by a Bench of this Court (Coram: Navaniti Prasad Singh, J.) and by the order dated 22.01.2008 the aforesaid writ petition was allowed and action taken by the respondent Bank was nullified. The aforesaid order dated 22.01.2008 has been reported in 2008(1) PLJR 585.

The respondent Bank and its functionaries, who were the respondents in the aforesaid writ petition also, being aggrieved by the aforesaid judgment and order passed by the learned Single Judge, preferred LPA No.129 of 2008, which was admitted by a Division Bench of this Court by the order dated 13.02.2008 and operation of the judgment passed by the learned Single Judge was stayed with certain conditions. The aforesaid order dated 13.02.2008 has been brought on record as Annexure-A to counter affidavit filed on behalf of the respondents. However, the Company failed to pay the debts to the Bank despite the aforesaid order dated 13.02.2008. Subsequently, the aforesaid LPA No.129 of 2008 was referred to the Lok Adalat for settlement of dispute between the parties by the order dated 22.04.2010 (Annexure-B to the counter affidavit filed on behalf of the respondents). It is the case of the respondents that the Company and its Directors failed to appear before the Lok Adalat on the date fixed. Therefore, dispute could not be settled by the Lok Adalat and the matter was referred back to the Court for its adjudication. Finally, the aforesaid LPA No.129 of 2008 was heard by another Division Bench (Coram: R.M.Doshit, the then Chief Justice and Jyoti Saran, J.) and it was allowed by the judgment and order dated 17th August, 2010 (Annexure-C to the counter affidavit filed on behalf of the respondents). The LPA Court set aside the order dated 22nd January, 2008 passed in CWJC No.9527 of 2007 by the learned Single Judge and the aforesaid writ petition filed by the Company was dismissed.

M/S Prachi Exim India Ltd., the Company and its some of the partners, being aggrieved by the aforesaid judgment and order dated 17th August, 2010 passed by a Division Bench of this Court, filed Special Leave to Appeal (Civil) No.30758 of 2010 before the Hon'ble Apex Court, which was finally dismissed by the order dated 15.11.2010. The aforesaid order dated 15.11.2010 has been brought on record as Annexure-D to the aforesaid counter affidavit filed on behalf of the respondents.

Curiously enough when the action taken by the respondent Bank under Section 13(4) of the SARFAESI Act was approved by the Division Bench of this Court by the judgment dated 17th August, 2010 and SLP filed on behalf of the Company was dismissed on 15.11.2010, then the present writ petition was filed on 09.12.2010 by the petitioner claiming to be one of the partners of the said Company. However, all these material facts have been concealed by the writ petitioner.

The issues, which have already been settled by this

Court and approved by the Hon'ble Apex Court, are sought to be raked up in the present writ petition by filing this frivolous and most unwanted writ petition and by concealing the material facts. Admittedly, no action has been taken against the petitioner by the respondent Bank under the SARFAESI Act. Whatever action has been taken under the SARFAESI Act that was taken against the Company, of which the petitioner claims to be one of the partners. It appears to be proxy litigation at the behest of the Company. The reliefs which were not granted directly are sought to be obtained indirectly by the Company. Admittedly, the reliefs sought for by the Company and its partners with respect to action taken by the respondent Bank under the SARFAESI Act were not granted directly in the previous proceedings, referred to above, but same are sought to be obtained by filing this proxy litigation and efforts are being made to obtain such relief indirectly in the present writ petition. The action of the petitioner in filing the present writ petition cannot be justified by any standard looking into the factual matrixes of the case as noticed above.

In the result, this Court has no hesitation in holding that the present writ petition is completely misconceived, frivolous and most unwanted one and is, therefore, dismissed with a cost assessed to be Rs.25,000/- (Rupees twenty five thousand) payable by the petitioner to the respondent Bank within a period of three months from today.

(Birendra Prasad Verma, J)

Arvind/-

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