

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12331 of 2011

=====

1. Chanda Devi W/O Late Damodar Prasad Santhalia, R/O Santhalia Niwas, Sankarwar Tola, P.S. Mokama, Distt.-Patna

2. Krishna Murari Santhalia S/O Late Damodar Prasad Santhalia, R/O Pharma Traders Shop No. 21, Govinda Complex, G.M. Road, Patna-4

3. Kanhiya Prasad Santhalia S/O Late Damodar Prasad Santhalia, R/O Santhalia Niwas, Sinkarwar Tola, P.S.-Mokama, Distt.-Patna

4. Smt. Radha Devi Hisariya W/O Deo Prakash Hisariya, C/O Narayan Hisariya Chatti Road, Ratnapur East Begusarai

5. Laxmi Agrawal W/O Santosh Agrawal C/O Bansidhar Baijnath R/O P.S.+P.O.-Barharwa, Distt. Sahebganj (Jharkhand).

.... Petitioner/s

Versus

1. The Registrar, Debts Recovery Tribunal situated at Bank Road P.S.-Gandhi Maidan, Distt.-Patna

2. Canara Bank, Main Branch through It Chief Manager, at South Gandhi Maidan, P.S.-Gandhi Maidan, Patna

3. Dinesh Prasad S/O Late Jangli Prasad (As Mentioned In O.A. & M.A) R/O Of Opposite Allahabad Bank, B.N.College, Bakarbganj Bajaj Home, Makhania Gali, P.S.-Pirbahore At Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha

For the Respondent No. 2 : Mrs. Sheela Sharma

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 30-10-2015

Heard Mr. Shivendra Kumar Sinha for the petitioners and Mrs. Sheela Sharma for the respondent Bank. In spite of notice, no one has appeared on behalf of the respondent no. 3 (the loanee), although he entered appearance through a counsel.

Petitioners are the widow and other legal heirs of the original auction purchaser namely late Damodar Prasad Santhalia. They raise a grievance against the order dated 24.6.2011 passed by the Debt Recovery Tribunal, Patna (for short 'DRT') in M.A. No. 65 of

2011.

The respondent loanee having obtained loan from the respondent Bank failed to pay the loan of the respondent Bank which resulted in action taken under the SARFAESI Act. The property mortgaged to the Bank was auction sold. Damodar Prasad Santhalia purchased the property in the year 2008. The respondent no. 3, the loanee preferred an appeal thereagainst before the DRT vide Appeal No. 32 of 2008. While the said appeal was pending, the original auction purchaser died on 6.5.2009. It is stated that the death of the original auction purchaser was brought to the notice of the DRT. Ignoring the said information and without taking steps for substitution of the deceased auction purchaser, an order was passed by the DRT on 31.5.2010 disposing of the appeal. Aggrieved by the aforesaid order, the writ petitioners filed C.W.J.C. No. 11910 of 2010. A Bench of this Court vide proceeding dated 7.3.2011 (Annexure-5) disposed of the writ petition observing as under in paragraph 4 thereof:-

“4. Accordingly, this writ petition is allowed and order dated 31.05.2010 passed by the appellate authority allowing Appeal Case no. 32 of 2008 is hereby quashed and the appellate authority is directed to take up the appeal afresh and if the appellant of the appeal takes steps for substitution, the same may be decided in accordance with law.”

In the light of the said order, an application appears to have been filed by the appellant loanee in the pending appeal for



substitution of the deceased auction purchaser by his legal heirs. The DRT instituted Misc. Appeal No. 65 of 2011 for the purpose of passing order on the substitution petition which arose out of SARFAESI Appeal No. 32 of 2008. In the said proceeding, the DRT passed an order on 24.6.2011 which has been impugned in the present writ application. It would be appropriate to extract hereinbelow the said order in extenso passed by the DRT:-

“During the proceeding, Late Damodar Prasad Santhalia died leaving behind wife Smt. Chanda Devi, sons Krishna Murari Santhalia & Kanhiya Prasad Santhalia & daughters Radha Agarwal and Laxmi Agarwal are the legal heirs of the Late Damodar Prasad Santhalia.

Let a legal heirs certificate of Late Damodar Prasad Santhalia be produced.

Put up on 29.07.2011”

The contention of the petitioners is that the DRT committed mistake in instituting a separate proceeding. This Court in C.W.J.C. No. 11910 of 2010 had quashed the order dated 31.5.2010 of the DRT and restored S.A. No. 32 of 2008 on the file of the DRT for passing appropriate order on substitution petition of the deceased party. No separate proceeding was required to be initiated. Secondly, it has been submitted that the DRT further committed mistake in directing the applicants (writ petitioners herein) to produce legal heir certificate for the purpose of substitution of the deceased original auction purchaser. Arguing further, it is contended that such

application for substitution was filed beyond time without filing an application seeking condonation of delay. This aspect of the matter has not been considered by the DRT.

It appears to this Court that M.A. No. 65 of 2011 has been instituted for a limited enquiry on the substitution of the deceased party. Any order passed therein would be treated as an order of substitution passed in the pending S.A. No. 32 of 2008. What procedure the Court adopts is of not much relevance. The said contention of the petitioners, in my view, has no substance.

It has been argued that the substitution has been sought by the appellant (respondent no. 3 herein) without seeking condonation of delay. In my view, this is a matter which should be raised and considered by the DRT itself. Such pre-hearing of the issue in the writ petition would not be countenanced. The DRT is in seisin of the matter where these issues can be raised for consideration.

This Court would now advert to the last submission of the petitioner that the Tribunal committed an error in directing the writ petitioners (legal heirs of the original auction purchaser) to produce legal heir certificate. If there is no controversy with regard to the legal heir of the original auction purchaser and the petitioners have presented themselves as the legal heir(s) of the deceased auction purchaser, the DRT ought to have accepted the said contention of the

petitioner and ought to have proceeded to dispose of the pending appeal on merit. This, however, again is a matter to be considered by the DRT. Production of legal heirs certificate, in the facts of the case, do not appear to be logical particularly when there is no controversy with regard to the legal representative(s) of the deceased auction purchaser.

This Court, having observed as above, would dispose of the writ petition enabling the DRT to proceed to dispose of the pending Appeal No. 32 of 2008 on merit as directed under order dated 7.3.2011 passed in C.W.J.C. No. 11910 of 2011.

(Kishore Kumar Mandal, J)

Pankaj/-

U			
---	--	--	--