

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.773 of 2004

IN

Civil Writ Jurisdiction Case No. 2370 of 2003

- =====
1. Chairman, Central Bank of India having office at Chandramukhi, Nariman Point, Bombay-700021.
2. Zonal Manager, Maurya Complex, Patna.
3. Branch Manager, Central Bank of India, Siwan Branch, Region-Siwan/through concerned Branch Manager at Chapra, Region Siwan.
- Respondent Nos.2 to 4/Appellants.
- Versus
1. Industrial Corporation Pvt. Ltd. through its Chairman-cum-Managing Director, Viren Pandey, son of Late Ram Nath Pandey, Factory Bihar Sugar Works at Panchrukhi, P.S.-Panchrukhi, District-Siwan.
2. Viren Pandey, son of Late Ram Nath Pandey, Factory Bihar Sugar Works at Panchrukhi, P.S. Panchrukhi, District-Siwan, at present residing at B-60, South Extension, Part-II, New Delhi-110049.
- Petitioners/Respondents 1st Party.
3. The State of Bihar. Respondent No.1/Respondent 2nd Party.
4. Amar Kumar Agrawal, son of Sajjan Kumar, resident of 202, B-Block, Hari Om Apartment, Exhibition Road, Patna.
- Intervenor Respondent No.5/Respondent 3rd Party.

WITH

Letters Patent Appeal No. 783 of 2004

IN

Civil Writ Jurisdiction Case No. 2370 of 2003

- =====
- Amar Kumar Agrawal, son of Sajjan Kumar, resident of 202-B Block, Hariom Aptmmt, Exhibition Road, Patna. Intervenor Respondent/Appellant.
- Versus
1. Industrial Corporation Pvt. Limited through its Chairman-cum-Managing Director, Viren Pandey, son of Late Ram Nath Pandey, Factory-Bihar Sugar Works at Panchrukhi, P.S.-Panchrukhi, District-Siwan.
2. Viren Pandey, son of Late Ram Nath Pandey, resident of Panchrukhi, P.S.-Panchrukhi, District-Siwan, at present B-6-, South Extension, Part-II, New Delhi-110049.
- Petitioners/Respondents.
3. The State of Bihar. Respondents/Respondents.
4. The Chairman, Central Bank of India, having its Head Office, at Chandrakukhi, Nariman Point, Mumbai-400021.
5. The Zonal Manager, Central Bank of India, Maurya Lok Complex, Patna.
6. The Branch Manager, Central Bank of India, Siwan Branch, Siwan.
- Respondents/Respondents.
- =====

Appearance :

(In LPA No. 773 of 2004)

For the Appellants : M/s Umesh Prasad Singh, Sr. Adv., Rajeev Ranjan Prasad, Raghvendra Kumar Singh, Nilanjan Chatterjee, Advocates.

For the Respondents : Mr. Kamal Nayan Chaubey, Sr. Adv.
Mr. Ambuj Nayan Chaubey, Adv.

(In LPA No. 783 of 2004)

For the Appellant : Mr. Sanjeev Ranjan, Adv.

Mr. Satish Narain Sinha, Adv.

For the Respondents : Mr. Umesh Prasad Singh, Sr. Adv.

Mr. K.N. Chaubey, Sr. Adv.

Mr. Ambuj Nayan Chaubey, Adv.

Mr. Rajeev Ranjan Prasad, Adv.

Mr. Raghvendra Kumar Singh, Adv.

Mr. Nilanjan Chatterjee, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 24-06-2015

These two appeals arise out of a judgment and order dated 22.06.2004 passed by the learned Single Judge of this Court in C.W.J.C. No.2370 of 2003. The said writ petition was filed by Industrial Corporation Private Limited, a Private Limited Company incorporated under the Companies Act, 1956, (hereinafter in short as 'Company'), having its Sugar Mill at Panchrukhi in the district of Siwan and one Mr. Viren Pandey was the Chairman-cum-Managing Director of the said Company. The present appellant i.e. the Central Bank of India (hereinafter in short as 'Bank') was the contesting respondent in the writ proceedings. One Mr. Amar Kumar Agrawal had intervened in the proceeding, being auction purchaser of some of the properties, though no formal order was passed impleading him as respondent. He was heard and orders were passed on his application allowing his intervention application. It may be noted that he is also aggrieved by the order

of the learned Single Judge and hence the second Letters Patent Appeal, being L.P.A. No.783 of 2004, which is heard along with this appeal. The facts are spread over a long period of time but, fortunately, are not materially in dispute.

2. The Company was indebted to the Central Bank of India, Siwan Branch. It had mortgaged its property as security to the Bank. It appears there being default the Bank filed a Title Mortgage Suit being Title Mortgage Suit No.42 of 1977 as against the Company, its Directors including its Chairman-cum-Managing Director who were the guarantors, as well, for a decree of Rs.1.56 crores. In course of time, upon parties appearing, there seems to have been a compromise and accordingly a compromise petition was filed in the Court of learned Sub-Judge, Siwan wherein the Civil Court passed a compromise decree scaling down the principal liability from Rs.1.56 crores to Rs.80 lakhs only. The said amount of Rs.80 lakhs was payable in 8 equal installments, first of such installment falling due on 31st of March, 1983. The Bank was entitled to charge interest at the rate of 6 % per annum for the first two years and at the rate of 12.505 % per annum for the subsequent years. The interest for the two years were to accrue and become payable along with the first installment. In event of default in payment of any two installments and/or the interest, the entire

amount or the balance thereof would become immediately payable. Upon this compromise being filed, the Court being satisfied, passed a compromise decree accordingly on or about 23.01.1982. We would not like to go into the controversies as to what payments were made or not made as there is some dispute there but that is not relevant for the present proceedings. It appears that there being a default, the Bank was forced to file a execution case which was registered as Execution Case No.03 of 1988 in the Court of learned Sub-Judge-III, Siwan. Both parties were appearing in these execution proceedings but strangely enough on number of days consecutively Advocates of both the parties were absenting themselves. It may be noted that on 30.07.1996 the decree holder Bank remained unrepresented but the judgment debtor i.e. the Company was represented and the case was fixed for 04.09.1996 for hearing. On 04.09.1996 the order-sheet of learned Sub-Judge-III would show that none of the parties were present and as such the matter was adjourned to 03.10.1996 for hearing. Now, is the controversy. On 03.10.1996, there are two orders on records. First, it is recorded that parties are not present and in spite of notice, no pairvi is being done. It appeared that parties are not interested in execution proceedings, therefore, in absence of necessary pairvi, the proceedings are dismissed. This order is then scored out in

entirety and on the same day a fresh order is recorded showing parties as absent. The execution proceedings are pending since 1988 and parties are not taking interest, as such, let this order be shown to the Advocates of the parties and the case should be placed on the next date for final disposal. These two orders are of some importance in the present case. Thereafter, there are series of orders of learned Sub-Judge-III again showing that none of the parties are appearing which appears quite strange to this Court. On 24.01.1997, the Debt Recovery Tribunal (hereinafter in short as 'D.R.T.') was established at Patna under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 yet these execution proceedings continued in the Civil Court. It appears on or about 04.03.1998, the decree holder filed an application before the Executing Court for transfer of the execution proceedings to the D.R.T. On or about 08.03.1999, the learned Sub-Judge-III finding that the amount to be recovered under the decree would exceed to Rs.10 lakhs ordered for the records of the execution case to be sent to the D.R.T., Patna.

3. Here, it may be noted that none of the parties i.e. neither the Bank nor the Company or its Chairman-cum-Managing Director have objected either before this Division Bench or the learned Single Judge or before the D.R.T. that they were unaware

of the proceedings of the Civil Court or they had no notice and had not been appearing in the execution proceedings before the Civil Court. We are noticing because this is of some major consequence.

4. It appears the execution proceedings were then transferred from the Court of learned Sub-Judge-III, Siwan to the D.R.T., Patna and registered as Execution Case No.23 of 1999 on 06.06.2000 by the Registrar of the D.R.T. On 21.06.2000, the matter was placed before the Presiding Officer of the D.R.T. who noticed the decree in execution upon compromise and calculated the amount due and ordered for issuance of certificate under Section-19 of the Debt Recovery Act. The certificate so drawn up was then sent to the Recovery Officer of the D.R.T. for recovery. The certificate of recovery so sent is dated 26.06.2000. The matter then came up before the Recovery Officer of the D.R.T. where it was registered as Recovery Proceeding No.80 of 2000. On or about 10.07.2000, the notices having been issued to the parties, the Recovery Officer ordered for attachment of properties of the Company.

5. At this stage, the Company and its Chairman-cum-Managing Director filed a writ petition before this Court, being C.W.J.C. No.3710 of 2001, challenging the proceedings as before the D.R.T. including the order dated 21.06.2000 by which without

notice to the Company or its Director, certificate was ordered to be issued based upon the execution case as stood transferred to D.R.T. After some argument, the said writ petition was allowed to be withdrawn to enable the writ petitioner to file a petition for review and setting aside the ex parte certificate before the Presiding Officer, D.R.T. The writ petition was as such by order dated 21.03.2001 dismissed as withdrawn. Let it be noted that in this writ petition, which was filed when execution proceedings were being taken up by the D.R.T. as against the properties of the Company, there was no challenge made to the proceedings as before the learned Sub-Judge prior to transfer of execution proceedings to D.R.T. or with regards to the jurisdiction of learned Sub-Judge-III to transfer the proceeding to D.R.T. or the jurisdiction of D.R.T. to entertain the transferred execution proceedings. Having withdrawn the writ petition, a miscellaneous application was filed before the Presiding Officer of the D.R.T. under Section-22 of the D.R.T. Act, which was registered as Miscellaneous Application No.25 of 2001. In the meantime, the Recovery Officer started taking steps to auction properties. On 23.10.2001 on behalf of the Company and the Chairman-cum-Managing Director, a supplementary affidavit was filed in the miscellaneous application proceedings pending before the Presiding Officer bringing on record the first order of

Sub-Judge-III dated 03.10.1996 and urging that the execution proceedings having been dismissed, the learned Sub-Judge could not have recalled the order and all proceedings thereafter are not maintainable. However, after hearing the parties, on 16.01.2002, the Miscellaneous Application No.25 of 2001 was dismissed by the Presiding Officer of the D.R.T. with a liberty and direction to the Recovery Officer to proceed in the matter. Let it be noted that this order passed by the Presiding Officer of the D.R.T. on 16.01.2002 was then never challenged before any Court or authority by the Company or the Chairman-cum-Managing Director. It was allowed to attain finality. Then, it appears, subsequently various other orders were passed in recovery proceedings. On or about 08.10.2002, an appeal was filed before the Presiding Officer of the D.R.T. against various orders passed by the Recovery Officer which was Appeal No.26 of 2002 which appeal was ultimately dismissed on 13.01.2004 by the Presiding Officer. Let it be noted that even in this appeal, no grievance was made with regard to the proceedings in the Civil Court and the validity of the certificate as issued by the Presiding Officer upon transfer of the execution case to the D.R.T. In-stead, the Company and the Chairman-cum-Managing Director thereof, now filed this writ petition before this Court being C.W.J.C. No.2370 of 2003 on 03.03.2003 and in this

writ proceedings, now for the first time, they laid challenge to the validity of the execution case as before the Civil Court and the consequential validity of the certificate as issued by the D.R.T. Their primal ground of attack, which was accepted by the learned Single Judge, was that the learned Sub-Judge, having passed the first order on 03.10.1996 dismissing the execution proceedings he ought not and could not have cancelled the order and pass another order continuing the execution proceedings. He had become functus officio and thus all proceedings thereafter, treating the execution proceeding to be continuing, were invalid and consequently the transfer of the case to the D.R.T. and the certificate issued by the D.R.T. and the recovering proceedings done by the D.R.T. were all bad. The learned Single Judge has virtually accepted this contention and he set aside all proceedings before the D.R.T. and remanded the matter to the learned Sub-Judge to proceed in accordance with law, in our opinion, ignorant of the provisions of Section-31 of the D.R.T. Act which provides that all pending proceedings in Civil Court would by operation of law stand transferred to D.R.T. Therefore, remanding the matter to the Civil Court on the face of it was contrary to the provisions of Section-31 of the D.R.T. Act inasmuch as, no sooner the matter was remanded to Civil Court, the amount due being in excess of

Rs.10 lacs, it would automatically stand transferred back to D.R.T.

6. In any view of the matter, the order of remand inevitably results in the matter coming back to D.R.T. in view of Section-31 of the Act. The learned Single Judge has, in fact, not held that once the first order was passed by the learned Sub-Judge on 03.10.1996, the execution proceedings stood fully terminated by reasons of its dismissal and thereafter nothing was left in the Civil Court.

7. We may note though not finally deciding the case on this issue that the judgment of the learned Single Judge was an exercise in futility, if we keep the result and the resultant direction issued by the learned Single Judge in mind. We have pointed out that inevitable result would be the matter coming to D.R.T. all over again and if that was the result then why interfered at all.

8. Learned counsel for the writ petitioners, the judgment debtors who are respondents i.e. in these appeals, have urged as before the learned Single Judge so before this Division Bench that once the learned Sub-Judge had passed the first order dated 03.10.1996, he became functus officio and the execution proceedings stood dismissed. It would not be revived or restored except by way of an application filed by the decree holder for its restoration or recall of the said order and none having been filed,

the Court suo motu could not have cancelled or recalled that order. His second submission would be that once it is held that the execution proceedings stood dismissed then the foundation having been removed, all that followed becomes void and, therefore, the very institution of the proceedings before the D.R.T. are void. His third submission would be that the subsequent order (second order) dated 03.10.1996 of the learned Sub-Judge, being without jurisdiction, it could be challenged at any stage, at any time, and in any proceeding and the learned Single Judge rightly accepted the challenge.

9. To the contrary, Mr. Umesh Prasad Singh, learned senior counsel appearing for the appellant-the Central Bank of India, submits that the judgment debtor had full notice of the execution proceedings. He was appearing in it pursuant to due notices issued and, therefore, it cannot be urged that he was not aware of the second order dated 03.10.1996 passed by the learned Sub-Judge-III in the execution case. The writ petitioner took no step to challenge the subsequent order of the same date of the same Sub-Judge. Further, when the execution case was transferred to the D.R.T. and the certificate was issued by D.R.T., they came to this Court challenging the proceedings before D.R.T. but again failed to challenge the order of the learned Sub-Judge which had been

passed later. They withdrew the said writ petition after arguments to move before the D.R.T. for review. They moved the D.R.T. by filing miscellaneous application and while the miscellaneous proceedings were pending before the D.R.T., they did file the application assailing the second order of the learned Sub-Judge but left it at that, without seeking adjudication. The miscellaneous application was, thus, dismissed by the D.R.T. They did not challenge the order any further before any forum. An appeal was available to them. They did not prefer any appeal. They did not file the writ petition challenging that order. Instead, subsequently, when coercive processes were started by the D.R.T., they filed the present writ petition assailing the second order of the Sub-Judge-III dated 03.10.1996 for the first time in 2003. Sri Singh submits that this would be barred by principles of constructive res judicata in assailing that order at this late stage, especially in view of judgment of the Apex Court in the case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others** since reported in **(1987) 1 Supreme Court Cases 5**, on the said principle, they cannot now assail the certificate as issued by the D.R.T. or the proceedings thereafter, having failed to assail it on the earlier occasions and having withdrawn the earlier writ petition without leave to re-file or re-challenge. His further submission

would be that an order had been passed by the learned Sub-Judge, which, on the same day, he immediately found was wrongly passed. The Court did not intend to pass such an order. On the same very date, he passed another order cancelling the earlier order. The proceedings then proceeded as if they had never been terminated. Parties were aware of the proceedings. They were transferred to D.R.T. but no one has ever challenged this transfer except for the first time in this writ petition after 7 years. The Court of Sub-Judge had the inherent jurisdiction to correct an order passed mistakenly. If there was an inherent power then it matters little that it was passed on an application or suo motu. Such an order could not be interfered with under power of superintendence by this Court. We have to see the correctness of stand of either party on these issues.

10. We may at this stage notice one another important fact. While the matter was pending before the learned Single Judge, the Company and its Managing Director had filed yet another application whereby they challenged certain actions being taken by the Recovery Officer and being aggrieved by orders of the Recovery Officer, another writ petition was filed which was referred to Division Bench being C.W.J.C. No.8309 of 2009. That writ petition was disposed of by the Division Bench of this Court with a clear direction to the Presiding Officer and the Recovery

Officer of the D.R.T. to expeditiously conclude the recovery proceedings. Again no challenge was made with respect to the two orders of the Sub-Judge-III. This order was again assailed by the Company and the Managing Director before the Apex Court. The Apex Court ultimately dismissed their Special Leave Petition holding it to be infructuous because by then sale and delivery of certain properties had already been made. This order of the Division Bench of this Court was passed because the Recovery Officer had already passed order with regard to the petitioner i.e. the Company and the Chairman-cum-Managing Director. This order of the Division Bench was passed on 16.09.2009 and the order of the Apex Court was passed on 25.10.2013. Mr. Singh, learned senior counsel for the Bank, submits that in view of the direction of the Division Bench, the certificate proceedings before the D.R.T. have to continue and the writ petitioner cannot escape from the rigors of law in that regards and on this technical plea escape their civil liability based on compromise decree.

11. Thus, from the facts and submissions as noted above, primarily two issues arise for decision in these appeals so far as the company and its Chairman-cum-Managing Director is concerned. Firstly, what is the effect of the two orders that were passed on 03.10.1996 in Execution Case No. 03/1988, and

secondly, what is the effect of non-challenge to the legality of the second order passed by learned Sub-Judge-III in the said execution proceedings on 03.10.1996, in any proceedings including the writ petition filed before this court and the miscellaneous appeal before the D.R.T., raising this issue and seeking adjudication, for the first time, in a subsequent writ petition from which, this appeal arises.

12. We would consider the second issue first. Though, the detailed facts have been noted earlier in this judgment very briefly the relevant facts are being noticed. The company and its Chairman-cum-Managing Director, having defaulted in complying with consent decree obtained by the appellant Bank, the decree was put in execution before the learned Sub-Judge-III, Siwan, on 03.10.1996. First, the learned Sub-Judge-III signed the order noticing that none of the parties are appearing, and thus, dismissing the execution proceedings. On the same very day, he is cord out this order and then passed an order directing that the proceedings are shown to both the advocates fixing another date for hearing in the execution proceedings. The execution proceedings remained pending and upon application by the decree holder upon D.R.T. being established, the execution proceedings was transferred to D.R.T., Patna, where the Presiding Officer issued a certificate for recovery and the recovery officer then instituted

recovery proceedings and noticed all the parties. This action of the Presiding Officer was then challenged by the Company and its Chairman-cum-Managing Director before this Court in a writ petition on the ground that certificate could not be issued without notice to the parties. No challenge was laid on the ground that the transfer of the execution proceedings to D.R.T. itself was bad as in law. After dismissal order passed by learned Sub-Judge-III, there was no execution proceedings pending. After arguments, the writ petition was dismissed as withdrawn giving liberty to file a Review Application before D.R.T. Upon the liberty being granted, a Miscellaneous Application for review was filed and again no challenge was made with regard to legality of transfer of execution proceedings by the learned Sub-Judge-III to D.R.T. In the Miscellaneous Application, now, for the first time, an affidavit was filed raising the issue of two orders of the learned Sub-Judge-III. First dismissing the execution proceedings and second, after scoring of the first order continuing noticing, but again no adjudication was sought or made in this regard and the Miscellaneous Application was dismissed. Though, the appeal was available, no appeal was preferred, and the order was allowed to attain finality. Subsequently, when recovery officer passed various orders in the recovery proceedings, those orders and not the order

passed by the recovery officer dismissing the miscellaneous application were challenged in appeal. But, this appeal was also dismissed and that order of the Presiding Officer was not challenged any further, instead, a fresh writ petition was filed and now, for the first time, in this writ petition challenge was made to the proceedings before the learned Sub-Judge-III and the D.R.T. on the ground that the second order of the learned Sub-Judge-III was illegal. The question would, thus, be whether at this stage the Writ Court could entertain the plea of the writ petition or not. To us, the answer is clear based upon the judgment of the Apex Court in the case of **Sarguja Transport (supra)** based upon the principle of *res judicata/constructive res judicata* and public policy. The Company, when it moved the first writ petition, challenging the issuance of certificate of recovery, by the Presiding Officer of D.R.T., could have and ought to have challenged the same on all grounds that were available to it including that there was no execution proceedings surviving before the Civil Court for transfer to the D.R.T. They chose not to challenge the same on that ground.

13. Further, after hearing the parties, when the court was not inclined to entertain the writ petition it sought to withdraw the same to file a Review Application before the recovery officer, where again, no challenge to the legality of transfer of case to

D.R.T. was laid. In those proceedings, subsequently, affidavit was filed with regard to the two orders passed by learned Sub-Judge-III, but again, no adjudication was sought and miscellaneous application being dismissed that order was allowed to attain finality. Thus seen, even though, the Company and the Chairman-cum-Managing Director, who were aware of the orders of the learned Sub-Judge-III, chose not to challenge the same before this Court in the first writ petition nor sought adjudication in the Miscellaneous Application before the Recovery Officer of the D.R.T., they are surely precluded now from challenging the same before this Court in the present writ petition. The principles enshrined in Section 11 Explanation 4 of C.P.C. as well as Order-II Rule-2 C.P.C. would be attracted. Now, they would be precluded in the second writ petition from raising a ground that was available to them earlier, but, they had not raised either in the earlier writ petition or in the proceedings before the D.R.T.

14. Firstly, we must notice that the judgment of the Apex Court in **Sarguja Transport Services (*supra*)** is an authority for that where the first writ petition is withdrawn without leave to file another writ petition, the second writ petition would be barred in respect of the same subject matter. In this connection he may also noticed the judgment of the Apex Court in the case of

Satyadhyan Ghosal Vs. Smt. Deorajin Debi since report in **AIR 1960 SC 941** and the judgment of the Constitution Bench of the Apex Court in the case of **Devilal Modi Vs. Sales Tax Officer** since reported in **A.I.R. 1965 SC 1150**. In this later case, the writ petitioner had challenged the validity of the sales tax assessment for particular year. The writ petition was rejected on merits and appeal was also dismissed by the Supreme Court. The assessee had tried to raise their grounds before the Supreme Court which was not permitted as had not been raised before the High Court. They then filed fresh writ petition in the High Court challenging the same assessment order on grounds which had not been raised earlier and which had not been permitted to be raised because of that by the Supreme Court. The Apex Court held agreeing with the High Court that the second writ petition was barred by constructive *res judicata*.

15. Here also in the first writ petition, the challenge was made to the certificate proceedings before the D.R.T. but not on the ground that they were wholly without jurisdiction as there was no execution proceedings alive to be transferred to D.R.T. The said writ petition was dismissed as withdrawn giving limited liberty to file Review Application before the Recovery Officer. Before the Recovery Officer, this ground of challenge was not there and was

subsequently brought in, no adjudication was sought. The Recovery Officer dismissed the Review Application (Miscellaneous Application) which was again allowed to attain finality and the same was not challenged anywhere.

16. Now, in these writ proceedings after 7 years challenging the proceedings as before the D.R.T. those grounds that were available and not taken cannot be permitted to be raised. If this be so, then we have no option but to hold that the present writ proceedings, which is based solely on the aforesaid grounds, being taken for the first time in the second round of litigation before this Court, could not have been entertained and consequently the writ petition ought to have been dismissed can only be the inevitable result.

17. In view of the above finding of ours, it is not necessary to decide whether the learned Sub-Judge-III could have scored out, cancelled his order, dismissing the Execution Proceedings, and on the same day continued with the execution proceedings. Accordingly, this Intra-Court Appeal is allowed and the judgment and order dated 22.06.2004 passed by learned Single Judge of this Court in C.W.J.C. No. 2370 of 2003 is set aside. The aforesaid writ petition, consequently, stands dismissed.

18. So far as L.P.A. No. 783/2004 as preferred by Sri

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Arun Kumar Agarwal is concerned, suffice to note that he was auction purchaser of some of the properties of the Company and had intervened and had been added as a party to C.W.J.C. No. 2370 of 2003. Having purchased the property during pendency of the writ petition, but, in view of subsequent orders passed in the recovery proceedings by the D.R.T. and the challenge to the proceedings before D.R.T. having substantially failed, no order need be passed in regard to the said appeal, which is accordingly disposed of.

(Navaniti Prasad Singh, J.)

Jitendra Mohan Sharma, J. I agree

(Jitendra Mohan Sharma, J.)

Trivedi/Rajeev
AFR

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