

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6965 of 2010

With

I.A. No. 1590 of 2013

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1. M/S Swastika Exports a partnership firm having its place and business of 46-B, Rafi Ahmad Kidwai Road, 5th Floor, Kolkata-700019, through its Partner Sri Mahesh Kumar Agrawal
 2. Mahesh Kumar Agrawal S/O Sri Gajanand Agrawal, R/O Chitrlekha Building, 15 Ballygunj Park Road, Kolkata-700019

.... Petitioner/s

Versus

1. The State Bank of India through the Chairman -Cum-Managing Director, State Bank of India Corporate Centre, State Bank Bhawan, Madame Cama Road, Mumbai-400021
2. The Chief Manager, State Bank of India, City Branch, Sonapatti, Bhagalpur
3. The Union of India through the Secretary Ministry of Finance, Government of India
4. The Registrar, Debts Recovery Tribunal, East Boring Canal Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal

For the Respondent No.1 & 2: Smt. Nilu Agrawal

Mr. Avinash Kumar

For the respondent No. 3 & 4: Mrs. Kanak Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 11-03-2015

Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of judgment and certificate dated 13.10.2009 (Annexure-5) passed by the learned Presiding Officer, Debts Recovery Tribunal, For the State of Bihar, at Patna, whereby the petition filed on behalf of the respondent State Bank of India under Section 19 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (In short 'Act, 1993') has been allowed and M/s Swastik Exports (Petitioner no.1) and its partners, including the petitioner no.2, who were defendants in O.A. Case No. 85 of 1998 before the learned Debts Recovery Tribunal, Patna have been held liable jointly and severally to pay Rs. 71,22,905/- with pendentelite and future interest @ 9% per annum w.e.f. 06.04.1998 till the

realization of the entire sum due and recoverable.

3. Learned counsel appearing on behalf of the petitioners, while assailing the validity and correctness of the impugned judgment and certificate has drawn attention of this Court towards the very first page of the impugned judgment to demonstrate that when the impugned judgment was being passed, none was representing the defendants- petitioners herein. Therefore, according to him, the impugned judgment and certificate passed by the learned Debts Recovery Tribunal, Patna are ex parte and have been passed in violation of the principles of natural justice. To buttress his aforesaid points he has further drawn attention of this Court towards the order sheet of O.A. No. 85 of 1998, which has been brought on record as Annexure-7 to the supplementary affidavit filed on behalf of the petitioners. By referring to the orders passed on different dates, the learned counsel appearing on behalf of the petitioners has tried to demonstrate before this Court that on many dates the defendants were not represented and proceeding was carried out behind their back. It is contended that as per Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (In short 'Rules, 1993') order passed by the Debts Recovery Tribunal was required to be communicated to the defendants either in person or by registered post free of costs. According to the learned counsel appearing on behalf of the petitioners, the mandate of the aforesaid Rules, 1993 has not been complied with. On merits also, it is highlighted that the petitioners had filed their written statement contesting the claims of the respondent Bank and in support of their case, the petitioners had filed evidence on affidavits, but while passing the impugned judgment, though ex-parte, the learned Debts Recovery Tribunal has not considered the plea raised on behalf of the petitioners in their written statement. It is also contended that the evidence on affidavits filed by the petitioners have also not been dealt with and discussed in the

impugned judgment by the learned Debts Recovery Tribunal, Patna. Therefore, according to him, the impugned judgment as also the impugned certificate are not sustainable in law.

4. The learned counsel appearing on behalf of the State Bank of India and its functionaries has strongly contested the claims of the petitioners. At the very threshold the maintainability of the present writ petition was challenged on the ground of availability of efficacious statutory alternative remedy to the petitioners. According to the learned counsel appearing on behalf of the respondents, the impugned judgment and certificate passed by the learned Debts Recovery Tribunal is appealable under Section 20 of the Act, 1993 therefore, the petitioners were obliged to approach the learned Debts Recovery Appellate Tribunal and only thereafter they could have approached this Court, if still they were aggrieved by the judgments and orders passed by the statutory authorities.

5. It is true that the Hon'ble Apex Court in large number of cases has held that at the first instance the parties should be relegated to the statutory authorities for raising issues of facts and getting them decided conclusively and only thereafter, if they are still aggrieved, the power of judicial review under Article 226 of the Constitution of India may be invoked. So far the present matter is concerned, the impugned judgment and certificate has been passed under the provisions of the Act, 1993. Therefore, in view of the judicial pronouncement of the Hon'ble Apex Court in the case of **United Bank of India vs. Satyawati Tondon** [(2010)8 SCC 110] initially this Court was not inclined to interfere with the impugned judgment and certificate and was inclined to relegate the petitioners to the appellate forum in terms of Section 20 of the Act, 1993, but the learned counsel appearing on behalf of the petitioners has persuaded this Court to exercise the power of judicial review on the ground that the impugned judgment and certificate is ex parte one, as the



reasonable opportunity to defend themselves was not given to the petitioners. In support of the above contention he has placed reliance on the recent judgment of the Hon'ble Apex Court in the case of **Commissioner of Income Tax vs. Chhabil Dass Agarwal [(2014) 1 SCC 603]**. As noticed above, on the face of it, this Court finds that on the date of impugned judgment and even on some previous dates, the petitioners were not represented before the learned Debts Recovery Tribunal. It also appears that certain mandatory provisions of 1993, Rules were not complied with by the learned Debts Recovery Tribunal, Patna. This Court further finds that the Hon'ble Apex Court in the case of **Commissioner of Income Tax vs. Chhabil Dass Agarwal (Supra)** has laid down the law particularly in paragraph-15 that when a statutory forum is created by law for redressal of grievances, then in normal circumstances the writ petition should not be entertained and the parties may be relegated to the statutory forum, but in certain exceptional circumstances, enumerated in paragraph-15 itself, a writ petition may be entertained and one of the exceptions is that if the judgment and order has been passed in total violation of the principles of natural justice, then of course power of judicial review under Article 226 of the Constitution can be exercised at that stage also.

6. Taking into consideration the exceptions enumerated in paragraph 15 of the judgment in the case of **Commissioner of Income Tax vs. Chhabil Dass Agarwal (Supra)** and further taking into consideration the factual matrixes of the present case, noticed above, this Court is of the opinion that the matter requires reconsideration and fresh decision by the learned Debts Recovery Tribunal, Patna after giving a reasonable opportunity to the petitioners to place their cases before it. Evidently, in the present case the impugned judgment was passed on 13.10.2009, but a Bench of this Court by order dated 03.05.2010 granted interim

protection to the petitioners. Therefore, the Bank has not been benefited by the impugned judgment till date, and its debts have not been recovered. Hence, it would be in the interest of Bank also that the matter is finally concluded and Bank receives its due debts as also the interest from the petitioners or the other defendants, who are parties in the aforesaid O. A. case No. 85 of 1998.

7. For the reasons recorded above, the impugned judgment and certificate dated 13.10.2009 (Annexure-5) passed by the learned Presiding Officer, Debts Recovery Tribunal, Patna is hereby set aside and quashed, and the matter is remitted back to the Debts Recovery Tribunal, Patna for deciding O.A. Case No. 85 of 1998 afresh at an early date preferably within a period of three months from the date of appearance of the parties. The parties are directed to appear on 6th April, 2015 with a certified copy of the present order before the learned Debts Recovery Tribunal, Patna. Thereafter, the learned Presiding Officer, Debts Recovery Tribunal, Patna shall fix a firm date for hearing the case afresh and, if need be, he may proceed with matter on a day to day basis, and all endeavours shall be made to decide the case afresh within the time limit prescribed above.

8. It is clarified that if the petitioners fail to appear on the date fixed above before the learned Debts Recovery Tribunal or, after their appearance, if the petitioners and/or their partners do not co-operate for early disposal of the matter, the learned Debts Recovery Tribunal shall be at liberty to proceed further with the matter and pass fresh order in accordance with law. In that case, the petitioners shall not be permitted to challenge the final judgment/certificate on the ground of violation of principle of natural justice. It is further clarified that the petitioners shall not seek unnecessary adjournments, but they shall be at liberty to raise all the issues of facts and law, which are available to them and have not been

conclusively decided earlier in aforesaid O.A. Case No. 85 of 1998.

9. The interim order dated 03.05.2010 passed by a Bench of this Court stands vacated. I.A. No. 1590 of 2013 filed by the Bank stands disposed of accordingly

10. In the result, the writ petition stands allowed to the extent indicated above, but with the observations and directions made above. In the facts and circumstances of the case, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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