IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13031 of 2014

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M/s Harihar Cold Storage a partnership firm having its site at Rajrappa Road, P.O. Gola, District Ramgarh through one of its partners Shri Girish Chandra Agarwal S/o Late Shatrughan Prasad R/o Gola Cold Storage Pvt. Ltd. Rajrappa Road, P.O. Gola, District Ramgarh, Jharkhand.

.... Petitioner

Versus

The Asst. General Manager, State Bank of India, Stressed Assets Management Branch, 5th Floor, SBI Patna, Zonal Office Building, J.C. Road, Patna.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Adv.

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 05-05-2015

Heard learned counsel for the parties.

Pursuant to the earlier order dated 25.3.2015 and 17.4.2015 a supplementary affidavit has been filed on behalf of the petitioner.

The prayer of the petitioner in this writ application reads as follows:

> " Direction in the nature thereof directing the respondent to withdraw letter no. SAM/CLO/186 dated 14.6.2014 by which offer for compromise settlement has been declined with further direction to submit revised OTS. That the petitioner further prays for commanding the respondent Bank to honour the terms of offer dated 2.1.2014 which was impliedly accepted by encashment of cheque of Rs.10 lakhs, which was subject to approval of compromise and further acceptance of second instalment of Rs.5 lakhs by cheque dated 29.4.2014."

Mr. Arbind Kumar Jha, learned counsel appearing on behalf of the petitioner, has basically concentrated on the aspect that once an offer was given to the Bank for entering into One Time Settlement (OTS) for clearing the dues of the petitioner with the Bank and the petitioner's cheque of a sum of Rs.10 lacs was deposited on 2.1.2014 with an offer to clear the remaining amount by October, 2014 and that the aforementioned amount of Rs.10 lacs deposited by the petitioner was also encashed by the authorities of the Bank, the petitioner was legally entitled to get the offer of One Time Settlement enforced on the same terms as was offered by the petitioner in its letter dated 2.1.2014. Mr. Jha has also invited attention to the communication of the petitioner dated 24.4.2014, whereby and whereunder a further sum of Rs.5 lacs was offered to be paid by the petitioner in continuation to the earlier payment made on 2.1.2014. In this background Mr. Jha submits that the decision of the Bank dated 14.6.2014 refusing One Time Settlement offer by the Bank cannot be sustained on fact and in law.

Reliance in this regard has been placed by Mr. Jha on the judgment of the Apex Court in the case of Bhagwati Prasad Pawan Kumar v. Union of India, reported in (2006)5 SCC 311, in the case of Bharat Sanchar Nigam Limited & anr. V. BPL Mobile Cellular Limited & ors., reported in (2008)13 SCC 597, and in the case of Rajendran Chingaravelu v. R.K.Mishra, Addl. Commissioner of Income Tax & ors., reported in (2010)1 SCC 457. In addition to the aforesaid judgment of the Apex Court Mr. Jha also relies on an unreported judgment of the learned Single Judge of this Court dated 7.11.2006 in C.W.J.C.No. 5562/2004 (M/s Eastern Food Industries Pvt. Ltd. v. the Bihar State Credit and Investment Corporation Ltd.).

Per contra, Mr. Kaushlendra Kumar Sinha, learned counsel for the State Bank of India, has submitted that the policy of One Time Settlement, which is sought to be enforced by the petitioner, is non-existent. According to Mr. Sinha, the petitioner on his own came out to offer something which was not acceptable to the Bank in view of the huge outstanding. He has also explained that the petitioner having moved all the forums, namely, before the Debt Recovery Tribunal and also before this Court is now unnecessarily trying to wriggle out of the dues that has accumulated against it. In this regard he has placed reliance not only on the judgment of the Debt Recovery Tribunal dated 21.3.2014 in O.A.No. 44/2011 passed by the Debt Recovery Tribunal, Ranchi, but also on an order of this Court dated 19.1.2015 in C.W.J.C.No. 107/2015.

This Court having regard to the issue involved had felt the necessity to look into the records of the Bank to find out as to whether there was any offer given by the Bank by way of One Time Settlement. Learned counsel for the Bank has produced the records which goes to depict different story altogether which would be noted at the relevant place in seriatim the things as they stand.

It has to be borne in mind that the petitioner had taken loan of Rs.50 lacs on 5.3.2008. The agreed rate of interest over such loan was 12.75% per annum at monthly rest and the immovable property covered by the title deed dated 14.7.1975 in the name of Sri Girish Chandra Agarwal was put under equitable mortgage under which an area of land of 1.48 acres together with all structures standing on plot no. 217 and 89 under Khata No. 48 and 15 of village Heramdaga, in the district of Ramgarh was made the basis. After disbursement of the loan when payments of instalment was not being made the Bank had issued the legal notice on 21.7.2010 demanding the petitioner to pay the amount of loan. After all legal formalities were completed by the Bank for realization of the loan the original application No. 44/2011 was filed before the Debt Recovery Tribunal and that case was decided in favour of the Bank by the judgment dated 21.3.2014, wherein it was held as follows:

> "16. In the result, the Original Application succeeds on contest against all the Defendants with costs.
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> (i) That the Original Application No.44 of 2011 initiated by the Applicant Bank for issuance of Recovery Certificate to the tune of Rs.61,98,071.19 (Rupees Sixty One Lacs Ninety Eight Thousand Seventy One and Paise Nineteen Only) together with interest and costs hereby succeeds and is allowed on contest against the Defendants No. 1 to 5 jointly and severally with costs. The Defendants are directed to pay the dues within a period of two months

from the date of judgment, failing which the Applicant bank will be entitled to sale the mortgaged properties detailed in the application and para 4 herein above and in the application. In case the sale proceeds do not satisfy the certificate dues in full, the balance be recovered from other personal assets/ properties of Defendants No. 1 to 5 including the properties for which the Bank had advanced funds. The Applicant Bank is further entitled to pendentelite and future interest on the amount due @ 10.00% with monthly rests from 16.2.2011 till full recovery is made from the Defendants.

(ii) Let a Recovery Certificate be issued immediately under section 19(22) of Recovery of Debts Due to Banks and Financial Institution Act, 1993 together with the details of the properties (as detailed in its Original Application) by fixing 21.5.2014 before R.O., DRT, Ranchi.

(iii) The Defendants No. 1 to 8 are hereby restrained by means of injunctions from depleting, transferring, encumbering, alienating or in any way dealing with their properties/ estates without first paying the claim of the Applicant Bank."

If in this backdrop the case of the petitioner is examined it would be evident that when on 2.1.2014 the petitioner had come out to offer an amount by way of One Time Settlement it was an unilateral course without there being any such demand by the Bank. The Bank in fact was also litigating with the petitioner before the Debt Recovery Tribunal and therefore, if the petitioner had sought to make payment of certain amount the Bank had all the reasons to realize it towards his loan which on account of the petitioner becomes defaulter since 2010 had already become overdue. This Court, therefore, on perusal of the records of the Bank would not find anything over there which can even remotely suggest that the offer of one time settlement of the petitioner was ever accepted by it. It was a simple case of defaulter who did not want to pay the loan and when he found that it was an order in the long drawn proceeding over three years it had found a way out to minimize its payment. The Bank, therefore, was not bound having the decree of dues to accept offer of the petitioner.

Let it be noted that on 24.4.2014 when a sum of Rs.5 lacs was sought to be paid by the petitioner the Bank was already armed with an order to realize the amount within 60 days and therefore, this Court will not find any error in Bank encashing cheque which was given by the petitioner.

Let it be noted that for realization of such amount for which a decree was already in favour of the Bank by way of order of the Debt Recovery Tribunal the petitioner had made another effort to avoid such payment by moving this Court questioning the Bank’s action of issuance of a notice under section 13(2) of the SARFAESI Act. The petitioner in fact came before this Court in C.W.J.C.No. 107/2015 claiming the following relief:

> “That the writ petition is being filed for declaring the second notice under section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called Act) dt. 26.9.2014 void as it was issued without any authority of law under the Act. That for further declaration that in view of express provision of the Act the liability of the borrower under the Act includes his liability in full within the period specified in 13(2) notice not the interest pendentelite and further interest in view of law settled by Apex Court in case of Punjab and Sind Bank vs. Allied Beverage Company Private Limited & ors. Since reported in (2010) 10 SCC 640 where in it was held that provisions of Section 34 of the CPC and O.34 R11 of CPC are applicable to DRT Act. SARFAESI Act."

This Court having analyzed the entire past history of default of the petitioner had found nothing wrong in issuance of notice under section 13(2) of the Act and having made a threadbare of all the issues raised by the petitioner it had gone to hold as follows:

"11. Let it be noted that the earlier notice under section 13(2) of the Act dated 13.9.2010 was only for a sum of Rs.58.40 lacs whereas the DRT had passed an order on 21.3.2014 for recovery of Rs.61,98,071.19 paise alongwith interest and costs. This amount of Rs.61,98,071.19 was the amount as on 18.2.2011 the date of filing O.A.No. 44 of 2011 by the Bank. The Bank therefore had proceeded by computing the interest in between 19.2.2011 to 26.9.2014 as also the amount of cost. In that view of the matter the fresh impugned notice under section 13(2) of the Act for recovery of a sum of Rs.90,94,346.00 was in fact only an aftermath of the order of DRT itself.

12. The objection of the petitioner as to whether there was a crystallized amount in the order of DRT dated 21.3.2014 or

whether the interest could have been charged by the Bank for the interregnum period of 13.9.2010 to 26.9.2014, is a pure question of fact. It was/is for the petitioner to explain by way of its reply under section 13(3-A) of the Act that the Bank could not have included interest pendent elite. That however will not make impugned notice to be bad."

It would, therefore, appear that the petitioner is not trying to make payment of the dues of the Bank as has already been decreed by the Debt Recovery Tribunal. It has always been only tried to delay the matter for one ground or another. The story of One Time Settlement is a facade which must not impress anyone much less any court of law because there is an inter-party judgment which binds the petitioner. The reliance placed by the learned counsel for the petitioner on the judgment of the Apex Court in the case of Bharat Sanchar Nigam Ltd. (supra) will have no bearing, inasmuch as there BPL Mobile Cellular is not a defaulter alike the petitioner in that case where the contract was supposed to be given to BPL Cellular and that was sought to be inferred by the action of the authorities. Here in the present case it is a case of defaulter which does not want to pay the amount of loan taken by it alongwith interest as has been decreed by the Debt Recovery Tribunal.

Similarly the reliance placed by the learned counsel for the petitioner on the judgment of Bhagwati Prasad Pawan Kumar (supra) will also have no application to the facts of the present case. In that case a claim was made by a consignee of the Railways and the damages was being sought from the Railways and therefore, when that case also did not relate to a defaulter like the petitioner there would be no concept of any concluded contract so as to enforce One Time Settlement which, as noted above, was the one way offer of the petitioner which will never be deemed to have accepted only on account of encashment of the cheque which could have been encashed to satisfy the loan taken by the petitioner as ordered by the Debt Recovery Tribunal.

Finally the reliance placed on a judgment of this Court in the case of M/s Eastern Food Industries Pvt. Ltd. (supra) will also have no application for a simple reason that there was a OTS policy in existence in the case of BICICO. The issue arose as to whether the BICICO could have avoided that one time policy and that was decided in the light of one time policy of the BICICO. Here as noted above there is no one time policy. The petitioner in fact was given additional opportunity only to produce any such policy by the order dated 25.3.2015 but neither in the supplementary affidavit nor in course of submission any such policy has been brought to the notice of this Court.

That being so, this writ application of the petitioner must fail and is hereby dismissed.

(Mihir Kumar Jha, J)

Surendra/-

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