IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9437 of 2016

==

1. M/s Hind Drug Distributors, a Partnership firm, constituted under Indian Partnership Act with defendant nos. 2 & 3 as its partners.
2. Parveen Kumar, Son of Sri Mahesh Thakur,
3. Binod Kumar, Son of Sri Dhrub Narain Rai,
4. Mahesh Thakur son of late Satya Narain Thakur,
5. Dhrub Narayan Rai, son of late Magani Rai,

All residents of Mohalla: Agarwa, P.O: Motihari, P.S: Motihari Town, District: East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate East- Champaran, Motihari.
2. District Magistrate, East-Champaran, Motihari.
3. State Bank of India, Madame Cama Road, Mumbai, 400021.
4. Chief General Manager, State Bank of India, LHO, west of Gandhi Maidan, Patna- 800001.
5. Branch Manager, State Bank of India, Court Campus Branch, Motihari, District: East Champaran, PIN: 845401
6. Authorised Officer, State Bank of India, Motihari Court Campus Branch, Motihari, District: East Champaran, PIN: 845401
7. State Bank of India, SARB Patna Branch, through its Chief Manager, State Bank of India, west of Gandhi Maidan, Patna-800001.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Singh, Adv.
For the Respondent/s	:	Mr. Satya Prakash Tripathy, Adv.
		Mr. Satya Vrat, Adv.

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-07-2016

The present writ petition has been filed for a direction to the respondent Bank for issuing the No Dues Certificate to the petitioners in view of the order dated 21.02.2013 (Annexure-3) passed in SARFAESI Application No. 211 of 2012 by the Debts Recovery Tribunal, Patna and payments made by the petitioners, and to return the original title deeds of the mortgaged properties of the guarantors along with other connected documents; for quashing the entire proceeding registered as O.A. No. 410 of 2015 (State Bank of India SARB Patna Branch Vs. M/S Hind Drug & Distributors and others); and for connected reliefs.

2. Learned counsel for the petitioners makes a short submission to the effect that the original loan of Rs. 32,00,000/- was settled in SARFAESI proceedings, culminating in the final demand of Rs. 24,10,587/- by the respondent Bank in its letter dated 06.03.2013 pursuant to the order dated 21.02.2013 passed by the Debts Recovery Tribunal, Patna in SA No. 211/2012 under the SARFAESI proceedings. The petitioners have since made a payment of Rs. 24,30,000/- in the aggregate which has been accepted by the Bank. In that view of the matter, the initiation of proceedings in OA No. 410 of 2015 under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“the RDDBFI Act”) for recovery of the entire amount of the same loan of Rs. 32,00,000/- is wholly arbitrary, illegal and unsustainable in law.

3. Learned counsel for the respondent Bank, on the other hand, invites attention to the order dated 21.02.2013 passed by the Debts Recovery Tribunal, Patna which required the petitioners to make payment of the amount (later calculated at Rs. 24,10,587/- by the bank as aforesaid) within a period of three months from the date of order whereas the petitioners had made payments from time to time until as

late as on 14.03.2016. It is therefore submitted that in view of the petitioners not having fulfilled the conditions of the order passed in SA No. 211 of 2012 and having failed to observe the time limit for payment, the respondent Bank has rightly undertaken steps for recovery under the RDDBFI Act for recovery of the loan amount.

4. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that against the demand of Rs. 24,10,587/- raised by the Bank in its letter dated 06.03.2013 in connection with the SARFAESI proceeding, the petitioners have made an aggregate payment of Rs. 24,30,000/- and hence the entire amount required to be paid stands duly satisfied. The payment made by the petitioners has been accepted by the Bank without demur. It is also not on record that the Bank at any time raised objection with regard to delayed payment made by the petitioners. The order in SARFAESI proceedings did not also provide that delay in payment would negate the benefit of the order. In that view of the matter, this Court is of the view that the demand raised under SARFAESI proceeding having admittedly been satisfied, the Bank is not justified in ignoring the same and taking steps for recovery of the entire loan amount of Rs. 32,00,000/- through initiation of proceedings under the RDDBFI Act.

5. The proceedings registered as OA No. 410 of 2015 (State Bank of India SARB Patna Branch Vs. M/s Hind Drug & Distributors and

others) are accordingly quashed and the respondent Bank is directed to issue the requisite No Dues Certificate to the petitioners and also return the original title deeds relating to the mortgaged properties of the guarantors along with other relevant documents, without further delay. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	26-07-2016
Transmission Date	