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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.376 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 11374 of 2014
Along with
Interlocutory Application No.1771 of 2015

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Smt. Kanchan Singh, wife of Praveen Kumar Singh, Proprietor of M/s Steel Industries, Kharmanchak, D.N. Singh Road, P.O. Bhagalpur City, P.S. Adampur, District Bhagalpur.

.... Petitioner-Appellant

Versus

1. The Syndicate Bank through its Regional Manager, Patna.
2. The Branch Manager, Syndicate Bank, Bhagalpur Branch, Patal Babu Road, Bhagalpur.
3. The Authorised Officer, Syndicate Bank, Bhagalpur Branch, Patal Babu Road, Bhagalpur.

.... Respondents- Respondents

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Appearance :
For the Appellant : Mr. Nawal Kishor Singh, Advocate

For the Respondents : Mr. Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-05-2016

Re.: Interlocutory Application No.1771 of 2015

The application is for condonation of delay of 24 days in filing of the present appeal.

2. For the reasons mentioned in the application and explained by learned counsel for the appellant, we find that sufficient cause is shown by the appellant to condone such delay. Consequently, the delay in filing of the present Letters Patent Appeal is condoned.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.376 of 2015

The challenge in the present appeal is to an order dated 9th July, 2014 passed by the learned Single Bench whereby the writ application filed by the appellant was dismissed.

2. In the writ application, the petitioner has prayed for quashing of the auction notice dated 28th January, 2014 and to allow the loan account to be made operational subject to the appellant bringing the loan amount under limit.

3. The appellant refers to the order (Annexure-8 to the writ application) passed by the Debt Recovery Tribunal, Patna on an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Tribunal has observed as under:

> "Considering the rival submissions of the parties, the applicant is directed to pay entire dues of the respondent bank as per agreement by adding SARFAESI Cost, paper publication cost, Rs.7,000/- lawyer fee and also to pay 9% interest and 5% penalty on auctioned amount. The applicant is also to pay Rs.25,000/- each to auction purchasers as compensation. Accordingly, the bank is to supply calculation to applicant by Monday and the same be paid by the applicant within 15 days thereafter. Costs must be supported by receipts. It is made clear that on failure by applicant, the bank shall proceed further in accordance with law. Accordingly, the SA stands disposed off. A copy of this order be given to the parties."

4. A perusal of the said order shows that the auction was conducted before the said order. Therefore there is a direction to pay a cost of publication and the amount of interest on the amount of auction.

5. On the other hand, the stand of the appellant in the writ application is that the Bank has charged interest at the rate of 20% instead of charging simple interest. Therefore, the Bank be directed to furnish fresh calculation chart. It is contended that the appellant is ready and willing to pay the dues of the Bank.

6. We have heard learned counsel for the parties and find no merit in the present appeal. As per the counsel of the Bank, the auctions of two properties were conducted on 28th January, 2014 and confirmed on 12th and 13th of February, 2014. It is also contended that sale certificates of the auctioned property stand issued in favour of the auction purchasers. The appellant has not challenged the sale certificate issued in favour of the auction purchasers nor complied with the directions of the Debt Recovery Tribunal passed on 4th April, 2014 to settle the accounts between the borrower, Bank and auction purchaser.

7. In view of the said fact, we do not find any reason to interfere with the order passed by the learned Single Bench as the appellant cannot change the terms of the contract of levy of rate of interest and the manner for compounding thereof in proceedings under Section 17 of the Act.

8. In view thereof, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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