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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3153 of 2014

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New Dadiala Saw Mills Through Its Proprietor Harbhajan Singh S/O Late Sardar Darshan Singh, Boring Canal Road, P.S- Budha Colony, Town and District- Patna.

.... Petitioner

Versus

1. The Presiding Officer, Debts Recovery Tribunal, Patna.
2. Syndicate Bank, Patna Main Branch, Frazer Road, Patna- 800001 through the Regional Manager, Maurya Tower, Maurya Lok Complex, Dakbunglow Road, Patna.
3. Branch Manager, Syndicate Bank, Patna Main Branch, Frazer Road, Patna- 800001.
4. Authorized Officer, Syndicate Bank, Patna Main Branch, Frazer Road, Patna- 800001.

.... Respondents

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Appearance:

For the Petitioner : Mr. Uma Kant Tiwary, Advocate

For the Respondents : Mr. Subhash Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08.03.2016

Heard learned counsel for the petitioner and learned counsel for the Respondent Bank.

2. The present writ petition has been filed for quashing the order dated 28.11.2013 directing the petitioner to pay the court fee on O.A. within one month thereof; as well as for a direction to the Respondent Nos. 3 to 5 to issue "No dues Certificate" in favour of the petitioner.

3. The short facts of the case are that the petitioner had availed a loan of Rs. 25.00 lakhs which could not however, be repaid and the account became NPA at Rs. 27.00 lakhs. The petitioner thereafter paid an amount of Rs. 10.00 lakhs. The Respondent Bank took steps for recovery under the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short). The petitioner filed S.A. No. 114 of 2011, however, an amount of Rs. 7,00,000/- also appears to have been paid by the petitioner and on 18.11.2011 the Debts Recovery Tribunal, Patna ("DRT" for short) permitted the petitioner to make payment of the remaining amount of the dues by 21.03.2012 in equal monthly instalments along with Rs. 10,000/- as legal cost and the cost of SARFAESI agent. It was further provided that failure to make payment of any of the instalments would result in failure of the entire settlement. The petitioner was able to deposit only a sum of Rs. 6,00,000/- out of the remaining Rs. 10,00,000/- required to be paid and for the remaining amount of Rs. 4,00,000/- the petitioner applied for time before the DRT which was registered as M.A. No. 119 of 2012. Before hearing of the said M.A. the petitioner made further payments and under some misconception failed to appear before the DRT, resulting in the M.A. being dismissed for non-prosecution. On being noticed by the Respondent Bank to appear before the Lok Adalat with respect to the outstanding dues claimed at Rs. 19,33,499/- the petitioner filed M.A. No. 197 of 2013, in which by order dated 30.07.2013, the DRT observed that if the petitioner had made payment in accordance with its earlier order dated 18.11.2011 (in S.A. No. 114 of 2011), then the Bank was directed to issue no objection certificate. It also took note of the Bank's reply in which it was submitted that the petitioner had made payment of the amount after due date and hence "no objection" be issued to him. The petitioner filed M.A. No. 332 of 2013 for restoration of the M.A. No. 119 of 2012 aforesaid, which came to be restored by order dated 26.09.2013. The matter was taken up for final hearing and by order dated 27.09.2013 the DRT took note that the petitioner had not paid the requisite amount by 21.03.2012 as stipulated, rather payment had been made by 05.06.2012. In that view of the matter, the DRT directed the petitioner to pay simple PLR interest from the date of default namely, 23.01.2012 along with SARFAESI cost and Rs. 10,000/- towards unpaid legal cost. Such payments were to be made by 03.10.2013 by the petitioner. In compliance to the order dated 27.09.2013 the petitioner deposited the PLR interest of Rs. 12,500/- as well as Rs. 10,000/- as legal cost against receipts. According to the petitioner, on 28.11.2013 during the course of hearing of M.A. No. 119 of 2012, the Respondent Bank disclosed that O.A. No. 166 of 2013 had been filed by it upon which Court fees has been paid. On the oral prayer of the Bank, the DRT by its impugned order dated

28.11.2013 held that the Court fee on the Bank's O.A. was liable to be paid by the petitioner within one month thereof.

4. Learned Counsel for the petitioner submits that the direction of the DRT for payment of Court fee on the Bank's O.A. as in its impugned order dated 28.11.2013 is wholly illegal and misconceived as O.A. No. 166 of 2013 was entirely frivolous. It is stated that the entire payment as earlier directed by the DRT had already been made and as such there was no occasion for the Bank to have filed O.A. and the petitioner cannot be made liable to pay the Court fee on such O.A. The order dated 30.07.2013 passed in M.A. No. 197 of 2013 had itself taken note of the Bank's acknowledgement that the petitioner had paid the amount, albeit after the due date, and that "no objection" be issued to him. There was thus no occasion for the Bank to prefer the O.A. more so when the petitioner had also paid up the PLR interest and the legal cost as directed by the DRT in its order dated 27.09.2013.

5. Learned counsel for the Respondent Bank on the other hand, opposes the writ petition and submits that the petitioner has rightly been directed to make payment of the Court fees on the Bank's O.A. He points out that the settlement for payment of the dues had been made by the DRT in its order dated 18.11.2011 which was conditional upon payments being made by

21.03.2012 with the clear stipulation that default in payment of any instalment would entail failure of the settlement itself. Admittedly the payments were not made within 21.03.2012 and hence, the petitioner having committed default in making full payment in instalments within the due date in accordance with the order dated 18.11.201, became liable to make payment of the entire amount of dues with continuing interest, for the recovery of which O.A. No. 166 of 2013 had to be filed by the Bank.

6. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that by order dated 18.11.2011 the petitioner was required to make payment of the remaining amount together with legal cost and cost of SARFAESI agent by 21.03.2012 and failure in payment of any of the instalments would entail failure of the settlement. It is also not disputed that the requisite payments were made, but beyond the stipulated date. It is however significant to note that in its order dated 27.09.2013, the DRT directed payment of simple PLR interest for the period of delay in making the payment by the petitioner. Such order therefore amounts to the earlier order dated 18.11.2011 being modified and the time granted therein being extended on payment of PLR interest. There is no dispute

that such PLR interest together with the SARFAESI cost and legal costs were also paid by the petitioner by 18.10.2013. On being asked, learned counsel for the Respondent Bank informed that O.A. No. 166 of 2013 had been filed on 23.10.2013. In other words, on the date of filing of the O.A. by the Bank, nothing whatsoever remained due from the petitioner as the entire amount directed by the DRT had been paid. Once the order dated 27.09.2013 permitted payment of PLR interest for the delayed period, the stipulated date for payment namely, 21.03.2012 in terms of earlier order dated 18.11.2011 must be treated as extension of the originally stipulated date and hence the settlement of the amount of dues remained in force.

7. Consequently it must be held that the petitioner is not liable to pay the Court fee in respect of the Bank's O.A. No. 166 of 2013 and direction for such payment in terms of the impugned order dated 28.11.2013 is hereby set aside. The Respondent Bank shall issue the requisite no due certificate to the petitioner without undue delay.

8. The writ petition stands allowed.

(Vikash Jain, J)

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