

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1325 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 4696 of 2012**

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Amal Kumar Choudhary, S/O Chandra Bhushan Prasad Choudhary, R/O Gauripur,
P.S.- Bihpur, District- Bhagalpur.

.... Petitioner- Appellant/s

Versus

1. State Bank of India having its Central Office and Corporate Center at State Bank Bhavan Madam Cama Road, Nariman Point, Mumbai and one of its Branch at Bhagalpur through the Manager Rasmees-SARC, Bhagalpur, namely, Lakshmi Kant Mallik, S/O Late Jai Lal Mallik, R/O Cchoti Khanjarpur, P.S.- Barari, District- Bhagalpur.
2. The Union of India through the Debt Recovery Tribunal, Patna having its Office At 34, Bank Road, Opposite New Police Line, Lodipur, Patna- 800001, through its Registrar.
3. M/S Prachi Exim India Ltd. a company having its registered office at Gauripur, P.S.- Bihpur, Bhagalpur District and its Head Office at Kumar Bhawan, G.C. Banerjee Road, Gumti No.2, Bhagalpur through its Managing Director- Amal Kumar Choudhary.
4. Mahendra Narain Kunwar, S/O Late Mahabir Kunwar, resident at Gauripur, P.S.- Bihpur, District- Bhagalpur.
5. Seema, W/O Shri Priyadarshi, Ashok J-Sector, Kankarbagh, H/No. 117, Kankarbagh, Patna-20-Director.
6. Sanjeev Kumar, S/O Shri Mahendra Narayan Kunwar, resident at Gauripur, P.S.- Bihpur, District- Bhagalpur-Director.
7. Rekha Chaudhary, W/O Amal Kumar Choudhary, J-Sector, Kankarbagh, Patna-20-Director.
8. Rajiv Ranjan Kumar, S/O Shri Mahendra Narayan Kunwar, resident at Gauripur, P.S.- Bihpur, District-Bhagalpur-Director.
9. Mani Mala Devi, W/O Shri Mahendra Narayan Kunwar, resident at Gauripur, P.S.- Bihpur, District-Bhagalpur-Director.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Advocate

For the Respondent/s : Mr. S. D. Sanjay, Senior Advocate
Mr. Abhishek 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: 23-09-2016

The challenge in the present Letters Patent Appeal is to an order passed by a learned Single Bench of this Court on 28th of June, 2012 whereby an order passed by the Debt Recovery Tribunal (for short, 'the Tribunal') directing the Bank to pay Rs.5 lacs as compensation, was set aside.

2. The case has a chequered history, but it will suffice to give background briefly. M/s. Prachi Exim India Ltd., the Company incorporated, of which the appellant is a Managing Director, availed financial assistance from the Bank. However, there was default in making payments, which led the Bank to initiate proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). The borrower challenged the action initiated by the Bank under the SARFAESI Act before this Court in CWJC No.9527 of 2007. The writ petition was allowed, but the said order was set aside in Letters Patent

Appeal No.129 of 2008 on 17th of August, 2010. The Special Leave Petition against the said order was dismissed.

3. As per the Bank, mortgaged property was put to sale, but since the entire outstanding could not be recovered, the Bank initiated proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act') by filing an application on 2nd of July, 2007 under Section 19 of the Act before the Tribunal for the recovery of Rs.34,71,481.11. The defendant put in appearance, but no counter claim was filed on first appearance. The Original Application was allowed on 9th of January, 2012 after returning the following findings:

- (i) That the applications, including application, to file counter claim is not maintainable after failing to file the same at the first appearance.
- (ii) The defendants cannot challenge the action taken under the SARFAESI Act in an Original Application as they have to file an application under Section 17 of the SARFAESI Act.
- (iii) On the basis of the report of Recovery Officer, the Tribunal granted compensation of Rs.5 lacs to the defendants to meet the ends of justice.
- (iv) That Non-performing assets amount will be paid by the defendants to the Bank along with lawyer fee.

4. With the said findings, the Original Application was allowed. The Bank, being aggrieved by the award of Compensation of Rs.5 lacs to the defendant-appellant, approached the Writ Court which

order has been set aside by the learned Single Bench. Aggrieved against the said order of the learned Single Bench, the Managing Director of the writ applicant is before this Court.

5. The argument of learned counsel for the appellant is that in terms of Section 19(25) of the Act, the Tribunal has the jurisdiction to pass such orders as expedient to give effect to its orders to prevent abuse of its process or to secure the ends of justice. The relevant clause reads as under:

“19. Application to the Tribunal.- (1) xxxxxxxxxxxxxxxx

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

6. We do not find any merit in the argument raised. Sub-section (6) of Section 19 of the Act permits the defendant to raise a set-off at the first hearing of the application, but not afterwards. Such written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect of both of the original claim and of the set-off. In addition to set-off, the defendant has been given to raise counter claim in terms of sub-section (8) of Section 19 of the Act. Such counter claim has to be tried as the cross-suit.

7. Admittedly, the defendants have not raised either set-



off or counter claim at the time of first appearance. The Tribunal was justified in law in declining the prayer of the defendants to file counter claim in the year 2011 having put in appearance earlier in the year 2008. The Tribunal has passed an order directing the defendants to deposit the amount of non-performing assets. Therefore, in terms of sub-section (25) of Section 19 of the Act, the Tribunal can exercise the jurisdiction which is subservient to the main order, i.e. of recovery of the NPA and not contrary to it.

8. The Tribunal has ordered payment of Rs.5 lacs as compensation to the defendant from the Bank to meet the ends of justice, when the Tribunal is also issuing payment of amount of NPA to the Bank. Such order is wholly illogical, unwarranted and cannot be said to be within the scope of sub-section (25) of Section 19 of the Act. Once the counter claim is being declined as not maintainable, any monetary claim either by way of set-off or counter claim could not have been entertained or allowed. The Tribunal has acted in gross violation of the Scheme of the Act and committed illegalities in passing the order of payment of compensation.

9. The present Letters Patent Appeal is, thus, nothing, but an abuse of process of the Court in view of the fact that finding of the Tribunal in respect of non-maintainability of set-off and of counter claim has not been disputed. In the absence of any such challenge, the

claim of the appellant to the compensation is fully unwarranted. Consequently, we do not find any merit in the present Letters Patent Appeal. The same is, thus, dismissed with cost.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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CAV DATE	N. A.
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