IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7882 of 2015

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1. M/s J M K Enterprises a Partnership firm having it's Place of business at Patel Path, Kankarbagh, Main Road, Patna through one of it's partner Shashi Shekhar son of Sri Mithilesh Prasad resident of 605 A, Dwarkapuri, Road No. 1,Hanuman Nagar, Kankarbagh, Patna-20.

2. Mithilesh Prasad son of Somar Prasad, 605 A, Dwarkapuri, Road No. 1,Hanuman Nagar, Kankarbagh, Patna-20.

3. Malti Sinha, wife of Mithilesh Prasad 605 A, Dwarkapuri, Road No. 1, Hanuman Nagar, Kankarbagh, Patna-20.

.... Petitioner/s

Versus

1. The State Bank of India having its corporate office, Nariman Point, Madam Cama Road, Mumbai, through its Chairman-cum-Managing Director.

2. The Chairman-cum-Managing Director, The State Bank of India, Mumbai.

3. V.P. Tiwary, The Assistant General Manager, Stressed Assets Resolution Branch, Patna Branch Building, Patna.

4. The State Bank of India, SME branch, Boring Road, Patna through it's Chief Manager.

5. The Union of India through The Recovery Officer-1, Debts Recovery Tribunal, Chahajubagh, Patna.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Gautam Kumar Kejriwal, Advocate

For the SBI : Mr. Sanjiv Kumar, Advocate

For the Union of India : Dr. Poonam Kumari Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 16-02-2016

Heard learned counsel for the parties.

The writ petition has been filed for quashing of letter dated 21.01.2014 and all subsequent letters passed by the respondent no. 3 by which three mortgaged properties of the petitioners are sought to be put on auction sale for recovery of loan taken by the petitioners.

The brief facts of the case are that the petitioners took a loan of Rs.1.5 crores from the State Bank of India but due to them defaulting, the assets were declared NPA and the petitioners were called upon to repay the outstanding amount. The petitioners not being able to do so, the three mortgaged properties were then sought to be put on auction sale prompting the petitioners to move the Court in the present proceeding on 19.05.2015. The Court had by way of an interim measure put on hold the auction sale of the properties in question taking into consideration the fact that the petitioners had agreed to clear the entire debt of the Bank provided instalments were fixed and further as a token, he was ready to deposit Rs.10 Lakhs by 11:00 A.M. the next date.

The petitioners, while depositing Rs.10 Lakhs, had also made an application to the Bank that they were ready to clear the outstanding loan amount within nine months.

Learned counsel for the petitioners today submits that they may be permitted to sell two, out of the three, mortgaged properties and then would repay the amount as they have no other assets or means to return the money due against them of the Bank. He submits that in the alternative, the account may be removed from the NPA category and they may be permitted to pursue their original business. He further submits that the petitioners are still ready to make payment to the Bank for which they require some consideration.

Learned counsel appearing for the Bank submits that the conduct of the petitioners does not warrant any indulgence by the Court for the simple reason that initially auction was stayed in May, 2015 on the categorical assurance given by the petitioners before this Court, also on affidavit, that they will clear the entire outstanding dues within nine months and them having filed a similar petition before the Bank also, but after making the initial payment as per the order of the Court, not even a single rupee was deposited by the petitioners till now, that is, even after expiry of the period of almost nine months and the petitioners now raising various plea clearly indicates that their intention is only to delay the matter and frustrate any recovery by the Bank of its lawful dues. It is further submitted that during auction, the petitioners are at liberty to get buyers who may offer price more than what is offered by the other buyers as every person is free to participate and thus no prejudice has been caused to the petitioners and even when initially having defaulted on re-payment and subsequently after indulgence by the Court and even as per their own undertaking before the Court and the Bank, loan has not been cleared and the outstanding due still remains, does not warrant any interference.

After having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is clearly not convinced with regard to the *bona fide* of the petitioners of their stand that they are ready to clear the dues of the Bank. The Bank having given loan to the petitioners and the same having been availed by them, the matter being contractual and commercial in nature, the right of the Bank to recover its money cannot be fettered with unless it is shown that the action is perverse, arbitrary or against any legal provision.

In the present case, the Court finds that even after due indulgence shown to the petitioners by the Court and upon self undertaking of the petitioners, the petitioners not living up to the said commitment or even making an attempt to justify the indulgence shown to them inasmuch as no payment has been made by them to the Bank for the last nine months after obtaining an order of stay on submitting a proposal to clear the loan within nine months, the petitioners cannot have any legitimate expectation either from the Court or the Bank to show further indulgence in such commercial and contractual matters. Once liability to repay is denied as per terms of the agreement and the Bank moving for such recovery in accordance with law, the scope of judicial review and interference is limited. The Court acknowledges that for the purposes of maintaining trust in the system so that financial institutions do not feel inhibited in granting loans in future, their power to recover should not be fettered in the absence of sufficient and justifiable reason.

In view of the discussions hereinabove, the Court does not find any reason to interfere in the matter as despite giving a chance and more than reasonable time to the petitioners, as per their own undertaking and commitment, and the same not being honoured, the Court does not find the petitioners entitled to any further indulgence, muchless the relief claimed by them in the writ petition.

Accordingly, the writ petition stands dismissed.

It is needless to observe that the stay granted by order dated 19.05.2015 stands vacated.

(Ahsanuddin Amanullah, J)

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