

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10468 of 2014

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Anjani Kumar son of late Mahabir Prasad Lal resident of Mohalla - 11, Chitraguptpuri, P.S. Gardanibagh, District and Town - Patna, presently working as Regional Manager, Central Bank of India, Regional Office, Purnea, P.S. and District Purnea.

.... Petitioner

Versus

1. The Union of India through Secretary, Ministry of Finance, Government of India.
2. Central Bank of India, at Banmankhi Branch, P.S. Purnea, District Purnea.
3. U.C. Mohanty, Ex-Presiding Officer, Debts Recovery Tribunal, Patna-1,
4. Abhay Prasad, son of late Ram Janam Prasad, resident of Ramnagar P.O. Polytechnic, Purnea, District and Town, Purnea.
5. Sanjay Kumar, son of Late Ram Janam Prasad, resident of Ramnagar P.O. Polytechnic, Purnea, District and Town, Purnea.

.... Respondents

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Appearance:

For the Petitioner: Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Rajeev Ranjan Prasad, Advocate
Mr. Rajendra Kumar, Advocate

For the UOI: Mrs. Kanak Verma, C.G.C

For the Resp. No. 2: Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 01-08-2016

Heard learned senior counsel for the petitioner and learned counsel for the respondent bank.

2. The present writ petition has been filed for quashing the judgment dated 02.05.2014 passed by the Presiding Officer, Debts Recovery Tribunal [for short "the DRT"], Patna in O.A. No. 70 of 2012 [Central Bank of India vs Sri Ram Janam Prasad and others] whereby and whereunder in exercise of his jurisdiction under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 [hereinafter referred to as "the RDDBFI Act"] he has passed a judgment for recovery of Rs. 75,48,762/- with *pendente lite* and future interest against the petitioner and defendant no. 3 jointly and severally till realization, and has issued a certificate of recovery in

terms of the provisions contained in Section 19(22) of the Act.

3. Mr. Umesh Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner makes a short submission to the effect that impleading the petitioner as a party defendant for the purpose of recovery of the subject dues was completely beyond the competence and authority of the DRT. It is submitted that the action of the Presiding Officer of the DRT is, in the facts and circumstances of the case, mala fide at least in law if not in fact, inasmuch as being merely the disciplinary authority in the disciplinary proceedings held against the erstwhile Branch Manager of the bank, Sri Ram Janam Prasad, the Defendant No. 1, the petitioner could not have been made party as Defendant no. 137 in O.A. No. 70 of 2012 at the instance of the Presiding Officer, DRT, more so on the wrong assumption that the petitioner had exonerated the said Sri Ram Janam Prasad with only minor punishment. It is further submitted that unlike judicial Courts which are empowered under Order 1 Rule 10 C.P.C. to add or strike out the name of a person, whether as plaintiff or defendant, in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, no such power vests in the DRT. It is therefore, submitted that the impugned order of the DRT insofar as the petitioner has been added as Defendant no. 137 at the instance of the Presiding Officer, DRT is wholly arbitrary and without jurisdiction.

4. Learned counsel for the respondent bank appears and has been heard. Despite valid service of notice upon Respondent nos. 5 and 6, neither has entered appearance nor are they represented before this Court.

5. Having heard learned counsel for the petitioner and for the respondent bank, this Court finds merit in the writ petition. The recovery

proceeding by filing of an application in O.A. No. 70 of 2012 before the DRT was initiated at the instance of the respondent bank. The bank sought such recovery from its erstwhile Branch Manager, Sri Ram Janam Prasad, and a number of other persons said to be the borrowers. Admittedly, the bank was not seeking recovery of the dues from the petitioner which is evident from the very fact that the petitioner was not impleaded as defendant in the application before the DRT. It is well settled that the plaintiff is the *dominus litis* and cannot be compelled to sue a person against whom he does not claim any relief. The provisions of Order 1 Rule 10 C.P.C. are, strictly speaking, not available to the DRT for adding a person as defendant, having regard to Section 22 of the RDDBFI Act. Even otherwise, the issues before the DRT could well have been adjudicated in an effectual and complete manner without the necessity of impleading the petitioner.

6. In the above circumstances, the impugned judgment dated 02.05.2014 passed by the DRT, Patna (Annexure-15) in O.A. No. 70 of 2012 insofar as the petitioner has been added as Defendant no. 137 therein, as well as the direction to prepare a certificate of recovery insofar as concerns the petitioner, are hereby set aside.

7. The writ petition accordingly stands allowed to the above extent.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.08.2016
Transmission Date	N.A.