

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.626 of 2014

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Nutan Kumar Singh Patel, son of Shri Panna Lal Singh Patel, Resident of Village- Pansalwa, P.S.- Beldour, District- Khagaria, At Present resided at Flat No. 1, M.L.A. Flat, back of Museum Road, Police Station - Kotwali, Town and District- Patna

.... Petitioner

Versus

1. Housing & Urban Development Corporation Ltd., 2nd Floor, Block No. B/2, Maurya Lok Complex, Dak Bangalow, Police Station - Kotwali, Town and District- Patna
2. The Regional Manager, Housing & Urban Development Corporation Ltd., 2nd Floor, Block No. B/2, Maurya Lok Complex, Dak Bangalow, Police Station - Kotwali, Town and District- Patna
3. The Regional Chief Officer, Housing & Urban Development Corporation Ltd. 2nd Floor, Block No.B/2, Maurya Lok Complex, Dak Bangalow, Police Station - Kotwali, Town and District- Patna
4. The Registrar, Debts Recovery Appellate Tribunal, Near Balson Chauhara, Allahabad, U.P.
5. The Registrar, Debts Recovery Tribunal, State Of Bihar, Lodipur Opposite Police Line, Patna- 800001
6. The Dy. Manager (Law) Authorized Officer, Housing & Urban Development Corporation Ltd., 2nd Floor, Block No. B/2, Maurya Lok Complex, Dak Bangalow, Police Station- Kotwali, Town and District- Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Anil Kumar Jha, Sr. Advocate
Mr. Shekhar Kumar Singh,
Mr. Pankaj Kumar Jha,
Mr. Raja Surendra Mohan, Advocates

For the Respondents: Mr. Amaresh Kumar Sinha,
Mr. Prashant Kumar
Mr. Nagadeo Choubey, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-02-2016

The present writ petition has been filed for quashing the impugned order dated 31.10.2013 (Annexure-6) as well as the consequential order dated 04.12.2013 (Annexure-7) passed by the Debts Recovery Appellate Tribunal, Allahabad (the 'Appellate

Tribunal' for short) in Appeal Sr. No. 405 of 2013 by which the petitioner's appeal had been dismissed for non-payment of pre-deposit of 50% of the dues as determined by the Debts Recovery Tribunal (the 'Tribunal' for short) in O.A. Case No. 115 of 2012.

2. Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the petitioner, submits that in the backdrop of the facts and circumstances of the case, the Appellate Tribunal has erred in requiring payment of deposit of 50% of the amount awarded by the Tribunal. It is a matter of record that out of the sanctioned loan amount of Rs. 250 lakhs, only Rs. 230 lakhs was disbursed by the respondent-Housing & Urban Development Corporation Limited (for short, "the Corporation") and for the remaining amount, the petitioner had filed CWJC No. 13555 of 2011 which is said to be still pending after issuance of notice. It is further submitted that with a view to frustrate the said writ petition, O.A. No. 115 of 2012 had been filed by the respondent-Corporation. It is further submitted that it was because of non-disbursement of the full amount of the loan, operation of the cold storage of the petitioner had not properly commenced and accordingly, there could be no justification for requiring the petitioner to make deposit of 50% of the amount awarded by the Tribunal.

3. Mr. Amaresh Kumar Sinha, learned counsel for the respondent-Corporation, opposes the writ petition, submitting that no

fault can be found with the impugned orders of the Appellate Tribunal as sufficient opportunity was granted to the petitioner for making payment in question. The amount required to be paid was determined after due application of mind and having regard to the entirety of the facts and circumstances surrounding the petitioner's case as evident on bare perusal of the impugned orders.

4. Having heard the parties and on careful consideration of the materials on record, this Court takes note that the petitioner did not at any stage challenge the initiation of O.A. No. 115 of 2012 which was filed during the pendency of CWJC No. 13555 of 2011 rather he participated in the said proceedings before the Tribunal. Thereafter the petitioner also filed CWJC No. 6968 of 2013 against the order of the Tribunal but the same was permitted to be withdrawn for preferring an appeal before the Appellate Tribunal in terms of this Court's order dated 27.09.2013.

5. While requiring the petitioner to make deposit of 50% of the awarded amount by order dated 31.10.2013, the Appellate Tribunal has observed, inter alia, as follows:

“This is to be seen that in the present case the appellant while filing the written statement has not filed any counter claim, which is provided under section 19 (8, 9 & 11) of the RDDBFI Act, 1993. Since the appellant has not filed any counter claim and has not paid any court fee and if the appellant was entitled to any relief, then the relief as such could have only claimed by way of filing the counter claim. No counter claim has been

filed. Under the circumstances, until the appellant deposits the amount due as per section 21 of the RDDBFI Act, 1993, the Tribunal will have no jurisdiction to entertain the appeal or even to condone the delay. Section 21 provides to deposit 75% of the amount awarded by the D.R.T.”

6. This Court therefore finds that the Appellate Tribunal has passed a speaking order and has granted relief to the petitioner by requiring only 50% of the awarded amount to be deposited in place of 75% ordinarily required in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

7. In the above circumstances, this Court does not find any infirmity in the impugned orders passed by the Debts Recovery Appellate Tribunal. The writ petition stands dismissed.

(Vikash Jain, J)

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