IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10111 of 2016

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1. M/s Sun Print & Packers, through its Proprietor Dhananjay Kumar son of late Mathura Prasad Jaiswal resident of mohalla - Rai Jai Krishna Road, Gurhatta, Police Station - Khajekalan, Patna City, District - Patna.

.... Petitioner/s

Versus

1. Regional Manager, Circle office, Canara Bank, Luv Kush Tower, Exhibition Road, Patna - 800001.
2. Authorized Officer, Canara Bank, Patna City, Patna - 800008.
3. Presiding Officer, Debts Recovery Tribunal, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Sinha, Advocate

For the Respondent/s : Mr. Rajan Ghoshrave, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 28-06-2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for a direction to the respondent authority for restraining the proceeding of O.A. No. 193 of 2016.

3. Learned counsel for the petitioner has made a short submission to the effect that in view of proceedings under the Securitisation and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) having been initiated on 09.10.2015 by issuance of a demand notice under section 13(2) of the SARFAESI Act, an

application subsequently filed by the bank before the Debts Recovery Tribunal (DRT), Patna in O.A No. 195 of 2016 invoking provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the RDDBFI Act") during the pendency of the SARFAESI proceedings was invalid, and as such the proceedings in O.A. No. 195 of 2016 cannot be sustained.

4. The issue is no longer *res integra* and stands settled by the decision of a Division Bench of this Court in *The State Bank of India through the Deputy General Manager/Authorised Officer vs. M/s Purnea Cold Storage and another [2013 (4) PLJR 753]. T*he Division Bench has expressed its agreement with a decision of the Division Bench of the Delhi High Court in Mayur Coirs Pvt. Ltd. & Ors. vs. Development Credit Bank Ltd. wherein it was held as follows:-

> *"Equally untenable is the second submission made by Mr. Choudhary that the pendency of proceedings under the Securitisation Act would debar the bank from instituting proceedings for recovery of the debt by obtaining a decree from the DRT under the RDDBFI Act. There is no gainsaying that both the enactments are intended to ensure speedy recovery of the outstanding debts due to banks and financial institutions. There is nothing in either the provisions of the Securitization Act or in the RDDBFI Act to suggest that invocation of one would forbid the invocation of the provisions contained in the other. That position has been, in our opinion, sufficiently explained by the Supreme Court in Transcore's case (supra) where the issue was whether the bank could, without withdrawing the proceedings instituted before the DRT, take resort to the Securitisation Act. Answering the question in the negative, theCourt held that withdrawal of the OA before the DRT was not a condition precedent for invoking the Securitisation Act. We see no reason why the converse also cannot be true. If Securitisation*

proceedings are permissible during the pendency of the recovery proceedings under the RDDBFI Act, there is no reason why the recovery proceedings would become legally bad just because the bank had taken resort to Securitisation Act. What is important is that both the proceedings can be instituted and maintained simultanesouly. If that be so, just because the proceedings under the Securitisation Act had been instituted earlier would not render the proceedings before the DRT bad. The Appellate Tribunal was, in our opinion, perfectly justified in holding that the scheme of the two enactments did not debar simultaneous resort to the provisions thereof. The fact that there is a period of limitation prescribed for filing of the suits before the DRT also makes it necessary for the banks and financial institutions to institute such suits within the period of limitation stipulated for the same. Any delay in doing so would jeopardize the maintainability of such suits which no banking institution can afford to risk especially where the amounts outstanding against the borrowers are huge.

5. In the above view of the matter, this Court does not find any infirmity in the action of the respondent bank in adverting to the Debts Recovery Tribunal, Patna for remedy under the RDDBFI Act even during the pendency of SARFAESI proceedings.

6. The writ petition is devoid of merit and stands dismissed as such.

(Vikash Jain, J)

Chandran

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CAV DATE	-
Uploading Date	11.07.2016
Transmission Date	-