

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.175 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 23245 of 2013

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IFCI Ltd., a Company Incorporated and Registered Under the Provisions of The Companies Act 1956, Having Its Registered Office at IFCI Towers, 61, Nehru Place, New Delhi- 110019 And One Of Its Other Offices At Maurya Lok Commercial Complex, Block 'C' (3rd Floor), Dak Bunglow Road, Patna- 800001 Through its Assistant General Manager

.... Appellant/s

Versus

1. Arun Kumar Agarwal @ Arun Agarwal S/O Late Bihari Agarwal R/O Chirkunda, P.O.: Chirkunda, District:- Dhanbad, State Of Jharkhand
2. Bimal Agarwal S/O Late Bihari Agarwal R/O Chirkunda, P.O.: Chirkunda, District:- Dhanbad, State Of Jharkhand
3. M/S Refractory Specialties (India) Limited (In Liquidation), Having Registered Office At Jamtara, P.O.: Jamtara Through The Official Liquidator, Jharkhand High Court Having Its Office, House No.: 239, Road No.: 4, Magistrate Colony, Doranda, District:- Ranchi, Jharkhand:- 834002
4. The Registrar, Debt Recovery Appellate Tribunal At Allahabad, 147-A, 58/A, J.L. Nehru Road, Tagore Town, Allahabad:- 211001
5. Amrik Singh S/O Shri Avtar Singh R/O Retreat, Barar Street, Patiala, Punjab
6. Prithvi Bhattacharya S/O Shri Jagar Bandhu Bhattacharya R/O Refractory House, P.O.: Sitarampur- 713359, District:- Burdwan (West Bengal)
7. V.K. Pathak S/O Sri Lakshman Dutt Pathak R/O At 9/32, School Street, Choubey Colony, District:- Raipur (Madhya Pradesh)
8. M/S Refracon Private Limited Having Its Registered Office At Manisahu Chhak, Null Cuttack:- 753001 (Orissa)
9. Industrial Development Bank Of India, Idbi Tower, Cuffe Parade, Colaba, Mumbai:- 400005
10. ICICI Limited (Formerly The Industrial Credit And Investment Corporation Of India Limited) Having Its Registered Office At Icici Towers, Bandra-Kurla Complex, Mumbai:- 400051 And Calcutta Office 2-B, Gorky Terrace, Calcutta:- 700017
11. Life Insurance Corporation Of India, Yogashema, Jivan Bima Marg, Mumbai:- 400020
12. The Regional Debt Recovery Tribunal, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shivendra Roy, Advocate
For the Respondent/s : Mr. Ashish Giri, 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: 28-04-2016



The challenge in the present appeal is to an order passed by the learned Single Judge on 5.12.2013 in CWJC No. 23245 of 2013 whereby an order dated 26.03.2013 passed by the Debt Recovery Tribunal, Patna, in O.A.No. 10 of 2000 in proceedings under Section 19 of the Recovery of Debts Due to banks and the Financial Institutions Act, 1993, was set aside.

The appellant filed an application under Section 19 of Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (hereinafter referred to as the Act). The writ petitioners, the respondents herein are sons of the deceased guarantor. The said Original Application was allowed on 26th March, 2013 when a recovery certificate was ordered to be issued in the sum of Rs.1,96,45,328.20p. against defendant nos. 2 to 6. However, in respect of the writ petitioners, it was ordered that they will be liable only to pay the dues with interest to the Bank to the extent of inherited properties from their father.

In an appeal against an order passed by Debt Recovery Tribunal, the appellants were directed to pay 50% of amount before their appeal could be entertained by the Debt Recovery Appellate Tribunal. It is said order which was challenged by the writ petitioners before this Court.

The learned Single Judge considered the argument of the

petitioners that they have inherited nothing from their father, still are required to pay huge amount before their appeal could be entertained. After finding that this is harsh, the learned Single Judge passed the following order:-

“In such a situation, I set aside the order dated 26.03.2013 passed in O.A.No. 10 of 2000 and remand the matter back to the D.R.T., Bihar, Patna to determine the exact liability of the petitioners. It is only thereafter the petitioners can proceed in appeal. The D.R.T., Patna is directed to decide this issue within two months from the date of production of a copy of this order before him, subject to petitioner cooperating. The purported appeal filed, would consequently become infructuous for the moment.”

Keeping in view the stand of the writ petitioners that they have inherited no property, we find that it is a case where pre-deposit in terms of Section 21 of the Act can be dispensed with but the order to set aside the recovery certificate on an application under Section 19 of the Act is unjustified. Hearing of appeal after or without deposit is a separate right than to set aside an order passed in an application under Section 19 of the Act without touching merits of the controversy when such order is subject matter of appeal. The question as to whether the petitioners have inherited any property or not is a question which will require adjudication when the recovery certificate is sought to be executed. The recovery certificate issued makes the petitioners liable to pay the amount to the extent they have inherited the properties. The extent or the nature of properties can be examined

only at the stage of execution in recovery proceedings.

Consequently, the order of the learned Single Judge as reproduced above is set aside and it is ordered that the appeal filed by the petitioners before the Debt Recovery Appellate Tribunal, shall be heard and decided without insisting on any pre-deposit of any amount. The order passed by the Tribunal on 26th March, 2013 stands restored.

The appeal stands disposed of accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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