

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10035 of 2014

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1. Sri Mahendra Singh S/o late Thana Rai, Vill. Dhepura (Ranatola), P.O. Kewati Runway, District- Madhubani

2. M/s Food Product through Proprietor, Sri Sanjay Singh S/o Sri Mahendra Singh, Vill. Dhepura (Ranatola), P.O. Kewati Runway, District- Madhubani

.... Petitioners

Versus

1. The Authorized Officer, Zonal Office, Allahabad Bank, Muzaffarpur, Om Shanti Complex, Zila School, Main Road, Muzaffarpur, District- Muzaffarpur

2. Chairperson, Debts Recovery Appellate Tribunal, 147-A-58/1, Jawaharlal Nehru Road, Tagore Town, Allahabad

.... Respondents

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Appearance :

For the Petitioners : Mr. Arbind Kumar Jha, Advocate

For the Respondents : Mr. Sanjay Singh Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the petitioners and learned counsel for the Respondents.

2. The present writ petition has been filed for quashing the order dated 16.12.2013 passed in Appeal (T) No. 112 of 2013 in Appeal No. 157 of 2012 by which the appeal filed by the petitioners under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was dismissed without having due regard to the Full Bench decision of the Allahabad High Court in the case of Sharda Devi wherein it was expressly held the loan granted under the State Sponsored Scheme is beyond the definition of "debt"; and also against the SARFAESI proceedings said to have been initiated without declaring the account as NPA including enforcement of security

interest over the agricultural land being contrary to the provisions of Section 31(i) of the SARFAESI Act.

3. Learned counsel for the petitioner submits that a question of law was raised before the appellate tribunal with regard to the validity of the action of the respondents to the effect that creation of security interest over agricultural land was contrary to Section 31(i) of the SARFAESI Act. It has further been contended that the loan granted under the State Sponsored Scheme does not fall within the purview of "debt" as was settled by the Full Bench decision of the Allahabad High Court in the case of *Smt. Sharda Devi vs. State of U.P. and others* [A.I.R. 2002 Allahabad 1] which was binding on the appellate tribunal. It is therefore, submitted that the appellate tribunal ought not to have dismissed the petitioners' appeal in absence of pre-deposit inasmuch as there being no "debt", the petitioner was not required to make any deposit in terms of Section 18 Proviso 2 of the SARFAESI Act.

4. Learned counsel for the respondents on the other hand, submits that the appellate tribunal has not committed any error in dismissing the petitioners' appeal for want of pre-deposit and this proposition was duly supported by the judgment of the Apex Court in *Narayan Chandra Ghosh vs. UCO Bank and others* [A.I.R. 2011 Supreme Court 1913]. It is further submitted that the term "agricultural land" occurring in Section 31(i) of the SARFAESI Act has not been defined and cannot be interpreted to mean any land regardless to its location merely because a part thereof is under cultivation.

5. Having heard the parties, this Court is not inclined to interfere in the matter at this stage. The question whether or not the Full Bench decision of the Allahabad High Court as relied upon by the petitioners was applicable

to this case and thereby whether any amount was required to be deposited before the appeal could be entertained, requires to be decided and so also the claim of the petitioner with regard to the plots of land namely, Khesra No. 1374 and Khesra No. 1386 constituting agricultural land in the context of Section 31(i) of the SARFAESI Act requires decision.

6. In the ends of justice therefore, liberty is granted to the petitioners to make the requisite pre-deposit in terms of Section 18 Proviso 2 of the SARFAESI Act and approach the appellate tribunal. In such event, the appellate tribunal's order dated 16.12.2013 shall be treated as set aside for fresh decision on merits after hearing the parties, firstly on the question whether the loan granted to the petitioners constitutes "debt" in the backdrop of the Full Bench decision of the Allahabad High Court and thereafter on the remaining issues including the claim of the petitioners that the land under Khesra No. 1374 and Khesra No. 1386 constitutes "agricultural land" within the meaning of the SARFAESI Act.

6. It is made clear that the pre-deposit by the petitioners shall abide by the result of the appeal and in the event of petitioners' success on the issue that the agricultural land does not constitute "debt" for the purpose of Section 18 of the Act, the amount of the pre-deposit shall be refunded to the petitioners.

7. The writ petition stands disposed of with the aforesaid liberty.

(Vikash Jain, J)

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