IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1157 of 2014

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Uday Kumar Sharma S/O Late Janardan Singh R/O Village Amhara, P.S. Bihta, District Patna.
2. Sri Janardan Singh (since deceased) Through Virendra Kumar S/O Late Janardan Singh representing all the legal heirs of Late Janardan Singh R/O Village Amhara, P.S. Bihta, District Patna.

.... Petitioners

Versus

1. Central Bank of India through its Managing Director, a Body Corporate constituted under Banking Companies Acquisition and Transfer of Undertaking Act, 1970 having its Head Office at Chandramukhi, Nariman Point, Mumbai.
2. Branch Manager, Central Bank of India, Dak Bunglow Road, Patna.
3. Chairperson, Debts Recovery Appellate Tribunal, 147-A, 58/1 Jawaharlal Nehru Road, Tagore Town, Allahabad.
4. Sri Dilip Kumar S/O Late Sukhdeo Prasad R/O Sakrigali, Gulzarbagh, Patna-800007.

.... Respondents

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Appearance :
For the Petitioners : Mr. ARBIND KUMAR JHA
For the Respondents : Mr. AJAY KUMAR SINHA

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 05-05-2016

Heard learned counsel for the petitioners and learned counsel for the Respondent Bank.

2. The present writ petition has been filed for quashing a part of the order dated 10.09.2013 passed by the Debts Recovery Appellate Tribunal ("DRAT" hereinafter), Allahabad in Appeal (T) No. 37 of 2013 (in Appeal No. 27 of 2011) remanding the matter to the Debts Recovery Tribunal ('Tribunal" hereinafter) without deciding the substantial questions of law, and to declare that the entire proceeding before the Tribunal from the stage of application by the bank under Section 31A

of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDDB Act" hereinafter) is without jurisdiction.

3. The facts in brief giving rise to the present writ petition are that on 13.10.1984 the petitioner no. 1 applied for a term loan of Rs. 1,79,775.00 which was sanctioned to him and in respect of which the petitioner no. 2 created equitable mortgage by depositing three title deeds in respect of 4 bighas, 17 kathas, 10 dhurs and 6 dhurkhis of land by way of security of loan advanced to the petitioner no. 1. Subsequently, on default in repayment of the term loan, a Title Mortgage Suit registered as TMS No. 504 of 1989 was instituted for realization of Rs. 2,78,288/- with *pendente lite* and future interest and for other reliefs. An *ex-parte* order dated 25.05.1995 was passed and a preliminary decree made under Order XXXIV Rule 4 read with Order XXXIV Rule 2(1) on 23.06.1995 with a direction to pay Rs. 2,78,308.35 with interest @ 9% per annum quarterly rests till realization of the decretal amount. It appears that First Appeal No. 622 of 1995 was preferred by the bank before this Court. Though a preliminary decree had been passed in favour of the bank, no application was filed for final decree within three years thereof. During the pendency of the First Appeal No. 622 of 1995, an amendment was made to the RDDB Act by the insertion of Section 31A made effective from 17.01.2000 which enabled a decree holder to apply to the Tribunal for an order of recovery, where a decree or order had been passed by any Court before

the commencement of the Amendment Act of 2000 and had not been executed. In such event the Tribunal was empowered to issue a certificate to the Recovery Officer, and this was done in the present case. The Recovery Officer then proceeded for recovery of the certificated dues. The appeal filed by the petitioner raised various questions of law with regard to the jurisdiction of the Tribunal, and was disposed of by the Appellate Tribunal in its impugned order, remanding the matter to the Tribunal for deciding the matter afresh.

4. Learned counsel for the petitioner submits that the Appellate Tribunal should have decided the questions of law which fell for its consideration and which struck at the very root of the jurisdiction of the Tribunal, the latter having illegally entertained the bank's application under Section 31A of the RDDB Act and ordered recovery of the amount in question by the issuance of a certificate to the Recovery Officer. It is submitted that the right to apply for such a certificate was dependent on the nature of the decree itself, and in the present case~~,~~ while a preliminary decree had been passed on 23.06.1995 in favour of the bank, admittedly no application had been made for a final decree thereafter. It is submitted that Article 137 of the Schedule of the Limitation Act is applicable, in view of which the right to apply for a final decree and get the same executed became barred after 21.05.1998 being the end of the period of three years after the expiry of 30 days from the date of preliminary decree. It is thus

submitted that in absence of a final decree, the application for which had became barred on 21.05.1998 itself, no application under Section 31A of the RDDB Act could have been entertained by the Tribunal for the purpose of recovery as this amounted to execution of a preliminary decree itself which is wholly impermissible in law. In other words, on 17.01.2000 being the date of introduction of Section 31A of the RDDB Act, there was no subsisting final decree of the Court capable of being executed in favour of the respondent bank. The petitioner relies on the decisions of the Apex Court in *Balvant N. Viswamitra and others vs. Yadav Sadashiv Mule (dead) through LRS. and others [(2004) 8 SCC 706),* and *Sital Prasad and another vs. Kishori Lal [AIR 1967 Supreme Court 1236]* in this behalf.

5. Learned counsel for the respondent bank appears and has been heard. It has been submitted that with the introduction of Section 31A in the RDDB Act on 17.01.2000, the bank had been provided with a new forum for recovery of its dues and has rightly taken recourse to such remedy by applying to the Tribunal for the issuance of a certificate to the Recovery Officer.

6. Having heard the parties and on a consideration of the materials on record, this Court does not find it an appropriate case in which to interfere in the discretionary exercise of its extraordinary writ jurisdiction. The impugned order of the Appellate Tribunal has considered various facts and submissions of the petitioner and has

found it a fit case in which to remand the matter for a decision by the Tribunal in the first instance. The decision of the Appellate Tribunal cannot be said to be either without jurisdiction, perverse or suffering from any infirmity in law. This Court is of the view that no fault can be found in the direction given by the Appellate Tribunal which has acted well within the scope of its jurisdiction in remanding the matter to the Tribunal. On fresh orders being passed by the Tribunal pursuant to the appellate direction, the petitioner would have a fresh remedy against such order. This Court therefore refrains from considering the merits of the contentions raised by the petitioner.

7. The writ petition stands dismissed.

Chandran

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	
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