

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8668 of 2017**

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1. Binod Kumar, Son of Baldeo Jha, Resident of Dak Bungalow Road, Infront of Subham Enterprises, Proprietor of Samar Medical Agency, P.S.- Begusarai Town, District- Begusarai.
  2. Indu Kumari, Wife of Manoj Kumar Jha, resident of Mohalla- Sarvodaya Nagar, P.S.- Begusarai Town, District- Begusarai.

.... .... Petitioner/s

Versus

1. Punjab National Bank through its Authorized officer, Main Branch, Begusarai, P.S.- Begusarai Town, District- Begusarai.
2. Ram Shekhar Singh (Auction Purchaser), Son of Dhanushdhari Singh, resident of Village- Sihma, P.S. , District- Begusarai.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shambhu Nath Choubey, Adv.

For the Respondent/s : Mr. Kumar Priya Ranjan, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 17-08-2017**

Heard learned counsel for the parties.

In the present writ application, the order passed by the Debt Recovery Tribunal dated 20.5.2017 in S.A. No. 18 of 2017 is under challenge on a limited ground that the same is completely misdirected and misconstrued order as this Court, while disposing of the writ application, C.W.J.C. No. 12718 of 2015, has refused to entertain the application on the ground that there is already an alternative remedy for the petitioner to raise his grievance but, instead of going there, the petitioner has directly approached this Court. That order was challenged in Division Bench in LPA No. 1909 of 2015



which was rejected placing reliance in the case of United Bank of India Vs. Satyawati Tondon reported in (2010) 8 SCC 110 and, after that, the petitioner approached to the Tribunal where the Tribunal has misdirected himself, rejected the application on the ground that liberty was not given by the L.P.A. Court to the petitioner to approach to Tribunal and, thus, the Tribunal is not obliged to pass order on the merit of the case.

Learned counsel for the Bank has taken a plea that there is a provision for appeal and, without exhausting that remedy, the present writ application is not maintainable.

Be that as it may, it is apparently clear from the order passed by this Court that this Court has not decided the case on merit at all, rather has refused to entertain only on the ground of availability of alternative remedy. In such circumstances, when the application was filed, the Tribunal was required to examine all aspects of the matter even technical as well as on merit and should have passed a reasoned order taking into account all attending facts and circumstances but, the manner it has been passed leads to travesty of justice and this Court cannot approve such order passed by the Tribunal refusing to decide the case on merit when this Court has only refused to entertain on account of availability of alternative remedy.

In view of the above, the order dated 20.05.2017 passed by



the Debt Recovery Tribunal, Patna in S.A. No. 18/2017 is set aside and the matter is remanded back to the Tribunal with a direction to give an opportunity to all the parties to participate in the proceeding and pass an order on all aspect of the matter including merit of the case.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

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| AFR/NAFR          | NAFR       |
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