

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3661 of 2016

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Awadh Narayan Singh, Son of Late Chandra Shekhar Singh, Resident of
Village- Bali, P.O- Alawalpur, P.S.- Gaurichak, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary (In-charge) Welfare and Re-habilitation of Ex-Service Men, New Delhi.
2. The Secretary, In-Charge, Soldier Welfare and Welfare of Ex-Service Men, Ministry of Defence, New Delhi.
3. The Chair Man-cum-Managing Director, Central Bank of India, New Delhi.
4. The Regional Managing Director, Central Bank of India, Eastern Zone, Maurya Lok, Patna.
5. The Deputy General Manager Central Bank of India, Maurya Lok, Patna.
6. The Branch Manager, Gauri Chak Branch, Central Bank of India, Patna.
7. The Chairman-cum- Managing Director, CGTMSE (Credit Guarantee Fund Trust, Scheme for Micro & Small Enterprises, New Delhi.
8. The D.M., Patna.
9. The General Manager, District Udyog Kendra, Patna.
10. The Debts Recovery Tribunal, through its Registrar, Patna.
11. The Recovery Officer, Debt Recovery Tribunal, Patna.
12. The Chairman, Chola Mandlam Insurance Company Ltd, 2 NSC Bose Road, Chennai.
13. The General Manager, Chola Mandalam Insurance Company Ltd. Near Gandhi Maidan, Patna.
14. The State of Bihar, through the Principal Secretary, Industry Department, Old Secretariat, Patna.
15. The Principal Secretary, Agriculture Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	
For the Respondent/s-Bank	:	Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-11-2017

Challenging an order passed by the Debts Recovery Tribunal,
Patna in O.A. No.144 of 2015 vide order dated 23.12.2015



directing for recovery of Rs.16,54,255/- from the petitioner, this writ has been filed under Articles 226 and 227 of the Constitution.

As against the aforesaid order passed, the petitioner has a remedy of filing of an appeal before the Appellate Tribunal under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as 'the Act'), challenging the constitutional validity of Section 21 of the Act which contemplates and mandates deposit of 75% of the amount before filing an appeal, the petitioner has called in question constitutional validity of the said provision, i.e. Section 21 and wants to be declared as *ultra vires* of the Constitution.

Certain provision of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was subject matter of consideration before Hon'ble the Supreme Court in the case of **Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors. (2004) 4 SCC 311** and the constitutional validity of the aforesaid Act has been upheld by the Hon'ble Supreme Court.

Even though in the case of **Mardia Chemicals Ltd.** (supra), challenge was made to the provision of Section 17 of the SARFAESI Act whereby it was provided that for filing an application 75% of the amount to be recovered should be



deposited, the Hon'ble Supreme Court considered the issue and held that the provisions of Section 17 is not an appellate provision, it is a provision akin to filing of the civil suit and at the initial stage when a suit is filed, the condition for pre-deposit cannot be imposed. However, from paragraph 65 onwards discussing this question, it has been held that while filing an appeal, a condition for pre-deposit can always be imposed and in the matter of payment of pre-deposit in an statutory appellate provision, the Hon'ble Supreme Court has upheld the provision. It has been held by the Hon'ble Supreme Court that right to appeal is an statutory appeal and a condition for pre-deposit in such an appellate provision is permissible, keeping in view the aforesaid principle laid down by the Hon'ble Supreme Court which is based on the law laid down earlier in this regard in the case of **Seth Nand Lal v. State of Haryana, 1980 Supp SCC 574** and an earlier judgment in the case of **Anant Mills. Co. Ltd. v. State of Gujarat, (1975) 2 SCC 175**.

It is also seen that the provision of Section 21 of the Act provides for pre-deposit of the amount also gives discretion to the appellate Tribunal to waive or reduce the amount of deposit for reasons to be recorded in writing and in the case of **Om Kant Aggarwal and another v. Punjab National Bank and others**,



AIR 1999 Punjab and Haryana 80, a Division Bench has already rejected such prayer after considering the law laid down by the Hon'ble Supreme Court in the case of **Anant Mills Co. Ltd.** (supra) and in the case of **Navin Chandra Chhotelal v. The Central Board of Excise and Customs**, AIR 1971 SC 2280.

In view of the detailed discussions made above, we see no reason to make any indulgence into the matter and declare the provision of Section 21 of the Act *ultra vires* merely because it contemplates condition for pre-deposit while filing an appeal. The provision for pre-deposit in law giving right to appeal having been upheld by the Hon'ble Supreme Court, we see no reason to make any indulgence into the matter. The writ petition stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2017
Transmission Date	

