IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.610 of 2014
IN
Civil Writ Jurisdiction Case No. 1749 of 2013

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1. Mr. Rajeev Kumar Singh, S/o Surendra Prasad Singh R/o Flat No. 404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna-800001.
2. Smt. Arunima Kumari Singh W/o Rajeev Kumar Singh R/o Flat No. 404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna-800001.
3. Mr. Anupam Raj Kumar, S/O Late Ram Bahadur Singh R/o Flat No. 404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna-800001.

.... Appellants

Versus

1. Chairman Cum Managing Director, Indian Bank, Corporate Office, P.B. No. 5555, 254-60, Awai Shanmugam Salai, Royapattah, Chenai-600014.
2. Asst. General Manager, Indian Bank, Biscomaun Bhawan, West Gandhi Maidan, Patna 800001
3. Presiding Officer, Debt Recovery Tribunal, 34, Bank Road, Opp. New Police Line, Lodipur, Patna- 800001

.... Respondents

<u>With</u>

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Letters Patent Appeal No. 1364 of 2013
IN
Civil Writ Jurisdiction Case No. 975 of 2013

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1. Mr. Rajeev Kumar Singh S/O Surendra Prasad Singh R/O Flat No. 404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna-800001
2. Smt. Arunima Kumari Singh W/O Rajeev Kumar Singh R/O Flat No. 404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna-800001
3. Mr. Anupam Raj Kumar S/O Late Ram Bahadur Singh R/O Flat No. 404, Suryalok Apartment, Budha Colony, P.S.- Budha Colony, Patna-800001

.... Appellants

Versus

1. Chairman Cum Managing Director, Indian Bank, Corporate Office, P.B. No. 5555, 254-60, Awai Shanmugam Salai, Royapattah, Chenai-600014
2. Authorized Officer, Indian Bank, Zonal Office, Govind Bhawan, 1st Floor, New Dak Bunglow Road, Patna- 800001
3. Presiding Officer, Debt Recovery Tribunal 34, Bank Road, Opp. New Police Line, Lodhipur, Patna-800001

.... Respondents

<u>With</u>

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Letters Patent Appeal No. 1496 of 2013

IN
Civil Writ Jurisdiction Case No. 3705 of 2013

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1. Mr. Rajeev Kumar Singh S/O Surendra Prasad Singh R/O Flat No.404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna - 800001
2. Smt. Arunima Kumar Singh W/O Rajeev Kumar Singh R/O Flat No.404, Suryalok Apartment, Budha Colony, P.S. Budha Colony, Patna - 800001

.... Appellants

Versus

1. Chairman Cum Managing Director, Indian Bank, Corporate Office, P.B. No. 5555, 254 - 60, Awai Shanmugam Salai, Royapattah, Chenai - 600014
2. Authorized Officer, Indian Bank, Zonal Office, Govind Bhawan 1st Floor, New Dak Bunglow Road, Patna - 800001
3. Presiding Officer, Debt Recovery Tribunal, 34, Bank Road, Opp. New Police Line, Lodhipur, Patna - 800001

.... Respondents

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Appearance :
For the Appellants : Mr. Arbind Kumar Jha, Advocate
For the Respondents : Mr. Binay Kumar Singh, Advocate
Mr. Amit Singh, Advocate
Mr. Brij Mohan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 11-07-2017

Heard Sri Arbind Kumar Jha, learned counsel for the appellants and Sri Vinay Kumar Singh, learned counsel for the respondent-Bank.

2. It is a matter of record that originally three writ applications were filed by the same and one petitioners who are borrower and guarantors of a financial assistance from the respondent Bank. As the issues involved in all the three writ applications are interwoven and intrinsic to each other, these applications were heard together and disposed of by learned Single Judge of this court vide common order dated 09.09.2013. It is this common order of the learned Single Judge which is impugned in these three Letters Patent Appeals. Both the parties agreed that these appeals need to be heard and disposed off accordingly.

3. Having discussed the issues involved in all these three writ applications, the learned Single Judge has come to a conclusion that C.W.J.C. No. 975/2013 and C.W.J.C. No. 3705/2013 had no merit and those were accordingly rejected. As regard C.W.J.C. No. 1749/2013, the same has been disposed of permitting the petitioners to seek remedy as is/are available to them in accordance with law. As we proceed to dispose of these appeals it would be just and proper to remind ourselves with the relevant legislation, its aim and objectives. Therefore, before going into the merit we take a brief look at enactments.

<u>A brief Legislative History – Aims & Objections</u>

4. As the Banks and financial institutions were experiencing considerable difficulties in recovering loan and enforcement of security charged with them, Parliament of the Republic of India enacted an Act namely "the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "DRT Act") to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. The DRT Act came into effect from 27th August, 1993. Later on, in order to strengthen the banking industries in India who were already complying with the international prudential norms and accounting practices, it was felt that the banking sectors need to have a level playing field and therefore provision facilitating securitization and financial assets of banks and financial institutions were necessary to be brought into existence, accordingly the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (hereinafter referred to as 'SARFAESI') Act, 2002, was enacted which came into effect from 17th December, 2002. By virtue of this the banks and financial institutions got power to take possession of the securities given for financial assistance and sale or lease the same or take-over management in the event of default i.e. classification of the borrower's account as Non-Performing Assets (NPA) in accordance with the direction given or under guidelines issued by the Reserve Bank of India from time to time. Under the provisions of DRT Act, if the outstanding dues is more than Rs. 10 lacs, the banks & financial institutions can file an application under Section 19 for adjudication and upon such an adjudication the Tribunal shall grant a Certificate of Recovery. The Recovery Officer under the DRT Act shall thereafter proceed to execute the certificate and the certificate amount is liable to be recovered by attachment and sale of the properties of borrowers and/or guarantors in accordance with third schedule to Income Tax Act, 1961.

5. The SARFAESI Act provides that in case of an 'NPA' account the bank and financial institution can issue notice under Section 13(2) calling upon the defaulters to pay the outstanding amount within 60 days from the date of receipt of the notice or submit an objection, if any. In case the defaulter(s) submit an objection within the aforesaid time, the same is liable to be considered by the Authorised Officer and the order on that objection must be communicated within seven days to the defaulter(s). Thereafter, one of the measures as envisaged under Section 13(4) may be resorted to against the borrowers and the guarantors. The measures provided includes (1)

Taking over possession of the "Secured Assets" and (2) Selling of the Secured Assets and to appropriate the sale proceeds against the default amount. If despite adjustment the bank could not get the entire outstanding dues then steps shall be taken to institute an application for a certificate for the balance amount. The procedure applicable for recovery of the balance amount would be the same and one applicable in case of recovery proceeding under the DRT Act. As regards maintainability of proceedings under DRT Act, 1993 and the SARFAESI Act, 2002, simultaneously, initially there were some arguments and counter arguments but very soon the issue was settled by the Hon'ble Apex Court in the case of **M/s Transcore Vs. Union of India & Ors.** Since reported in **AIR 2007 SC 712**. A Division Bench of this court followed the same in **LPA No. 1743/2012 (The State Bank of India & Anr. Vs. Purnea Cold Storage)** and set aside the learned Single Judge judgment in C.W.J.C. No. 8746/2012.

6. These cases are classical examples of the efforts taken by the borrower (petitioner no.1) and the guarantors (petitioner nos. 2 & 3) to thwart every action of the bank in realizing it's outstanding dues from them. The petitioners/appellants have challenged every stage of action before the Tribunal as well as before this Court. From the narration of facts stated hereinafter, the intention of the petitioners/appellants was to delay the proceeding which is writ large from the conduct of the petitioners/appellants.

FACTS AS TO BORROWING, DEFAULT – SALE NOTICE

7. It is not in dispute that the petitioners/appellants no. 1 is the borrower who obtained loan for his building construction business. Petitioner nos. 2 and 3 were the guarantors to the secured over draft facility and they have executed their personal guarantee in favour of the respondent bank. Petitioner nos. 1 & 2 have created equitable mortgage of their respective immovable properties by depositing their original title deeds in respect of the properties situated at Patna. Thus, the property in respect of which equitable mortgage has been created are the 'secured assets' within the meaning of the SARFAESI Act, 2002. As the borrowers defaulted in repayment of the loan, the respondent bank initiated action under the provisions of the SARFAESI Act, 2002. A notice under Section 13(2) of the SARFAESI Act was issued to the borrowers and guarantors calling upon them to pay the outstanding dues of Rs.

82,55,889/- (Rupees Eighty Two Lacs Fifty Five Thousand Eight Hundred and Eighty Nine only), which was the NPA amount as on 20th November, 2010. The said notice clearly stated that the said amount carries further interest at the agreed rate from 21st November, 2010 till date of payment (Annexure-5). The documents enclosed with the writ application would show that prior to issuance of the said notice under Section 13(2), the respondent Bank had already rejected the request of the borrower to restructure the loan account and had called upon the borrower to pay the amount outstanding, however, once again, vide Annexure-7 to the writ application, the petitioner No. 3 requested the respondent Bank to allow regularization of the account by allowing him to deposit the irregular portion of the loan account and to allow 60 equal monthly installments. The respondent Bank immediately replied to petitioner no. 3 that before the account was classified as NPA, the borrower (petitioner no. 1) was informed in this regard and even petitioner no. 3 had met the bank officials as the representative of petitioner no. 1. Petitioner no. 1 was well informed and therefore once again he was advised to arrange repayment of the petitioner. The respondent bank having found that there was no payment of the amount under this statutory notice under Section 13(2), decided to proceed in terms of Section 13(4) of the SARFAESI Act, 2002 read with Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 and took possession of the secured assets (Annexure-11). The petitioners had a remedy of Appeal under Section 17 against Section 13(4) action but no appeal was filed challenging the action taking possession of Secured Asset by the bank. Later on, on the representation of the petitioners/appellants bank deferred auction sale of the secured assets till 30.09.2011, subject to the condition that they will pay at the rate of 1.25 lacs every month in the account with effect from April, 2011. A total 6 months time was allowed to repay the total dues and close the account (Annexure-12). As the petitioners/appellants could only pay a small portion of the outstanding dues and failed to pay in terms of the letter as contained in Annexure-12 to the writ application, the respondent bank issued a public auction sale notice on 31.01.2012. As required in law, the sale notice was published in Newspaper, however the petitioners/appellants moved the Debt Recovery Tribunal, Patna under Section 17 of the SARFAESI Act, 2002 challenging the said public auction sale notice.

<u>S.A. No. 35/2012 – Challenge to auction sale notice dated 31.02.2012</u>

8. On 29.02.2012 (Annexure-14), an order was passed by the then Presiding Officer of the Tribunal which is the bone of contention, thus is quoted hereunder for ready reference : -

> *"Parties has given reply, accordingly Annexure 7 how the NPA the account should be converted to standard account. Bank has not considered prayer of the SARFAESI applicant in this regard. The counsel for Indian bank submitted that loan sanctioned was made for only one year, as per SARFAESI applicant's request, 6 month time was allowed and but same amount have been deposited by SARFAESI applicant. The outstanding dues is more than 56,34,541/- at present if the borrower pay 25 lacs before 2nd March 2012 and rest amount be paid within 4 month in equal installment. If it is not paid, the entire compromise failed, it is made clear that if borrower arrange a intending purchaser who will deposit the amount before the bank, after full payment of bank dues. The intending purchaser will get registration of above property. SARFAESI applicant will bear only minimum SARFAESI cost and Advocate fees 15000 and cost of paper publication on supply of proper receipts. Accordingly, the S.A. stands disposed off. A copy of this order be given to the parties."*

9. As the petitioners/appellants could not deposit the entire amount as per direction contained in order dated 29.02.2012, a miscellaneous application being M.A.No. 256/2012 was filed for extension of time and directing the Bank to accept the balance amount offered by the petitioner with cost and Advocate Fee deposit by the next date.

10. At this time, while the proceeding under the SARFAESI Act, 2002 was going on, the respondent bank filed an application under Section 19 of the DRT Act, giving rise to O.A. No. 31/2012, before the Tribunal. The respondent bank sought recovery of its debts from the defendants (present petitioners) to the tune of Rs. 77,61,607/- up to 20.12.2011 along with *pendente lite* and future interest at the contractual rate from 21.12.2011 till full and final realization of the amount with cost and expenses. The present petitioners who were defendants in the said O.A. though had notice but they did not appear to contest. The respondent bank got a certificate of recovery against the defendants in O.A. No. 31/2012 in terms of the judgment dated 30.07.2012 passed by the Tribunal in the said case. It is not the case of the petitioners that no notice was served upon them in respect of the said original application. The case of the petitioners is that filing of the O.A. No. 31/2012 without disclosing the fact that a SARFAESI proceeding was already there before the Tribunal and as certain amount had been paid by the petitioners which were not disclosed, therefore, the judgment dated 30.07.2012 shall stand vitiated by fraud. We will take a view on this later. Further facts of the case would reveal that the parties indulged in filing miscellaneous applications in the S.A. No. 35/2012 at different stages. The respondent bank was not satisfied with the order dated 29.02.2012, therefore, the learned Presiding Officer of the Tribunal was informed on 06.08.2012 that the bank is going to file an appeal against the order of the Tribunal.

11. A bare perusal of the order dated 06.08.2012 passed by the DRT would show that on the said date learned counsel for the applicant took a stand that **"if the bank is not satisfied, then all the amount deposited by the applicant be returned by the bank immediately …………"**

12. On this stand taken by the applicant, the Tribunal directed the respondent bank to return all the amount deposited by the applicant by virtue of intervention of the Tribunal. The bank took steps to return the amount, there was some delay in official procedure, interim order was passed by the Tribunal calling the senior officers of the bank to explain the delay in refund, however, the bank was consistent with its stand and returned the entire amount of the applicant on 03.09.2012, vide demand draft no. 374770 dated 01.09.2012 for Rs. 55,70,692/-. It is an admitted position that the applicants received the said amount from the Bank.

13. It is worth to mention that after passing of the order dated 29.02.2012 by the Tribunal in S.A. No. 35/2012, the respondent bank filed a writ application giving rise to C.W.J.C. No. 15753/2012. During pendency of the writ application, the Tribunal disposed of miscellaneous application bearing M.A. No. 362/2012 which was brought by the applicant for non-compliance of the order passed by the Tribunal as the bank had not paid the entire amount of the petitioners/borrowers, as per the orders passed by the Tribunal. The Tribunal disposed of the said M.A.No. 362/2012 and the bank complied the order by refunding the entire amount of Rs. 58,70,692/- to the applicant which was earlier received by the bank under order of the Tribunal dated 29.02.2012. Thus, the factual position, during the pendency of the writ application, completely changed due to the stand taken by the applicants themselves. Since the order dated 29.02.2012 had lost its significance as the applicants had already received money back on their own, the said C.W.J.C. No. 15753/2012 had become infructuous as nothing remained for adjudication with regard to the order dated 29.02.2012. The writ application was, therefore, permitted to be withdrawn vide order dated 13.09.2012, after recording that the same has become infructuous.

14. After the amount was returned to the applicants, the Tribunal passed an order dated 07.12.2012, vide M.A. No. 440/2012, whereby the order dated 29.02.2012 was recalled and both the parties were directed to come prepared for argument on the next date. The S.A. no. 35/2012, however remained pending and dates were fixed one after another. By this time the sale notice had already become stale and infructuous.

<u>Second public auction sale notice</u>

15. On 02.02.2013, a fresh advertisement of public auction sale notice was published by the respondent bank. It is admitted position that the said public auction sale notice was not challenged by filing a separate SARFAESI appeal under Section 17 of the SARFAESI Act, 2002. However, the Tribunal considered the challenge made to the second auction sale notice in the same pending S.A. No. 35/2012 as would appear from the final order dated 02.05.2014, passed in S.A. No. 35/2012. The facts mentioned in the order dated 02.05.2014 would reveal that the second auction sale notice was successfully carried out and the successful bidder was declared as auction purchaser and a sale certificate was also issued in his favour, but the possession was not handed over to him. The Tribunal entertained the objections raised by the applicants/petitioners against the said auction sale. The Tribunal declared the sale certificate issued in favour of the auction purchaser as non-est being contrary to the direction issued by the Tribunal as well as of the provisions of the SARFAESI Act and the Rules made thereunder. The applicants/petitioners were directed to pay the dues of the bank as per NPA amount declared on 30.09.2009, as per Reserve Bank of India guidelines with simple interest within three months in equal monthly installments. It was further directed that the auction purchaser may get his money along with 9% simple interest and 5% simple penalty on the amount due on borrower which is to be paid by borrower from the date money was received by the bank for the balance auction amount, the bank was directed to pay the interest at the rate of 9% and 5% default as per order. S.A. no. 35/2012 was disposed of in terms of the order dated 02.05.2014, which has been brought on record as Annexure-1 to the reply of counter affidavit filed on behalf of the respondent bank.

A challenge to the order dated 02.05.2014 passed in S.A. No. 35/2012

16. Being aggrieved by the order dated 02.05.2014, the respondent bank preferred an appeal no. R/67 of 2014 before the learned Appellate Tribunal under Section 18 of the SARFAESI Act, 2002.

17. The learned Appellate Tribunal considered the appeal, set aside the orders passed by the Tribunal in S.A. No. 35/2012, and remanded the matter back to the Tribunal for hearing afresh.

18. The order passed by the Appellate Tribunal has been brought on record as Annexure R1/2 to the counter affidavit filed on behalf of the respondent bank in Letters Patent Appeal No. 1496/2013.

19. A perusal of order of the said Appellate Tribunal would show that the learned Appellate Tribunal has expressed its displeasure over the manner in which the Tribunal dealt with S.A. by passing one order after another. The Appellate Tribunal came to a conclusion that the Tribunal had wrongly continued to deal with the S.A. and passed contradictory orders. It was also noticed that the order dated 30.07.2012 passed by the Tribunal in O.A. may be ex parte order against the borrower, but he had not challenged the same by way of appeal. Ultimately, it was held that the Tribunal was not justified in dealing with the S.A. which was disposed of on the basis of various M.As. The S.A. was dealt in violation of the rules covered in the procedure. The learned Appellate Tribunal set aside the impugned order and remanded the case back to the Tribunal to decide the S.A., in accordance with law after giving proper opportunity to the parties. The appellate Tribunal observed that since the impugned order passed in the S.A. is being set aside, the direction to refund the amount deposited by the auction purchaser would also go. Before the Appellate Tribunal the auction purchaser submitted that he was no longer interested in the property since his amount of Rs. 3 crores was lying with the bank without any fruitful purpose. The respondent bank agreed to refund the said amount to the auction purchaser with interest as applicable to fixed deposit receipt from the date it was deposited with the bank to the date of its refund. The factual position as on today is that the S.A. No. 35/2012 is pending before the Tribunal at

Patna.

C.W.J.C. No. 1749 of 2013 giving rise to LPA No. 610 of 2014

20. This writ application was filed before this Court for setting aside ex parte judgment dated 30.07.2012 passed by respondent no. 3 for payment of amount mentioned therein in O.A. No. 31/2012 under Section 19 of the DRT Act, 1993. The petitioners also prayed for declaring that the entire proceeding of O.A. No. 31/2012 initiated on 22.12.2011, after initiation of the proceeding under the SARFAESI Act was without jurisdiction and beyond authority of law as held by this Court in C.W.J.C. No. 8746/2012 in the case of M/s Purnea Cold Storage Vs. State Bank of India and others (Learned Single Judge judgment of this Court). A prayer was also made for restraining the respondents concerned from proceeding further and to give effect in O.A. No. 31/2012 and the certificate issued under Section 19(22) of the DRT Act, 1993.

21. It appears from perusal of the impugned order passed by the learned Single Judge that initially, learned counsel for the petitioners sought to challenge the jurisdiction of the Tribunal in the light of the order passed by learned Single Judge in the case of Purnea Cold Storage, however in view of setting aside of the order passed by the learned Single Judge in the Purnea Cold Storage case by a Division Bench of this Court in LPA No. 1743/2012, the said objection/ground was given up. Learned counsel for the petitioners submitted that the petitioner shall invoke the jurisdiction of the DRT for the recall/review of the judgment. The stand of the respondent bank was that the said order is appealable. The learned Single Judge disposed of the writ application permitting the petitioners to seek remedy as is/are available to them in accordance with law.

22. We are afraid that the petitioners chose to file present Letters Patent Appeal against the order of the learned Single Judge, even though a stand was taken before the learned Single Judge that the petitioners shall invoke the jurisdiction under the DRT Act for recall/review of the judgment dated 30.07.2012. The judgment dated 30.07.2012 has been passed by the Debts Recovery Tribunal in exercise of its power under Section 19 of the DRT Act, 2002. There is a statutory appeal provided against the said order under Section 20 of the DRT Act, therefore, not only the petitioners had remedy in law by way of appeal, the petitioners also accepted the said position and had themselves taken a stand that they would invoke the provisions of the DRT Act. Despite this, learned counsel for the petitioners once again sought to challenge the judgment dated 30.07.2012 passed in O.A. No. 31/2012 on the ground that non-disclosure of the on going SARFAESI proceeding in O.A. No. 31/2012 shall amount to fraud and the certificate of recovery obtained by fraud is a nullity. He has relied upon the judgments of the Hon'ble Supreme Court in the case of **Transcore Vs. Union of India** since reported in **(2008) 1 SCC 125** and in the case **Union of India Vs. Ramesh Gandhi** and argued that the order dated 30.09.2012 in O.A. No. 31/2012 is obtained by fraud. We do not appreciate this change of stand on the part of petitioners-appellants.

23. An issue as to 'fraud' is an issue of fact and a court or Tribunal has got inherent power without reference to any legal provision to recall its order obtained by fraud. A writ court can not go into this issue that too where there are statutory remedies available to an aggrieved party. Any observation on this issue by this court would amount to exercising a power vested in the statutory forum. Under the provisions of the DRT Act itself a certificate debtor has an opportunity to seek correction of certificate amount if wrongly shown du to a clerical or mathematical error. In the case of **Union Bank of India Vs. Satyawali Tandon & Ors** since reported in **AIR 2010 SC 3413;** the Hon'ble Supreme Court has deprecated entertainment of writ application where there is a statutory forum particularly in these kind of matters which involve recovery of public money. We are, therefore, not allowing the applicants to change their stand and refrain from expressing any view because that will make the statutory remedy, if any available to the appellants redundant.

24. The conduct of the petitioners in filing the present Letters Patent Appeal is unworthy of being a *bona fide* litigant, and therefore, while holding that the present Letters Patent Appeal is wholly misconceived and the petitioner has unnecessarily wasted considerable time of the Court, we feel that while dismissing the present Appeal, by way of deterrent measure a cost of Rs. 25000/- (Rupees Twenty Five Thousand) be imposed upon the petitioners for filing a frivolous Letters Patent Appeal and same is accordingly ordered.

C.W.J.C. No. 975 of 2013 giving rise to LPA No. 1364 of 2013

25. C.W.J.C. No. 975/2013 was filed by the petitioners for quashing of the order dated 07.12.2012 passed by the Debts Recovery Tribunal, Patna by which order dated 29.02.2012 passed in S.A. No. 35/2012 was recalled. The petitioners prayed for a writ of mandamus restraining the respondents from proceeding further in the matter and to give effect to order dated 29.02.2012 passed in S.A. No. 35/2012. Further a direction was also sought against the Presiding Officer of the Debts Recovery Tribunal directing him not to travel beyond the provisions of the SARFAESI Act, 2002.

26. Learned counsel for the appellants submitted in course of hearing of the appeal that the DRT Act does not contain any provision for recall of an order and therefore the Presiding Officer, Debts Recovery Tribunal, Patna having already passed the order dated 29.02.2012 disposing of S.A. No. 35/2012 was not justified in recalling the said order. The argument seems unworthy of consideration in the facts of this case. It is an admitted position that there is no provision conferring power upon the Tribunal to recall its own order save and except the power of review to correct the errors apparent on the face of the record. We need not refer the judicial pronouncement on this point.

27. The facts, as revealed, are however clearly indicating that the plea taken by the petitioners/appellants of this case is not a bona fide plea. The petitioners/appellants having deposited the amount with the bank as per order dated 29.02.2012, firstly, filed an application for extension of time, and then, when the bank submitted before the Presiding Officer, Debts Recovery Tribunal on 06.08.2012, that it was not satisfied with the order dated 29.02.2012 and they are going to file an appeal against the said order, the petitioners/appellants themselves took a stand that in such a circumstance the bank should be directed to refund the amount deposited by the petitioners. In fact, the petitioners/appellants did not leave the matter here only, they filed a contempt application by way of M.As. and at one stage the Senior Officer of the bank was called upon by the Presiding Officer when there was some delay in refund of the amount. On the stand taken by the petitioners/appellants, the bank refunded the entire amount vide demand draft drawn in favour of the petitioners/appellants. The same was received by the petitioners/appellants on 03.09.2012, thus it is the petitioners who themselves were a party to the circumstances leading to dilution of the order dated 29.02.2012 and recall thereof later on was a mere empty formality, which was done by the Presiding Officer vide his order dated 07.12.2012, i.e. the order impugned in the present writ application-appeal. The order dated 29.02.2012 had lost its significance and implementation thereof was made redundant due to stand taken by the petitioners/appellants on 06.08.2012. An order, as desired by the applicants/petitioners/appellants, was passed on 06.08.2012 which amounts to review/recall of the order dated 29.02.2012. The said order dated 06.08.2012 having been passed at the instance of the petitioners/appellants, the same was never challenged by them before any competent court of law. Passing of the order dated 07.12.2012, when the money was already refunded to the petitioners/appellants on 03.09.2012 was a mere empty formality. The effect of the order dated 29.02.2012 had already been washed off. Considering the conduct of the petitioners/appellants that they firstly took benefit of the order dated 06.08.2012 and received their money back from the bank and then came forward to challenge a much subsequent order dated 07.12.2012, this Court comes to a conclusion that the petitioners/appellants were only trying to delay the entire SARFAESI proceeding on one ground or the another and even if it is assumed that the order dated 07.12.2012 was illegal, the same is not required to be interfered with at the instance of the petitioners/appellants. It is well settled inlaw that a person cannot be allowed to take benefit of his own wrongs. Having got the order dated 29.02.2012 recalled by virtue of order dated 06.08.2012, the petitioners/appellants have no *locus standi* to seek implementation of the said order dated 29.02.2012 once again.

28. Here, it is worth mentioning that after disposal of the present writ application on 09.09.2013 and during pendency of the present Letters Patent Appeal, the parties participated in fresh hearing and at the instance of the petitioners auction sale in favour of successful bidder was held non-est vide order dated 02.05.2014. On Appeal preferred by the respondent bank, the learned Appellate Tribunal has already set aside the final order dated 02.05.2014 passed by the Tribunal in S.A. No. 35/2012, and has remanded the matter for fresh consideration. The order passed by the Appellate Tribunal has been challenged by the appellants by filing a writ petition being C.W.J.C. No. 4152/2015 and there seems to be an interim order that till further order the Tribunal shall not pass final order in S.A. No. 35/2012.

29. We, therefore, hold that at first instance the writ application itself was thoroughly misconceived and the learned Single Judge has rightly dismissed the writ application for the reasons mentioned in the impugned order.

30. We do not find any illegality or infirmity in the order passed by the learned Single Judge. Further developments during pendency of this Appeal has virtually rendered this writ-appeal infructuous in the eye of law. The Letters Patent Appeal has got no merit and the same is liable to be rejected.

C.W.J.C. No. 3705 of 2013 giving rise to LPA No. 1496 of 2013

31. This writ application was filed by the petitioners/appellants for a direction to the respondent no. 3, the Presiding Officer, Debts Recovery Tribunal, Patna to give effect to its own order dated 13.12.2012 and also for a mandamus restraining the respondents to proceed with the sale of the properties of the petitioners/appellants which was published in Hindi Daily "Dainik Jagran" dated 02.02.2013 in pursuance of order dated 11.01.2013 hereinabove. Further, a direction to respondent no. 3 to exercise his power under the SARFAESI Act, 2002 has again been sought in the present writ application. In view of the developments which have been taken place during the pendency of the present Letters Patent Appeal, this Letters Patent Appeal has to be dismissed without going much into the details. It is a matter of record that vide order dated 13.11.2012, the Debts Recovery Tribunal allowed time to the bank and fixed the matter for 07.01.2013. Ultimately S.A. No. 35/2012 was disposed of vide order dated 02.05.2014 by setting aside the auction sale which had taken pursuant to the advertisement of public sale notice published in Hindi Daily "Dainik Jagran" on 02.02.2013, as has been noted hereinabove. The auction purchaser in the said case has already taken refund of his money due to the intervening circumstances and the Appellate Tribunal having recorded the stand of the auction purchaser directed the bank to refund the amount with the interest rate applicable on fixed deposits. Thus, the issues arising out of the order dated 13.12.2012 and the public auction sale notice dated 02.02.2013 do not survive for any adjudication and the prayer made in C.W.J.C. No. 3705/2013 has become infructuous. Even otherwise, we do not find any illegality or infirmity in the order passed by the learned Single Judge in the connected writ application.

32. We have noticed hereinabove how the petitioners/appellants have indulged in delaying the entire SARFAESI proceeding after taking benefit of the order of refund passed by the Tribunal at their instance. The recall order is virtually the order dated 06.08.2012, which is to the advantage of the appellants, however, the same was never challenged. If there is no provision for recall of an order, the order dated 06.08.2012, by which the Debts Recovery Tribunal directed refund of the amount to the petitioners/appellants was not correct. The bank had informed that it was not satisfied with the order dated 29.02.2012 and was going in appeal, thus the Tribunal should have stuck to its order. The appellants could have been better advised to defend the order dated 29.02.2012 and the bank should have been allowed to prefer appeal. Instead, the appellants got an order of refund and actually received back the entire amount from the bank. They took benefit of the order dated 06.08.2012. Remedy under Article 226 of the Constitution of India is meant for the citizen who approaches this court with clean hands. We are constrained to hold that the petitioners/appellants have not shown a good conduct and have utilized the process of the court and Tribunal to their advantage at the cost of withholdment/non-payment of public money in form of outstanding dues lying with the appellants. The Debts Recovery Tribunal constituted under the provisions of the DRT Act has been conferred with certain powers as stated under Section 22 of the DRT Act, which includes power of reviewing its decisions, however Rule 5-A of the DRT (procedure) Rules, 1993 clearly provides that any party treating itself aggrieved by an order made by the Tribunal on account of some mistake of error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

33. We are afraid the Debts Recovery Tribunal kept on entertaining miscellaneous applications one after another and reviewed its decisions on merit as and when and in whatever way it suited the petitioners/appellants. We, therefore, strongly deprecate this approach of the Tribunal and put a word of 'caution' for henceforth. The Debts Recovery Tribunal shall not entertain a miscellaneous application for reviewing it’s decision or recall of an order passed by it, affecting merit of the case. The application should be in conformity with the condition mentioned in Rule 5-A and when an error apparent on the face of record is found. As the Appellate Tribunal has remanded the S.A. No. 35/2012 and a writ application is said to be pending against that, at this stage, we refrain ourselves on commenting upon the Appellate Tribunal’s order.

34. In the result, all the three Letters Patent Appeals are dismissed with the cost of Rs. 25,000/- (Rupees Twenty Five Thousand) as mentioned hereinabove. The cost shall be deposited by the appellants with the Bihar Legal Services Authority, Patna within a period of four weeks from today and proof thereof be submitted with the Registry of this Court.

(Rajeev Ranjan Prasad, J.)

I agree.
(Ajay Kumar Tripathi, J.)

Rajeev/-

(Ajay Kumar Tripathi, J.)

AFR/NAFR	AFR
CAV DATE	03.07.2017
Uploading Date	11.07.2017
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