IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2218 of 2015

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Ram Ayodhaya Dubey Son of Late Vidya Dubey, resident of village/Mohalla - Laskariganj, P.O + P.S - Sasaram, District - Rohtas.

.... Petitioner/s

Versus

1. The State Bank of India through its Zonal Manager, Gandhi Maidan, Patna, Bihar.
2. The Regional manager, the State Bank of India, Regional Officer, Harkhen Kumar Jain,Trust Building Hariji Hata, Arah, District- Bhojpur. \
3. The Branch Manager, State Bank of India, Sasaram, Branch Code- 00177, District - Rohtas. .... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramchandra Singh, Adv.

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-02-2017

Heard learned counsel for the petitioner and learned counsel for the State Bank of India.

In the present case, the petitioner is challenging the action of the Bank for charging the interest at the rate of 12.45% *per annum* over the amount of Rs.5,00,000/- (Rupees five lakh), which the petitioner has taken as loan. The petitioner had applied for loan of Rs. 5,00,000/- for the purposes of construction of his house after giving collateral security and the Bank has found it feasible, has given the loan of Rs. 5,00,000/- to the petitioner.

As per the statement of the petitioner, prior to November 2013, he had already deposited Rs. 73,500/-, thereafter, he deposited Rs. 10,000/- on 09.12.2013, subsequently, he also deposited

Rs.50,000/-, which has been mentioned in paragraph 8 of this petition.

The Bank has taken possession of the constructed house of the petitioner and sealed it, but when the petitioner has paid Rs.50,000/- on 18.02.2014, seal of the house was removed and the petitioner was allowed to use his constructed house.

As per the Bank, as the petitioner did not pay the amount in terms of the instalment fixed at the time of allotment of the loan, his account was declared N.P.A and thereafter, the Bank initiated the proceeding and issued the notice to the petitioner under section 13 (2) of the SARFAESI Act, 2002 for payment of Rs. 6,06,557/- plus interest within 60 days. When the petitioner did not pay the said amount, notice under section 13 (4) of the SARFAESI Act was issued and the possession of the house was taken. Thereafter, the petitioner deposited Rs. 50,000/- and on deposit of the same, the house was unsealed. Now, the petitioner is challenging the manner the interest rate has been applied in his case, as the counsel for the petitioner submits that there cannot be an interest at the rate of 12.45% *per annum, as* in terms of agreement, the interest has to be levied at the rate of 8% *per annum* and without giving any notice and without any information, the interest has been enhanced to 12.45% *per annum* and also charged the penalty on the aforesaid interest.

On the direction of this Court, the Bank has filed the supplementary counter affidavit in which the Bank has mentioned, in what manner, the interest has been charged on the loan amount of petitioner at different rates and different time i.e. the interest 8%, 9% and 12% as per rate provided from time to time. In order to understand gamut issue raised, it will be proper to quote paragraphs 6 and 7 of the supplementary counter affidavit, which are as follows:-

> **Para 6 "** That in light of the above insertion in the Bank's Circular as well as the Arrangement letter, it would transpire from perusal of the statement of Account, that the Bank charged interest @ 8% p.a. in the 1st anniversary i.e. from 26th February 2010 to 31st January 2011. In the second anniversary, the Bank increased the rate of interest from 8% to 9% which they charged it from 26th February 2011 to 22nd January 2013 i.e. for two years.
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> **Para-7** That after completion of three years from the date of disbursement of loan, the Bank increased the rate of interest from 9% to 13,450% but later the Bank reduced it from 13.450% to 12.75% on 19th June 2014 but, on the same day, it was reduced it from 12.75% to 12.450%. Having further increase, it was increased from 12.45% to 12.75%. Thus, obtaining this situation, the

Bank has been charging interest @ 12.75% p.a.. Hence, the Bank has been charging the interest as per the Bank's circular being read with the Arrangement law and so no illegality is being done by the Bank in charging the interest.

It has further been stated that the Bank has quoted the Scheme, if the petitioner wants to avail the present Circular of the Bank, he will have to file an application along with 0.50% of outstanding dues, which comes to Rs. 5,000/-, in that circumstances, the Bank would charge the interest flatly at 9%. It will be proper to understand the manner of the interest, the Bank has charged, which has been dealt with in clause 5-b of the Circular dated 31/03/2016 and agreement, which provides that the Bank will have sole discretion to vary the loan interest in terms of the Circular issued by the Bank from time to time, in such circumstances, when the Bank is coming forward with the Scheme, it will be proper for the petitioner if so advised, may file an application along with the service tax, which they have fixed Rs. 5,000/-. If the petitioner files such application then the Bank will be obliged to grant the benefit of the present Circular and the petitioner will be obliged to pay the same/amount. The Bank is directed to give details of the amount after applying the present interest and the petitioner would liquidate the outstanding dues, which is lying against him.

With the above observation/direction, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.02.2017
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