

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.863 of 2016
IN
Civil Writ Jurisdiction Case No. 9628 of 2014**

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Kamla Devi, Wife of Ram Ishwar Mahto, resident of Village Jaipur Dhanuki, P.O. Bari Pahari, P.S. Agamkuan, Distt. Patna.

.... Appellant/s

Versus

1. The Union of India through the Secretary, Finance Department, Govt. of India, New Delhi.
2. The Registrar, Debts Recovery Tribunal Bench Patna through the Union of India, New Delhi.
3. The Recovery Officer, Debts Recovery Tribunal, Bench Patna through the Union of India New Delhi.
4. The Chairman Bank of India having its office at Star House, C-5, 'G' Block, Bandra Kurda Complex, Bandra East, Mumbai- 400051.
5. The Senior Branch Manager, Asset Recovery Branch, Chankaya Tower, Bir Chand Patel Marg, P.S. Sachivalya Distt. Patna.
6. The Zonal Manger, Bank of India having its office at Chanakaya Tower, Bir Chand Patel Marg, P.S- Sachivalaya, Distt- Patna.
7. The Branch Manager, Bank of India Branch Rajendra Nagar, situated at Mohalla Rajendra Nagar Colony, P.S. Kadamkuan, Distt. Patna.
8. M/s Shree Ganapati Trading, Diwan Mohalla, Tarini Prasad Lane , Patna City, Patna- 800008 through its proprietir Shri Ashok Chandra Dubey, S/o Radhe Raman Dubey.
9. M/s Shree Balaji Industries, Opp. New Gulzarbagh Station Gulzarbagh, Patna- 800007, through its proprietor Shri Ashok Chandra Dubey, S/o Radhe Raman Dubey.
10. Shri Ashok Chandra Dubey @ Prakash Chandra Dubey @ Guddu Dubey Son of Shri Radhe Raman Dubey Resident of Dewan Mohalla, Tarini Prasad Lane, Paschim Darwaza, Patna City, P.S. Khajekalan, Distt. Patna.
11. Shri Radhe Raman Dubey, Son of Not known Resident of Dewan Mohalla, Tarini Prasad Lane, Paschim Darwaza, Patna City, P.S. Khajekalan, Distt. Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Deepak Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-11-2017



Seeking exception to an order passed by the learned Writ Court on 08.02.2016 in CWJC No. 9628 of 2014 this appeal has been filed by the appellant under Clause 10 of the Letters Patent.

The petitioner had filed the writ petition in question and sought quashing of an order passed by the Debts Recovery Tribunal, Patna, on 02.02.2012 in OA No. 08 of 2010 and OA No. 09 of 2010. The learned Writ Court found that the orders passed by the Tribunal are amenable through statutory provision of appeal available under section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and, therefore, the writ petition was not maintainable.

However, it is the case of the petitioner before us that the petitioner has been held liable on account of the fact that she is shown to have been a guarantor having stood security to the loan. However, the learned Single Bench refers to certain averments made by the Bank to say that the Title Deed was fraudulently mortgaged and the thumb impression of the petitioner was found to be not correct by the Bank itself. Learned counsel invites our attention to the averments made in this regard by the Bank in paragraph-9 of the counter affidavit. However, in paragraphs- 9 to 12 the Bank goes to clarify the position in the following manner:-



“9. That it is respectfully stated that upon her information, bank has conducted a scientific investigation through Director, Finger print Bureau, CID, Bihar and by its report it was confirmed that the thumb impression in Bank records are not that of Mrs Kamla Devi as compared with the admitted thumb impression in the title document No.10110 dated 13.01.1984 of Mrs. Kamla Devi.

“10. That the Proprietor Ashok Chandra Dubey in Commission with his father Shri Radhey Raman Dubey (his father) and another lady who had visited the bank for executing loan documents/equitable mortgage as his wife Smt. Kamla Devi. All the above said persons are jointly and severally responsible and has facilitated impersonation before the bank officials with the purpose of defrauding the bank so as to achieve wrongful gain out of that.

“11. That the bank requested the office in charge Kadamkuan P.S. on 21.09.2011 to lodge criminal complaint against borrower Ashok Chandra Dubey his father Shri Radey Raman Dubey and Ram Ishwar Mahto husband of actual Kamla Devi and the lady who impersonated as Kamla Devi.

“12. That the Title Suit No.22/2008 was decreed in favour of the appellant on 21.02.2011 directing the respondent bank to return the original title deeds to her.”

Keeping in view the aforesaid aspect of the matter and considering the fact that the learned Writ Court has only relegated to



the petitioner to take recourse to the statutory remedy available we are of the considered view that all these issues are issues of fact and to which certain enquiries are necessary, it would be more appropriate for the appellant authority to go into these factual aspects of the matter to come to a conclusion.

We find no error in the order passed by the learned Writ Court warranting reconsideration. The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
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