

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10931 of 2013

=====

Lalita Sinha, wife of Shri Rajni Kant Verma, Resident of Mauza Jaipur, P.S.-
Sherghaty, District-Gaya

.... Petitioner/s

Versus

1. Bank of Baroda, a Scheduled Bank having its Head Office at Mandavi, Baroda and one of its Branches at Alipur Branch, Town and District Gaya
2. The Branch Manager, Bank of Baroda, Alipur Branch, Town and District of Gaya
3. The Debt Recovery Tribunal, Bihar, Patna having its Office at 34, Bank Road, Opp. New Police Line, Lodipur, Patna through its Registrar
4. M/S Ashok Glass, a Proprietary concern through its proprietor Narendra Kumar Agrawal, Bhagirath Marg, Laheria Tola, P.O., P.S. Town and District of Gaya
5. Prem Saria Agarwal @ Sarita Agrawal, wife of Late Namit Agrawal, Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya
6. Manju Agrawal, wife of Narendra Kumar Agrawal, Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya
7. Alya Agrawal (Minor) daughter of Namit Agrawal, under the guardianship of his mother Smt. Prem Sarita Agrawal Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya
8. Aryan Agrawal (Minor) son of Namit Agrawal, under the guardianship of his mother Smt. Prem Sarita Agrawal Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya
9. Gunjan Kumari, widow of Late Sagar Kumar Agrawal, Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya
10. Master Syaneyas, S/O Late Sagar Kumar Agrawal, under the guardianship of Smt. Gunjan Kumari Bhagirath Marg, Laheria Tola, P.O., P.S., Town and District of Gaya

.... Respondent/s

=====

Appearance :

For the Petitioner : Mr. Anshuman Singh, Advocate
For the Respondent-Bank : Mr. Sanjeev Shankar, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 20-06-2017

Heard learned counsel for the petitioner and the learned
counsel appearing on behalf of the respondent-Bank.

2. In the present writ application, the petitioner seeks to
challenge the order dated 01.11.2012 passed in O.A. No.200/2011



by the Presiding Officer, Debts Recovery Tribunal, Patna, as contained in Annexure 7, whereby the Presiding Officer of the Tribunal has rejected the plea taken in the written statement filed by the petitioner and held that the loan amount due against M/s Ashok Glass would be recoverable from the sale of the land of the petitioner. A further prayer has been made by the petitioner for a declaration that the so-called mortgaged document created in favour of the Bank is forged and fabricated and, therefore, does not bind the present petitioner.

3. Learned counsel appearing on behalf of the respondent-Bank has made a preliminary objection, in support of which he has referred to several judgments of the Apex Court, particularly *(2010) 8 SCC 110 [United Bank of India v. Satyawati Tondon]*, wherein the Court has held that the writ Court would not be ordinarily available to the petitioner without exhausting the alternative remedy as provided under the statutory provisions of the Debts Recovery Tribunal Act. Learned counsel has particularly referred to Section 18 of the SARFAESI Act, 2002 and Sections 20 and 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which expressly bar the Writ jurisdiction from entertaining such an application before this Court. He has also referred to a judgment of the Apex Court, reported in *(2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev v. State of*



Maharashtra), which clearly shows that the remedy under Articles 226 and 227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. He thus submits that in view of the consistent view of the Courts that alternative remedy is available to the petitioner against the order of Recovery Officer, this Court would not ordinarily venture to interfere in the writ proceedings against such an order passed by the Debts Recovery Tribunal.

A subsequent judgment cited by the respondent-Bank is *(2013)10 SCC 652 [T.P. Vishnu Kumar. v. Canara Bank]*, the relevant paragraphs of which are paragraphs 6, 7, 8, 9, 10 and 11, which are reproduced hereunder:

"6. *The Debt Recovery Tribunals in the country are established for expeditious adjudication and recovery of debts due to banks and financial institutions. It was noticed that banks and financial institutions have been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and therefore the actual need was felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. It was noticed that on 30.9.1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs*



5622 crores in dues of public sector banks and about 391 crores of dues of the financial institutions. The locking up of such huge amount of money in litigation, it was noticed, prevents proper utilisation and recycling of the funds for the development of the country. It is in the above scenario, Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993). The Act itself provides the mechanism to an aggrieved party, if he is dissatisfied with an order passed by the Tribunal.

7. Section 20 of the Act says that:

"20. Appeal to the Appellate Tribunal.—

(1) ... any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter."

8. Section 18 of the Act deals with bar of jurisdiction which says:

"18. Bar of jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

9. Powers, which were conferred on the civil court, now stand conferred on a Tribunal under Section 17 of the Act thereby it can deal with applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. We are of the view that



when a specific remedy is made available to the aggrieved party under Section 20 of the Act, the learned Single Judge of the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, was not justified in interfering with the orders passed by the Debts Recovery Tribunal.

10. *Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications.*

11. *A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness or otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ court, it will only defeat the object and purpose of establishing such Tribunal.*



We have already noticed that due to the intervention of the writ court, the matter got delayed for four years defeating the very purpose and object of the Act. We, therefore, find no merit in these petitions and the same are dismissed."

4. Learned counsel for the petitioner has sought to answer the said preliminary objection by stating that the entire case of the Bank is based on fraud as the petitioner has never signed on the loan document nor she was a loanee nor she had entered into an agreement deed with the respondent-Bank and the document so pledged were forged, which has been perpetuated against her. Learned counsel for the petitioner has referred to a judgment of the Supreme Court in the case of *A.V. Papayya Sastry v. Govt. of A.P.*, reported in *(2007) 4 SCC 221*, wherein he has referred to the concept of fraud which goes to the root of the matter vitiating the order.

5. A further attempt has been made by the learned counsel for the petitioner that brought the attention of this Court to Annexure 10, which is a letter written by the Branch Manager of Gaya Branch of the respondent-Bank, wherein a statement has been made that the picture on the mortgage deed does not match with the face of the writ petitioner, which is wholly erroneous and uncalled for as it was never the Branch which had issued the loan



in favour of the borrower and, therefore, the concerned Branch Manager could not have access to the original loan document so as to enable him to make such a comment in his letter dated 19.01.2013.

6. It thus proves conclusively that the petitioner has herself been engaged in perpetuating the wrong and trying to create a document in her favour, which could not be appreciated by this Court under any circumstances.

7. It is thus very much clear that the petitioner has neither exhausted an efficacious alternative remedy available to her under the Act nor has she come to this Court with clean hands. As such, the present writ application is devoid of merit and disentitles her to be given any relief under the Writ jurisdiction.

8. The writ application, thus, stands dismissed. No costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.07.2017
Transmission Date	N.A.

