IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16909 of 2013

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1. Chairman & Managing Director, Central Bank of India, Central Office, Chandramukhi, Nariman Point, Mumbai, Maharashtra – 400021.
2. Zonal Manager, Central Bank of India, Pawapuri Vihar, Bhagwanpur, Muzaffarpur, Bihar – 842001.
3. Regional Manager, Central Bank of India, Speaker Chowk, Post Box No. 58, District Muzaffarpur – 842001.
4. Branch Manager, Central Bank of India, Amwara Chowk, P.O. Bakhra Saraiya, District Muzaffarpur , Bihar – 843101.

.... Petitioner/s

Versus

1. M/S Ram Pravesh Rai Estate Pvt. Ltd., A Company Registered Under The Companies Act, 1956 Having Its Registered Office At Goharua House, Shrinagar, Siwan, District Siwan At Present 19, Patliputra Colony, P.S. Patliputra, Patna - 800013 - Through Its Managing Director Sri Ram Pravesh Rai, Son of Sri Kamla Rai, By Profession Government Contractor.
2. Sri Rajesh Kumar Singh, Alias Munna Son of Late Paras Nath Singh, Resident of 60/1, Mandel Road, Kolkata, Permanent Address - Village Baniya, P.O. Chakaram, P.S. Saraiya, District - Muzaffarpur - at present resident of 126, Patliputra Colony, P.S. Patliputra, Patna – 800013.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N. Chateerjee, Advocate

For the Respondent/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-01-2018

This application has been filed to set aside the order dated 10.05.2013 passed by the learned Sub Judge-IV, Muzaffarpur in Money Suit No. 9 of 2010. The learned Sub Judge, as per impugned order, refused to transfer Money Suit No. 9 of 2010 to the Debts Recovery Tribunal.

2. Heard learned counsels for the petitioners as well as the respondents.

3. The respondents filed Money Suit No. 9 of 2010 before the Court below for a decree of Rs.21,36,36,754/- against the petitioners besides damages and compensation to the tune of Rs.1,44,03,29,214.18 with 18% interest *per annum*. The petitioners filed a petition before the court below praying therein to transfer the Money Suit No. 9 of 2010 to the Debts Recovery Tribunal for its disposal. The said petition was refused. The petitioners have challenged the said order.

4. Learned counsel for the petitioners submitted that the petitioners have filed O.A. No. 122 of 2011 before the Debts Recovery Tribunal, Bihar, Patna against the respondents for recovery of amount to the tune of Rs.33161265/-. The respondents appeared before the Tribunal and filed written statement with counter claim. It has been submitted that the subject matter of both the cases relate to recovery of money and so in order to avoid conflicting judgment, the Money Suit No. 9 of 2010 pending before Sub Judge Court is required to be heard and disposed by the Debts Recovery Tribunal.

5. The learned counsel for the respondents on the other hand submits that the learned Sub Judge has neither jurisdiction to transfer the said case to the Debts Recovery Tribunal nor the Debts Recovery Tribunal has jurisdiction to hear the money suit filed by the respondent who is a private person. The Claim Tribunal has been constituted only for recovery of debt expeditiously filed at the instance of Bank/financial institution and so the court below has not committed any error in rejecting the petition filed by the petitioners.

6. After hearing both sides and perusing the documents, I find that the respondents being a Firm had opened an account in their name in Central Bank of India of its Ambara Branch, Bakhra bearing O.D. Account No. 155. It is alleged that the petitioners in collusion with others fraudulently and unauthorisedly withdrew huge amount from the said account of the respondents. The petitioners made payment against the 59 unsigned cheques of the respondents account. The respondents on getting knowledge about unauthorized and illegal withdrawal of huge amount, filed two criminal cases, and one civil case against the petitioners (Bank) and other accuseds. The respondents further filed Money Suit No. 9 of 2010 against all concerned on the file of Sub Judge, Muzaffarpur. After filing of criminal cases and money suit, the Bank also filed O.A. No. 122 of 2011 before the Debts Recovery Tribunal for recovery of amount with respect to the O.D. Account of respondent. After examining relevant provisions of the Recovery of Debts and Bankruptcy Act, 1993 I find that the Debts Recovery Tribunal has been established for recovery of debt for the Bank and Financial

Institution. According to section 19 of the Act, only a Bank or a financial institution has right to recover any debt from any person under the Debts Recovery Tribunal Act. The provision to transfer the pending cases to the Debt Recovery Tribunal has been made in section 31 of the Act. Section 31 of the Recovery of Debts and Bankruptcy Act, 1993 which reads as follows:-

> "**31. Transfer of pending cases**.-(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:
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> Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court:
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> [provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 (39 of 2002), shall be continued and noting contained in this section shall apply to such proceedings.]

(2) Where any suit or other proceeding stands transferred from any Court to a Tribunal under sub-section (1),-

(a) the Court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such transfer or from any earlier stage [***] as the Tribunal may deem fit."

7. The above provision is explicit as regards transfer of cases to the Debt Recovery Tribunal. Only the cases which were pending before the Court immediately before the date of establishing of a Tribunal under this Act, were transferred to the Tribunal. The respondent being a private person has no right to file any case before the Debt Recovery Tribunal. The respondents have filed the said money suit against the Bank on the allegation that the Bank and its official had fraudulently withdrawn/made payment to unauthorized person against unsigned cheques. The Debts Recovery Tribunal has no jurisdiction to decide the case of fraudulent transaction. The Tribunal has been constituted only for recovery of debt by the Bank/financial institution from anybody. The learned Sub Judge in view of above fact the petition for transferring the case to the Debts Recovery Tribunal has rightly been rejected by the Court below. I do not find that the Court below has committed any error in rejecting the petition of the petitioners as per impugned order.

8. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06/02/2018
Transmission Date	