**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.7605 of 2016**

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1. Pankaj Kumar Nirala S/o - Shri Ganesh Prasad Mahto resident of P.O. - Murliganj, Old Post Office Road, Hat Bazar, District - Madhepura - 852122 (Bihar).
2. M/S Murliganj Cold Storage Pvt. Ltd., represented through its Proprietor-cum-Managing Director, Ward No. 1 , Kashipur, Murliganj, District - Madhepura - 852122(Bihar).

... ... Petitioner/s

Versus

1. The Chief Manager, U C O Bank, Fraser Road, Jeewan Prakash, L.I.C. Building, Patna - 800001.
2. The Authorized Officer, UCO Bank, Fraser Road, Jeewan Prakash, L.I.C. Building, Patna - 800001.
3. The Recovery Officer, Debt Recovery Tribunal, Patna.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. S.A. Narain, Sr. Adv.
Mr. S.P. Srivastava, Adv.
Miss. Anu Priyadarshini, Adv.

For the Respondent/s : Mr. Sheela Sharma, Adv.
Mr. Shivendra Kr. Roy, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**
**ORAL JUDGMENT**
**Date : 17-09-2018**

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the order dated 27.11.2015 (Annexure-8) by which the warrant of arrest has been issued.

In the present case, the fact, in detail, is not required to be mentioned in this order. The Promoter has decided to establish a cold storage in the name and style of M/s Murliganj Cold Storage Pvt. Ltd., in pursuance thereof, the Government of India has given subsidy of Rs. 50 lacs, out of that, Rs. 25,00,000/- has already been received and kept in a separate account of the UCO Bank and, the Bank sanctioned term loan of Rs. 126.60 lacs. The claim of the petitioner is that on account of devastating flood, their business crippled, failed to make payment to the Bank and the account was declared N.P.A.

The petitioner had filed an application for restructuring of the loan which remained pending, compelled the petitioner to approach this Court in C.W.J.C. No. 4079 of 2010 which has finally been disposed of, the order shows the Court has arrived to a finding that the loan account has wrongly been declared Non-Profitable Asset (N.P.A.) but, directed to consider for restructuring the loan by the Bank and, till decision of restructuring is done, no coercive step will be taken. Ultimately, the proposal for restructuring was rejected which is apparently clear from the order dated 15.6.2013 (Annexure-2) and the O.A. application has been filed by the Bank for recovery of the loan amount which was registered as OA No. 144 of 2013 and D.R.T.A. (Tribunal) has finally passed the order and issued certificate for Rs. 3,99,46,578/- and further pendentelite loan interest.

Before the Recovery Officer, the case was registered as R.P. No. 33 of 2014 and, while the matter was pending, the local unit of the Bank and the petitioner promoter has filed a compromise petition for settling the entire dues for Rs. 1 crore 68 lacks but, it remained pending and it has not been materialized.

Learned counsel for the petitioner has drawn attention of this Court towards different orders passed by the Recovery Officer like the order dated 28.11.2014 and 1.12.2014, argued that the settlement of payment of loan amount has not been finally decided by the Bank as compromise petition prescribing the terms and conditions of settlement has remained under consideration before the higher authority of the Bank which is reflective from the order of the Recovery Officer itself. Further submitted that the warrant of arrest has illegally been issued for execution of the certificate amount in terms of Section 25 of the Recovery of Debts and Bankruptcy Act, 1993.

Learned counsel for the petitioner submits that till the Recovery Officer takes a final decision on the compromise, the order of warrant of arrest should not have been passed by the Recovery Officer as it is against the spirit of the High Court's order.

Per contra, learned counsel for the Bank has submitted that the proposal for re-scheduling of the loan amount has already been rejected and nothing survives with regard to re-schedulement of the loan and that has not been challenged by the petitioner. So, this matter is not under consideration before this Court.

In the present case, the primal question remains to be answer, if the order has been passed by the Tribunal and for its execution, the warrant of arrest has been issued which is one of the mode of execution of the certificate, in such circumstances, if the petitioner has a grievance, he can approach to the Tribunal raising all the points for consideration.

One thing is very much clear in the present case as it appears that with regard to compromise, which has been tentatively entered into by the local authority but, is subject to final approval of the higher authority is still pending consideration. It is apparent that this order has been passed on 28.11.2014 and warrant of arrest has been issued after lapse of about one year, the question of status of compromise is not under consideration before this Court, as the petitioner has only challenged the warrant of arrest and tried to persuade this Court that as the matter with regard to compromise is pending before the higher authority, so it should be kept in abeyance and at the same time, the petitioner has also submitted that he has deposited Rs. 1,67,00,000/-, this Court is not deciding the issue whether the compromise is acceptable or not or whether the recovery officer has legally passed the order or not but, only question remains for consideration in the present case that this order of warrant of arrest could be challenged before the Tribunal which is the appellate authority as Section 30 of the Act itself prescribes in a specific manner and mode, notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. So, the words start with non-obstinate clause itself makes it very affirmatory and mandatory which is substantiated of the order passed in the case of Satyawati Tandon [United Bank of India Vs. Satyawati Tondon reported in 2010 (8) SCC 110 makes it very clear that when the provision of appeal is there, in such circumstances, the Court should refuse to entertain the writ application and the party should be asked to exhaust the remedy as is available under the statutory provision. As the provision starts with non-obstantive clause makes it mandatory and the order is appelable in nature.

In such circumstances, this Court is not giving any opinion on the merit of the case. If the petitioner files an appeal within a period of 20 days from today, the warrant of arrest will remain under suspension further for four weeks.

In the meantime, the petitioner would be at liberty to approach the Tribunal for interim relief. The interim protection will remain in force during aforesaid period only.

This writ application is, accordingly, disposed of.

**(Shivaji Pandey, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 20.09.2018 |
| **Transmission Date** | |