

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1309 of 2018

In

Civil Writ Jurisdiction Case No.8190 of 2010

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Surendra Kumar Pandey @ Surendra Pandey Son of Shri Baliram Pandey At present residing at Transport Nagar, Near N.R.L. Petrol Pump, P.S. Kumhrar, District - Patna – 800020 (Certificate Debtor No. 2).

Petitioner/ Appellant

Versus

1. Central Bank of India through its Branch Manager, Muradpur Branch P.O. Bankipur P.S. Pirbahore District - Patna - 800004 (Decree Holder).
2. Vidya Sharma wife of Shri Ramadhar Sharma resident of Bankmen's Colony, Chitragupta Nagar P.S. Patrakar Nagar District Patna – 800020 (Certificate Debtor No. 3).
3. The Presiding Officer, Debt Recovery Tribunal, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 1310 of 2018

In

Civil Writ Jurisdiction Case No.6295 of 2010

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Vidya Sharma @ Vidya Devi W/o Sri Ramadhar Sharma resident of Bankmen's Colony, Chitragupta Nagar P.S. Patrakar Nagar District Patna - 800020.

Petitioner/ Appellant

Versus

1. Central Bank of India through its Branch Manager, Muradpur Branch P.O. Bankipur P.S. Pirbahore District - Patna - 800004 (Decree holder).
2. M/S Madhu Pharma & Comp. Bihari Sao Lane, P.S. Pirbahore, District Patna - 800004 (Certificate Debtor No. 1).
3. Sri S.K. Pandey, Proprietor of M/S Madhu Pharma Comp, Bihari Sao Lane, P.S. Pirbahore, District Patna - 800004.
4. The Presiding Officer, Debt Recovery Tribunal, Patna (at present situated at Revenue Building Ashiana Digha Road, Rajiv Nagar P.S. District Patna.

Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Binod Bihari Singh
For the Respondent-Bank	:	Mr. Ajay Kumar Sinha
		Ms. Manju Jha

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2018

Heard Shri Binod Bihari Singh, learned counsel for the appellants and Shri Ajay Kumar Sinha, learned counsel for the Central Bank of India.

Neither the facts nor the issues are in dispute inasmuch as learned counsel for the appellants has urged that the finding as recorded in paragraph-7 by the learned Single Judge is causing prejudice to the appellants inasmuch as according to him the execution could not have proceeded in the absence of the original documents on record. He has invited the attention of the Court to the documents filed on with the records of the writ petition to demonstrate the same and substantiate the submissions.

The finding recorded by the learned Single Judge in paragraph-7 is as follows:-

“7. As regards the submission of the petitioners that neither the order dated 29.07.1995 nor the consequential decree were on the record of the DRT, in absence of which it could not have proceeded in the matter, this Court by its order dated 13.04.2010 passed in C.W.J.C. No. 6295 of 2010 called for the original record of Execution (O.A.) Case No. 21 of 2006 from the DRT which was duly received. On going through the record, I find that the order dated 29.07.1995 in original is found duly attached with the



application under Section 31(A) of the Act filed by the Bank. The said submission is therefore without substance and the DRT has rightly entertained the application of the Bank."

We have perused the records of the writ petitions and have also heard the submissions as well as the issue raised in these appeals.

Suffice it to say that the proceedings before this Court are in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The writ jurisdiction therefore, cannot be tied down nor any relief can be claimed as a matter of right unless substantial injustice or miscarriage of justice has been caused or otherwise there is a constitutional violation or violation of statutory right or fundamental rights guaranteed under the Constitution.

Writ being a matter of discretion, we find that the learned Single Judge has declined to exercise jurisdiction on the ground of any technicalities.

We do not find any such error in the conclusion so drawn by the learned Single Judge keeping in view the fact that for almost 20 years the order dated 29th July, 1995 had been allowed to survive.

Consequently, in the wake of the aforesaid fact that the



original order dated 29th July, 1995 is on record, we are not inclined to entertain these appeals. The same are consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

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CAV DATE	NA
Uploading Date	
Transmission Date	

