IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6295 of 2010

Vidya Sharma wife of Sri Ramadhar Sharma, Resident of Bankmen's Colony, Chitragupta Nagar, P.S. Patrakar Nagar, Distt.- Patna-800020 (Certificate Debtor No.3)

.... Petitioner

Versus

1. Central Bank of India through its Branch Manager Muradpur Branch, P.O.- Bankipur, P.S. Pirbahore, Distt.- Patna- 800004 (Decree Holder)
2. M/s Madhu Pharma & Comp. Bihari Sao Lane, P.S. Pirbahore, Distt.- Patna- 800004 (Certificate Debtor No.1)
3. Sri S.K. Pandey, Proprietor of M/s Madhu Pharma & Comp. Bihari Sao Lane, P.S. Pirbahore, Distt.- Patna-800004 (Certificate Debtor No.2)
4. The Presiding Officer, Debt Recovery Tribunal, Patna

... . Respondents

with

Civil Writ Jurisdiction Case No. 8190 of 2010

Surendra Kumar Pandey, S/O Sri 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

Versus

1. Central Bank of India through its Branch Manager, Muradpur Branch, P.O.- Bankipur, P.S.-Pirbahore, bDistrict-Patna 800004 (Decree Holder).
2. Vidya Sharma, W/O Sri Ramadhar Sharma, R/O Bankmen's Colony, Chitragupta Nagar, P.S.- Patrakarnagar,Patna-800020 (Certificate Debtor No. 3)
3. The Presiding Officer, Debt. Recovery Tribunal, Patna.

.... Respondents

Appearance :

(In CWJC No.6295 of 2010)

For the Petitioner : Mr. Binod Bihari Singh
Mr. Abhay Kumar Roy, Advocates.

For the Respondents : Mr. Ajay Kumar Sinha, Advocate.

(In CWJC No.8190 of 2010)

For the Petitioner : Mr. Binod Bihari Singh
Mr. Abhay Kumar Roy
Mr. Sanjay Kumar Jha
Dr. Rajesh Kumar Singh, Advocates.

For the Respondents : Mr. Ajay Kumar Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-08-2018

These two writ petitions are interconnected and hence taken up for disposal together with the consent of parties, and involve a common prayer for setting aside the order dated 03.08.2009 passed in Execution (O.A.) Case No. 21 of 2006 (Central Bank of India, Branch at Muradpur Vs. M/s Madhu Pharma & Com. and others) as well as the consequential recovery certificate dated 03.08.2009 prepared and issued by the Presiding Officer, Debts Recovery Tribunal, Patna as concerns the petitioners respectively.

2. The short material facts involved in these writ petitions according to the petitioners are that Smt. Vidya Sharma (petitioner of C.W.J.C. No. 6295 of 2010) created an equitable mortgage in favour of Central Bank of India, Muradpur Branch (hereinafter referred to as the 'Bank') on 29.11.1981 by depositing the original Title Deed No. 5637 dated 23.07.1980 and Municipal Tax receipt dated 26.11.1981 relating to land measuring 2 Katha 2 Dhurs with house of Plot No. 374 (Khata No. 324) at Mauza Sadiquepur Jogi of Patna for a cash credit loan of Rs. 50,000/- sanctioned in favour of M/s Quality Drug Corner, a sole proprietorship firm of her husband, Shri Ramadhar Sharma. It is alleged that the said Bank through fraud also treated the said equitable mortgage in favour of M/s Madhu Pharma (Proprietor Sri S.K. Pandey, petitioner of CWJC No. 8190 of 2010) and a cash credit loan for Rs. 50,000/- was sanctioned to it on 11.08.1981. Smt. Vidya Sharma claims to have executed a letter of guarantee in favour of the Bank only in respect of the loan sanctioned to M/s Quality Drug Corner, her husband's firm, but the same was also used for the loan sanctioned

to M/s Madhu Pharma. Sri S.K. Pandey claims that his firm M/s Madhu Pharma was sanctioned a cash credit loan of Rs. 50,000/- by the Bank on 11.08.1981 in ordinary course and the stock of medicines in the shop was hypothecated to the Bank. In due course repayment of the loan became irregular and as such the Bank filed Title Mortgage Suit No. 563 of 1988 on 19.08.1988 for recovery of Rs. 1,20,285.97 with compound interest *pendente lite* and future at the rate of 16.50% per annum with monthly rests, before the Sub-Judge-I, Patna. M/s Madhu Pharma and Sri S.K. Pandey were impleaded as defendant nos. 1 and 2 while Smt. Vidya Sharma and one Sri Ram Nandan Singh were impleaded as defendant nos. 3 and 4 as guarantors of the said loan. Both M/s Vidya Sharma as well as Sri S.K. Pandey have denied that Smt. Vidya Sharma was a guarantor for M/s Madhu Pharma and that she had not mortgaged the land with house in favour of the Bank by depositing the registered Title Deed No. 5367 dated 23.07.1980 and municipal receipts. An order dated 29.07.1995 is said to have been passed in the said suit. Both petitioners claim to have subsequently learnt that the impugned order dated 03.08.2009 under Section 31(A) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (hereinafter referred to as 'the Act') had been passed by the Debts Recovery Tribunal, Patna (hereinafter referred to as 'the DRT') in Execution (O.A.) Case No. 21 of 2006 against M/s Madhu Pharma in respect of the loan of Rs. 50,000/- taken by it, as well as against Smt. Vidya Sharma and Sri Ram Nandan Singh treating them as guarantors for the said loan. Accordingly, the impugned recovery certificate dated 03.08.2009 was prepared and issued by the DRT for an amount of Rs. 16,64,527.25 being the amount which the Bank was entitled to receive with interest @ 16.50% per annum with monthly rests from 01.09.2004 till realization.

3. Learned counsel for the petitioners submits that the impugned order dated 03.08.2009 passed by the DRT is wholly arbitrary and unsustainable in law for the following main reasons –

(a) Neither the order dated 29.07.1995 nor consequential decree in the suit were on record of the DRT as evident from a report dated 16.11.2009 issued by the Registrar of the Civil Court, Patna upon an application for obtaining certified copies of the order and decree.

(b) In absence of an order or decree of the Civil Court, the assumption of jurisdiction by the DRT under Section 31(A) of the Act was wholly arbitrary and illegal.

(c) An order was passed in the suit only for Rs. 1,20,285.75 on 19.08.1988 and as such the DRT lacked the pecuniary jurisdiction to entertain the application for recovery of an amount below Rs. 10 lacs in terms of Section 1(4) of the Act.

(d) Smt. Vidya Sharma had neither created any equitable mortgage by deposit of Original Title Deed No. 5637 dated 23.07.1980 nor executed a letter of guarantee in favour of the Bank in relation to the loan granted by it to M/s Madhu Pharma.

4. Learned counsel for the Bank has strongly opposed the writ petitions, submitting that there is no infirmity in the impugned

order and recovery certificate issued by the DRT. It is pointed out that the definition of the term “debt” as contained in 2(g) of the Act includes any liability (inclusive of interest) which is claimed as due from any person by a Bank, whether payable under a decree or order of any civil court. It is therefore submitted that even in the absence of a final decree being passed, the DRT was well within its jurisdiction to act on the basis of the order dated 29.07.1995 passed in the suit. The application under Section 31(A) of the Act was filed by the Bank within the period of limitation for recovery of the amount of “debt” determined by the Civil Court at Rs. 1,20,285.97 which, together with interest as ordered, amounted to Rs. 16,64,527.25 on the date of application. It is therefore submitted that the amount of debt sought to be recovered on the date of the application exceeded Rs. 10 lacs and fell well within the pecuniary jurisdiction of the DRT.

5. As regards the contention that Smt. Vidya Sharma had neither created an equitable mortgage nor executed a letter of guarantee in favour of the Bank as concerns the loan granted to Sri S.K. Pandey, it is submitted that the issue is not relevant for the present purposes. It would transpire that Sri S.K. Pandey had filed a written statement in the suit touching upon this aspect of the matter, but however abandoned the suit and failed to appear before the Civil Court. Sri S.K. Pandey cannot therefore be permitted to raise this issue in the present writ petition and the order dated 29.07.1995 passed in the civil suit has attained finality.

6. Having heard the parties and on a consideration of the materials on record, I find the writ petitions to be completely devoid of merit.

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.

8. There is also no merit in the contention of the petitioners that the amount was not liable to be recovered by resort to Section 31(A) before the DRT. The term 'debt' as defined in Section 2(g) includes an amount under a decree or order of a Civil Court and hence recoverable by issuance of recovery certificate by the DRT.

9. Equally untenable is the petitioners' submission that the DRT did not have pecuniary jurisdiction to entertain the application of the Bank. The amount determined in the suit together with interest has been claimed at Rs. 16,64,527.25 on the date of application which has not been denied nor disputed by the petitioners.

Such amount being in excess of Rs. 10 lacs, which is the threshold for vesting jurisdiction in the DRT, the application of the Bank has rightly been entertained and proceeded with by the DRT.

10. Smt. Vidya Sharma has further claimed that the Bank has acted fraudulently and in connivance Sri S.K. Pandey in treating the equitable mortgage created by her and the letter of guarantee issued by her against the loan of Rs. 50,000/- in favour of M/s Madhu Pharma, whereas these have been submitted by her only in relation to the loan to her husband's firm M/s Quality Drug Corner. To this extent, there is variance between the stand of the petitioners inasmuch as Sri S.K. Pandey does not admit of any fraud or connivance of his part. Be that as it may, this issue does not arise for adjudication in the present case and I do not propose to enter into the merits of the contentions of the petitioners in this behalf. The issue was raised in the written statement by Sri S.K. Pandey which was however not pursued by him and the order dated 29.07.1995 was allowed to be passed in the suit. Such order passed more than two decades ago has not been challenged by the petitioners at any stage and has attained finality. At any rate, this issue is also not relevant for the purposes of determining whether or not the DRT has acted within its jurisdiction to pass the order for recovery of the amount sought by the Bank and to issue a certificate for recovery to the Recovery Officer in terms of Section 31(A) of the Act.

11. The writ petitions are accordingly dismissed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.08.2018
Transmission Date	N.A.