IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2341 of 2016
In
Civil Writ Jurisdiction Case No.64 of 2014

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Mansoor Ansari Asharfi, son of Md. Kasim Ansari, resident of 504 Maqbool Apartment, Exhibition Road, Patna-

... ... Appellant

Versus

1. Sri Harsha Chopra, son of Ashok Chopra, resident of Sadar House, Gr. Floor, Brindavan Kunj, Exhibition Road, P.S.- Gandhi Maidan, Patna- 800001
2. Syndicate Bank, a Govt. of India Enterprises having one of its Branches at Frazer Road, Patna through its Branch Manager, Frazer Road, Patna.
3. Authorized Officer, Syndicate Bank, Frazer Road, Patna.
4. Presiding Officer, Debt Recovery Tribunal, 34 Bank Road, Opp. New Police Line, Lodipur, Patna
5. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Ragore Town, Allahabad

... ... Respondents

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Appearance :
For the Appellant : Mr. Rajesh Mohan, Advocate
Mr. Binod Kumar Sinha, Advocate
For the Respondent No.1: Mr. Arvind Kumar Jha, Advocate
For the Respondent Bank: Mr. Siddharth Harsh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 09-05-2018

Heard counsel for the appellant as well as counsel for the private respondent and the Bank.

The appellant is a defaulter. When actions were initiated against him under the SARFAESI Act and the matter adjudicated, he failed to honour the decision by not making payment of the quantified amount within the time frame and then rushed to the High Court. The learned single Judge was indulgent enough and granted him certain time to pay back the outstanding default amount. That period was also again not availed of. The time was extended in the M.J.C. application till 15.04.2011. Again, to no avail.

The loan amount is not disputed. Default is not disputed. The issue with regard to the loan amount became N.P.A. is carrying on since the year 2003. A very detailed order has been passed by the learned single Judge. Except for trying to ward off or dispute the calculation and some part payment, the final settlement of the outstanding loan amount was never made by the appellant.

Merely because some quantification was done at a point of time by various judicial forums, the interest component over the outstanding loans and non-payment will not stop mounting. The position with regard to the obligation of the borrower, as per the quantification, has been narrowed down by the learned single Judge, in following words :

> **"Since the borrower had all along evinced his inclination to pay the outstanding amount and since notice under section 13(2) of the 'SARFAESI Act' was only in relation to the loan account of M/s Maruti Automobiles hence the Appellate Tribunal by the order passed on 3.10.2013 on Miscellaneous Appeal No.345 of 2013 has merely clarified the status of the outstanding in the loan account of M/s Maruti Automobiles to conclude at Rs.76,00,000/- as on 8.7.2013 i.e. the date on which the final order was passed on the appeal preferred by the petitioner bearing Appeal (T) No.1 of 2013.**

Since the Bank had questioned this quantification on the basis of the records that this Court vide order passed on 5.1.2016 required the Bank to file an affidavit showing the outstanding against the loan account of M/s Maruti Automobiles which should be inclusive of interest calculated at the contractual rate as existing on the date of passing of the final order by the Appellate Tribunal on 8.7.2013. It is following the order passed by this Court that an affidavit has been filed by the Bank on 18.1.2016 and it is stated that the actual total outstanding against the loan account of M/s Maruti Automobiles as on 8.7.2013 comes to Rs.99,10,863/- which is inclusive of the auction sale amount of Rs.16,62,271.49; the total dues outstanding against the M/s Maruti Automobile as on 8.7.2013 after adjustment of the auction amount which comes to Rs.74,16,508.79 and the interest amount on the auction sale amount which is to the tune of Rs.8,32,083.35. The Bank has also enclosed the account statement of M/s Maruti Automobiles to support its contentions.

The details on the outstanding finds mention at paragraphs 4 to 6 of the supplementary affidavit filed on 18.1.2016 and which comes to Rs.99,10,863.63. Since Rs.50,00,000/- is already deposited by the borrower with the Debts Recovery Tribunal at Calcutta on 30.4.2012 and a further amount to the tune of Rs.6,00,000/- has subsequently been deposited by him hence the borrower would now be required to deposit a sum of Rs.43,10,863.63 and which would be towards the full and final settlement of the dues outstanding against M/s Maruti Automobiles. The borrower should deposit Rs.13,10,863.63 within one month from today and the remaining 30,00,000/- be deposited in equal monthly instalments in the next three months falling thereafter. The moment the borrower would deposit the entire outstanding amount that the Bank would take steps for restoration of the possession of the shops in question to the borrower. The order

passed by the Appellate Tribunal on the miscellaneous application stands modified only to the extent of quantification with no other infirmity found therein requiring any interference.”

Instead of taking the golden opportunity of the quantification and the direction made by the learned single Judge for final settlement of the outstanding dues, the appellant has preferred the appeal, prolonged the litigation and has only added burden to the outstanding loan by delaying compliance.

Since this Court has not found any illegality in the adjudication made by the learned single Judge in his order dated 10.08.2016 passed in C.W.J.C. No. 24462 of 2013, we are not inclined to interfere with the impugned order in any manner. The ball is in the court of the appellant now.

Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	14.05.2018
Transmission Date	N/A