

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.240 of 2018

In
Civil Writ Jurisdiction Case No.17855 of 2018

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IDBI Bank Ltd., a Company incorporated and registered under the Indian Companies Act 1956 and a Banking Company within the meaning of Section 5 (1) (c) of the Banking Regulation Act, having its registered office at IDBI Tower, Cuffee Parade, Mumbai and having its Regional Office at IDBI House, 44 Shakespeare Sarani, Kolkata- 700017 and one of its Branch Office at Fraser Road, Main Branch, through its Deputy General Manager.

... .. Respondent- Appellant/s

Versus

1. Tahiti Resort Pvt. Ltd. through Tripurari Prasad Singh, S/o Late Ram Narayan Singh, Managing Director, Tahiti Resort Pvt. Ltd. NH-31, Singhaul, District- Begusarai.

..... Petitioner/Respondent.

2. The District Magistrate Begusarai, District- Begusarai.

... .. Respondent- Respondent/s

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Appearance :

For the Appellant/s : Mr. Shivendra Kishore Roy, Advocate

For the Respondent No.1: Mr. Y. V. Giri, Senior Advocate

Mr. Raj Dular Sah, Advocate

For Respondent No.2 : Mr. Parijat Saurav, AC to AAG 10

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-03-2018

Re.: Interlocutory Application No.1308 of 2018

Delay of 3 days in filing of the Letters Patent Appeal is condoned.

Interlocutory Application stands allowed and disposed of.

Re.: Letters Patent Appeal No240 of 2018.

In spite of an order passed in Civil Writ Jurisdiction Case No. 309 of 2016 which has attained finality on 10.05.2017, the Bank in question without considering the directions issued



simply passed an order rejecting the proposal of the petitioner for restructuring and re-payment of loan by a non-speaking order indicating that their proposal is rejected. A perusal of the order dated 18.11.2017 clearly shows that it has been passed without taking note of the earlier direction issued on 10.05.2017 in Civil Writ Jurisdiction Case No.309 of 2016 and, therefore, when the respondent-writ petition challenged this order, the Bank came out with an additional letter and material in their counter affidavit to justify their action. The learned Writ Court took note of the same, found that this subsequent letter was issued on 14.12.2017 much after filing of the writ petition and also that it does not meet the requirement of the earlier direction issued in Civil Writ Jurisdiction Case No. 309 of 2016 and from para 7 onward, allowed the writ petition in the following terms:-

“7. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. The specific requirement in the judgment dated 10.05.2017 in C.W.J.C. No. 309 of 2016 was to grant an opportunity of hearing to the petitioner before taking a decision with regard to the re-structuring proposal of the petitioner. Apart from the letter dated 08.08.2017 calling various information/documents, which was also duly complied with by the petitioner, no opportunity *per se* appears to have been given to the petitioner before passing of the impugned order of rejection, apart



from the fact that the impugned order itself assigns no reason for rejection of the petitioner's proposal. The subsequent letter dated 14.12.2017 (Annexure-C to the counter affidavit) cannot also come to the rescue of the respondent-Bank as the same has been issued after filing of the present writ petition and more significantly on the well settled principle that an order has to be tested on the reasons stated therein and cannot be supplemented thereafter by filing a counter affidavit.

8. In the above circumstances, the impugned order dated 18.11.2017 is hereby set aside with a direction to the Deputy General Manager, IDBI Bank Limited, Kolkata (respondent no.3) to take a fresh decision by passing a speaking order after grant of proper opportunity of hearing to the petitioner with regard to the restructuring proposal of the petitioner.

9. The writ petition accordingly stands allowed.

10. Needless to say, the respondent-Bank shall not take coercive steps against the petitioner until passing of the fresh orders by the respondent no. 3.”

Even though learned counsel appearing for the appellant-Bank vehemently argued and tried to justify passing of the order dated 18.11.2017 and by referring to the subsequent correspondence and letter, Annexure-C dated 14.12.2017 to say that the Bank has passed the order in accordance to the direction issued in CWJC No.309 of 2016, we find that all these actions were undertaken by the Bank much after filing of the writ petition and notice was issued and under these circumstances, if



the learned Writ Court, as indicated hereinabove, in para-7 onward has issued direction, we see no reason to make any indulgence into the matter. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2018
Transmission Date	

