IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17293 of 2018

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Central Bank Of India Raiyam Darbhanga Through its Regional Manager

... ... Petitioner

Versus

1. The Union of India through its Secretary Ministry of Finance (Banking Division), New Delhi.
2. The Presiding Officer Debts Recovery Tribunal A, B and F Wing, 2nd Floor, Karpuri Thakur Sadan, Ashiana Digha Road, Patna-800025.
3. Binay Kumar Mishra S/o late Radhekant Mishra, Resident of Village-Kamalpur, Raiyam, Darbhanga.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 483 of 2018

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Binay Kumar Mishra @ Binay Kr. Mishra Son of Late Radha Kant Mishra, Resident of Village-Kamalpur Raiyam P.S. Darbhanga in the District of Darbhanga.

... ... Petitioner

Versus

1. The Central Bank of India, Zonal Office, Darbhanga through its Regional Manager.
2. The Regional Manager, Central Bank of India, Regional Office, Darbhanga.
3. The Manager, Central Bank of India, Branch Raiyam, Darbhanga.
4. The Authorized Officer, Central Bank Bank of India, Raiyam Branch, Darbhanga.

... ... Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 17293 of 2018)

For the Petitioner/s	:	Mr.Ajay Kumar Sinha, Advocate
For the UOI	:	Mr.Kanak Verma, C.G.C.
For the Respondent	:	Mr.Gopal Prasad Roy, Advocate

(In Civil Writ Jurisdiction Case No. 483 of 2018)

For the Petitioner/s	:	Mr.Gopal Prasad Roy, Advocate
For the Respondent/s	:	Mr.Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 16-09-2019 Heard learned counsel for the petitioners as well as learned counsel for Respondent No. 3 as also Union of India.

After hearing the learned counsel for the petitioners, this Court passed the following order on 28.08.2019:-

> "Mr. Ajay Kumar Sinha, learned counsel for the Bank has made out a *prima-facie* case at this stage to entertain the writ application despite the fact that the impugned order is an appealable order. The contention of Mr. Sinha is that by the impugned order passed in S.A. 195 of 2017 (Annexure 'P/5') the learned Presiding Officer, Debts Recovery Tribunal, Patna (in short 'Tribunal') has in fact forced a compromise upon the Bank. Attention of this Court has been drawn towards the view taken by the Presiding Officer of the Tribunal at Page 2 of the impugned order which reads as under:-
>
> "In my view, it would be appropriate that if the account is settled at Rs. 18.50 lacs, towards full and final settlement, to which the applicant is ready to pay Rs. 18.50 lacs through 6 post-dated cheques, details are as under-
>
> 1 Cheque no. 007438, dated 05.08.2018 for Rs. 3 lacs,
> 2 Cheque no. 007432 , dated 30.09.2018 for Rs.3.50 lacs,
> 3 Cheque no. 007434, dated 30.11.2018 for Rs.3 lacs,
> 4 Cheque no. 007435, dated 30.01.2019 for Rs. 3 lacs,
> 5 Cheque no. 007436, dated 31.03.2019 for Rs. 3 lacs and
> 6 Cheque no. 007437, dated 30.05.2019 for Rs. 3 lacs
>
> On direction, all the above mentioned six post-dated cheques of Rs. 18.50 lacs have been handed over to Sri Bimal Kishore Prasad, Law Officer of the respondent bank, to be deposited in loan account."
>
> It is submitted that the order is beyond jurisdiction as it is none of the functions of the Presiding Officer of the Tribunal to take a view as to what amount could be an appropriate amount for purpose of settlement. It is submitted that such order if allowed to exist it will take away the power of the respondent-bank to take a view as to settlement of an account in terms of its own recovery policy.
>
> Learned counsel for the Union of India is present. Since *prima-facie* case is made out for consideration, this Court directs stay of the operation of the impugned order dated 23.07.2018 passed in S.A. 195 of 2017.
>
> At this stage, learned counsel for the petitioner

submits that the private respondent no. 3 has filed one C.W.J.C. No. 483 of 2018 which is pending before this Court and if this case is listed along with the said writ application there would be no need to issue to Respondent No. 3. Let this case be listed along with C.W.J.C. No. 483 of 2018 on 9th September, 2019 under the same heading maintaining its position."

Today, the matter has been listed along with C.W.J.C. No. 483 of 2018. Learned counsel for Respondent No. 3 in the present case and the learned counsel for the petitioner in C.W.J.C. No. 483 of 2018 has appeared.

After hearing the learned counsel for the parties, this Court is of the considered opinion that the learned Debts Recovery Tribunal has exceeded its jurisdiction by imposing a compromise upon the Bank. Recently on 05.09.2019 this Court had occasion to consider a similar matter in C.W.J.C. No. 2153 of 2017 (Bihar Gramin Bank through its Authorised Officer vs. The Debts Recovery Tribunal and Another). This Court relied upon a judgment of the Hon'ble Supreme Court in the case of **General Assurance Society Ltd. Vs. Chandumull Jain and Anr** reported in **AIR 1966 SC 1644** and took a view that no Court can create a contract for a party howsoever good it may be. For the reasoning and rational already provided by this Court in the order dated 28.08.2019 and then the views expressed by this Court in C.W.J.C. No. 2135 of 2017, the impugned order is hereby set aside and the matter is remitted to the Debts Recovery Tribunal for a fresh consideration in accordance with law.

Learned counsel for the petitioner in C.W.J.C. No. 483 of 2018 agrees that so far as this writ application is concerned, it has become infructuous because the petitioner had already moved before the Debts Recovery Tribunal against the impugned orders.

Both the writ applications are, thus, disposed of in terms stated hereinabove.

(Rajeev Ranjan Prasad, J)

vats/ved

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