IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4469 of 2019

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Raj Marketing a Partnership Firm, having registered office at Beside Canara Bank (Ramnagari Branch), Ashiana-Digha Road, Patna-800025 through its partner namely Surjeet Raj, [M-50 years], S/o Late Shree Narayan Singh, Resident of Mohalla- Keshri Nagar, Text Book Colony, P.o.-Keshri Nagar, Distt.-Patna

... ... Petitioner/s

Versus

1. Dena Bank through its Zonal Manager, patna And Ors Patna
2. The Zonal Manager Dena Bank, Patna
3. The General Manager Dena Bank, Patna
4. Senior Manager Boring Road Branch, Dena Bank, Patna
5. The Branch Manager Boring Road Branch, Dena Bank, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brajesh Kumar, Advocate

For the Respondent/s : Mr.Nishi Nath Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

3 22-07-2019 A counter affidavit has been filed on behalf of the Bank today. The facts revealed from the counter affidavit clearly provide the manner in which the Bank has proceeded to deal with this matter which prima-facie seems to be a totally unmindful and irresponsible act on the part of the officers of the Bank whosoever was there dealing with the matter on receipt of the letter dated 26th September,2016 from M/s Pratibha Industries Limited who was the beneficiary of the Bank Guarantee.

It is apparent from Annexure 'R2' series of the counter affidavit that the Bank Guarantee was going to expire on 6th October, 2016, the beneficiary wrote to the Bank for extending the validity period by another three months and in case the Bank Guarantee is not being renewed/extended as requested by the beneficiary, the letter dated 26th September, 2016 was to be treated as a written claim or demand for payment to the beneficiary.

It appears that this petitioner who was the sub-contractor of M/s Pratibha Industries Limited did not agree with the Bank for extension of the Bank Guarantee. The Bank wrote a letter dated 17.10.2016 to Pratibha Industries Limited informing that this customer (the petitioner) has requested to close the Bank Guarnatee as they are not interested for further renew. Instead of honouring the Bank Guarantee in terms of the letter of the beneficiary, the Bank called upon the beneficiary to send back the original Bank Guarantee. By yet another letter dated 10.08.2017 they communicated the beneficiary that the Bank stands discharged of its obligation because the Bank had not received any demand or claim within the validity period.

Prima-facie this Court is not satisfied with this kind of stand taken by the Bank in it’s letter dated 10.08.2017, the Court is of the considered opinion that the Bank Guarantee having been invoked well before expiry of the validity period, the Bank could not have stated that they had not received any demand or claim under the guarantee within the validity period. To that extent view of the Bank expressed in its letter dated 10.08.2017 cannot be said to be correct.

The petitioner has moved this Court for setting aside of the letter dated 08.02.2018 written by the Branch Manager of the Bank calling upon him to provide the original Bank Guarantee and no objection certificate from the beneficiary for release of the fixed deposit. He has also prayed for a direction to the Bank to credit the proceeds of the fixed deposit in the petitioner's account along with the up-to-date interest as according to him the period of the Bank Guarantee has already expired on 06.10.2016.

The Beneficiary of the Bank Guarantee has not been made party respondent in this writ application.

In the given facts and circumstances of the case where it is apparent from the stand of the Bank disclosed in it's counter affidavit that the Bank Guarantee had already been invoked on 26th September, 2016, this Court is of the considered opinion that the petitioner is not entitled for the reliefs prayed in the writ application as has been framed by the petitioner.

This Court, in the given situation is not inclined to issue a writ of Certiorari to quash the letter of the Bank calling upon the petitioner to provide the original Bank Guarantee and a no objection certificate from the beneficiary. Since the Bank Guarantee has already been invoked prior to expiry of the validity period, the Bank is fully justified in not crediting the fixed deposit in the petitioner's account unless a no objection certificate is provided by the beneficiary to the petitioner and also to the Bank.

The writ application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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