

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7167 of 2017

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Ram Awtar Singh Son of Late Raj Kumar Singh, Resident of Village- Kothar,
Police Station- Fatehpur, District- Gaya. Petitioner

Versus

1. Allahabad Bank Through Its Chief Manager, Exhibition Road, Patna.
2. Authorized Officer Allahabad Bank Kotwali more Patna.
.....Respondent Ist party
3. Shree Krishna Drugs through Proprietor Manoj Kumar, Son of Late Nand Kishore Singh.
4. Manoj Kumar, S/o Late Nand Kishore Singh residence of Flat No.- 207 Gyan Apartment main Road Kankarbagh Patna.
... .. Respondents 2nd party

with

Civil Writ Jurisdiction Case No. 21900 of 2013

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1. Mr. Nand Kishore Poddar S/O Late Kailash Poddar Parivahan Bhawan, Veerchand Patel Marg, P.S- Kotwali, District- Patna.
 2. Mr. Suraj Kumar S/O Kedar Lal Bernval 61- Devi Asthan, Paschim Gali, P.S- Jakkanpur, District- Patna.

... .. Petitioners

Versus

1. Authorized Officer Cum Chief Manager Allahabad Bank, Zonal Office, Budh Marg, Patna
2. Presiding Officer, Debt Recovery Tribunal, 34 Bank Road, Opp, New Police Line, Lodhipur, Patna- 800001
3. M/S Shree Krishna Drugs Through Proprietor Sri Manoj Kumar S/O Late Nand Kishore Singh R/O Flat No. 207, Gyan Apartment, Main Road, Kankarbagh, Patna- 800020
4. Mr. Ram Awtar Singh S/O Late Raj Kumar Singh R/O At P.O- Kothar, P.S- Fatehpur, District- Gaya.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 7167 of 2017)

For the Petitioner/s : Mr.Mukund Jee, Advocate

For the Respondent/s : Mr.Anurag Saurav, Advocate

(In Civil Writ Jurisdiction Case No. 21900 of 2013)

For the Petitioner/s : Mr.Arbind Kumar Jha, Advocate

For the Respondent/s : Mr.Dr. Binod Kumar Jha, Advocatae

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER



2 10-04-2019 Heard the parties. Both the writ applications are connected to each other, hence, on the request of learned counsel for the parties, both the matters are being heard together for final disposal.

Reg: C.W.J.C. No. 7167 of 2017

This writ application has been preferred seeking quashing of the order dated 01.09.2016 passed in M. A. No. 87 of 2016 by which the Presiding Officer of the Debt Recovery Tribuna, Patna (hereinafter referred to as 'the Tribunal') has refused to entertain the Miscellaneous Application No. 87 of 2016 on the ground of limitation. The petitioner is aggrieved by the rejection of M. A. No. 87 of 2016.

Learned counsel for the petitioner submits that earlier when a SARFAESI action was taken by the Bank, the petitioner challenged the same in Securitization Appeal No. 05 of 2012 which was disposed of with a direction to the borrower to deposit 25% amount on possession notice by 15.03.2012 and the rest amount were to be paid within six months from 15.03.2012 in equal monthly installment. The petitioner, however, could not pay the amount. The property in question was thereafter, sold and the Sale Certificate dated 17.01.2013 was issued in favour of Sri Nand Kishore Poddar (writ petitioner



in C.W.J.C. No. 21900 of 2017). After the Sale Certificate was already issued, once again a Miscellaneous Application being M. A. No. 261 of 2013 was filed by Manoj Kumar (Principal debtor) and others raising a question on the valuation of the property. The Presiding Officer of the Tribunal vide his order dated 27.08.2013 entertained the M. A. No. 261 of 2013 and in its operative part issued the following directions:

“In view of the rival submissions of the party, the applicant is directed to pay the entire dues of the bank as per agreement with 9% simple interest and 5 % penalty on auction amount and also pay Rs. 1 lac as compensation to auction purchaser, as he has filled up the sand on vacant plot. The bank is directed to supply calculation within 7 days from today and the applicant is to deposit the said amount within one month from today. Accordingly, this MA stands disposed off. A copy of this order be given to the party.”

The order dated 27.08.2013 has been challenged by the auction purchaser in the connected C.W.J.C. No. 21900 of 2013. It is submitted that Manoj Kumar happened to be the principal borrower of the loan. He had assured the petitioner to pay the entire debt amount as per order of the Presiding Officer of the Tribunal in SARFAESI Appeal no. 05 of 2012 but he



failed to fulfill his obligations to pay the debt amount.

Learned counsel for the petitioner submits that vide order dated 27.08.2013 passed in M. A. No. 261 of 2013 the sale in question was set aside. It is submitted that the rejection of the prayer of the petitioner in M. A. No. 87 of 2016 is bad in law and is liable to be set aside.

Reg: C.W.J.C. No. 21900 of 2013

This writ application has been preferred by the auction purchaser to quash the order dated 27.08.2013 passed in M.A. No. 261 of 2013 by which the Presiding Officer of the Tribunal interfered with the sale held in favour of the petitioner by issuing direction to the borrower to pay the entire dues of the bank with 9 % simple interest and 5 % penalty on auction amount and Rs. 1 lac as compensation.

Learned counsel for the petitioner submits that from the narrations of facts in the writ application being C.W.J.C. No. 7167 of 2017 it would be apparent that the then Presiding Officer of the Tribunal was acting irresponsibly and in excess of his jurisdiction. It is submitted that once the Securitization Appeal No. 05 of 2012 under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the



SARFAESI Act, 2002) was disposed of vide order dated 09.02.2012 with certain directions which the borrowers failed to abide by, the respondent bank was fully justified in proceeding with the SARFAESI action, 2002. Learned counsel submits that once the Certificate of Sale was already issued in favour of the petitioners in this case, there was no reason that the Presiding Officer would have interfered with the sale on mere asking of the borrowers by filing M. A. No. 261 of 2013. Learned counsel has relied upon a Division Bench judgment of this Court in case of **Mr. Rajeev Kumar Singh & Ors. (in all) Versus Chairman-Cum-Managing Director, Indian Bank & Ors. (in all)** reported in **2017 (3) BLJ 268**.

It is submitted that in the case of **Rajeev Kumar Singh** (supra) the Hon'ble Division Bench of this Court has heavily deprecated the approach of the Debts Recovery Tribunal in entertaining miscellaneous application one after another and thereby reviewing its decision on merit as and when and in whatever way suited the petitioners. It is submitted that the present case is one of those cases in which the ratio of the Hon'ble Division Bench Judgment of this Court in the case of **Rajeev Kumar Singh** (supra) shall fully apply.

Having heard learned counsel for the parties and on



perusal of the records, this Court finds that the order dated 27.08.2013 passed in M. A. No. 261 of 2013 which is under challenge in C.W.J.C. No. 21900 of 2013 is wholly without jurisdiction. It is apparent from the records that the borrower had failed to abide by the order passed by the Tribunal in S.A. No. 05 of 2012 passed on 09.02.2012. The Tribunal having disposed of the Securitization Appeal could not have entertained M. A. No. 278 of 2012 at the instance of Manoj Kumar (principal borrower).

This Court finds that in its order dated 16.07.2012 in M. A. No. 278 of 2012 the Presiding Officer had once again reiterated his order dated 09.02.2012. This Court finds that once the order dated 09.02.2012 passed in S.A. No. 05 of 2012 was not complied with, the bank rightly proceeded with the SARFAESI action. Even the later order dated 16.07.2012 in M.A. No. 278 of 2012 was not complied with. In these circumstances the Sale Certificate was issued on 17.01.2013 in favour of the auction purchaser. It is totally surprising that the Presiding Officer was so generous towards the principal borrower that at his instance once again he entertained M.A. No. 261 of 2013 and passed a fresh order which has in fact the effect of nullifying the whole sale process. The order dated



27.08.2013 is found to be wholly without jurisdiction and the same is liable to be set aside. Accordingly, the order dated 27.08.2013 impugned in C.W.J.C. No. 21900 of 2013 is hereby set aside and the C.W.J.C. No. 21900 of 2013 is allowed.

So far as C.W.J.C. No. 7167 of 2017 is concerned, this Court is of the considered opinion that the Presiding Officer of the Tribunal has rightly refused to entertain M.A. No. 87 of 2016 whereby the borrower had once again made effort to continue with the litigation in respect of the property which was already auction sold. In the case of **Rajeev Kumar Singh** (supra), this Court has recorded in paragraphs 32, 33 and 34 as under:

“32. We have noticed hereinabove how the petitioners/appellants have indulged in delaying the entire SARFAESI proceeding after taking benefit of the order of refund passed by the Tribunal at their instance. The recall order is virtually the order dated 06.08.2012, which is to the advantage of the appellants, however, the same was never challenged. If there is no provision for recall of an order, the order dated 06.08.2012, by which the Debts Recovery Tribunal directed refund of the amount to the petitioners/appellants was not correct. The bank had informed that it was not satisfied with the order dated 29.02.2012 and was going in appeal thus the Tribunal should have stuck to its order. The appellants could have been better advised to defend the order dated 29.02.2012 and the bank should have been



allowed to prefer appeal. Instead, the appellants got an order of refund and actually received back the entire amount from the bank. They took benefit of the order dated 06.08.2012. Remedy under Article 226 of the Constitution of India is meant for the citizen who approaches this court with clean hands. We are constrained to hold that the petitioners/appellants have not shown a good conduct and have utilized the process of the court and Tribunal to their advantage at the cost of withholdment/non-payment of public money in form of outstanding dues lying with the appellants. The Debts Recovery Tribunal constituted under the provisions of the DRT Act has been conferred with certain powers as stated under Section 22 of the DRT Act, which includes power of reviewing its decisions, however Rule 5-A of the DRT (procedure) Rules, 1993 clearly provides that any party treating itself aggrieved by an order made by the Tribunal on account of some mistake of error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

33. We are afraid the Debts Recovery Tribunal kept on entertaining miscellaneous applications one after another and reviewed its decisions on merit as and when and in whatever way it suited the petitioners/appellants. We, therefore, strongly deprecate this approach of the Tribunal and put a word of 'caution' for henceforth. The Debts Recovery Tribunal shall not entertain a miscellaneous application for reviewing its decision or recall of an order passed by it, affecting merit of the case. The application should be in conformity with the condition mentioned in Rule 5-A and when an error apparent on the face of record is found. As the



Appellate Tribunal has remanded the S.A. No. 35/2012 and a writ application is said to be pending against that, at this stage, we refrain ourselves on commenting upon the Appellate Tribunal's order.

34.In the result, all the three Letters Patent Appeals are dismissed with the cost of Rs. 25,000/-(Rupees Twenty Five Thousand)as mentioned hereinabove. The cost shall be deposited by the appellants with the Bihar Legal Services Authority, Patna within a period of four weeks from today and proof thereof be submitted with the Registry of this Court.”

I am of the considered opinion that the petitioner in C.W.J.C. No. 7167 of 2017 has been litigating the matter with sole intention to keep the litigation pending which has otherwise achieved the finality. This Court finds no reason to set aside the impugned order in C.W.J.C. No. 7167 of 2017. The writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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