

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2135 of 2017

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Bihar Gramin Bank through the Authorized Officer, Head Office, begusarai
namely Ram Kumar Mehta, son of Ram Bhajan Prasad, R/o Gaighat Link
Road, Patna, P.S.- Sultanganj, District- Patna.

... .. Petitioner

Versus

1. The Debts Recovery Tribunal through the Registrar, 2nd Floor Karpuri
Thakur Sadan, Ashiyana Digha Road, P.S. - Rajiv Nagar, District – Patna.
2. Ritesh Kumar Gupta, Proprietor of M/s Sai Trading Company, Son of Ganga
Prasad Gupta, R/o Ghose Lane, P.O. and P.S.- Samastipur, District-
Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar Pandey, Advocate
For the Resp. No. 2	:	Mr. Abhay shankar Singh, Advocate
		Mr. Amit Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 05-09-2019 Heard learned counsel for the petitioner-Bank

and learned counsel representing the respondent no. 2.

Learned counsel for the petitioner-Bank has

received verbal instruction on which he has made a

statement before this court that in view of the

observations of this court recorded in order dated

16.08.2019, the Bank has considered the case of the

petitioner and is ready to settle the account if the

petitioner pays the balance amount of Rs. 1,45,000/-

with interest @ 10% p.a. simple for a period of two



years nine months approximately.

Learned counsel for the petitioner accepts the offer being made by the Bank for purpose of settlement of the account. In these circumstances, the case is being disposed off by recording the undertaking of the Bank and respondent no. 2 whereunder now respondent no. 2 shall pay the balance amount of Rs. 1,45,000/- with interest @ 10% p.a. simple for a period of two years nine months as on today within three months in three equal installments which the Bank will accept as full and final settlement of account and no dues certificate shall be issued to the respondent no. 2 and the documents of title, if any, in possession of the Bank shall also be returned.

Learned counsel for the Bank has argued before this court that the observations made in the impugned order passed by learned Presiding Officer, Debts Recovery Tribunal, Patna against Sri Paritosh Kumar, Senior Manager of the Bank is wholly without jurisdiction



and unwarranted hence the same be expunged.

It appears from the impugned order passed by the learned Presiding Officer of the Tribunal that the following observations have been made against Shri Paritosh Kumar, Senior Manager of the Bank:

"Since, Sri Paritosh Kumar, Senior Manager has refused to accept the cheques, therefore, the Chairman of the bank is directed to take necessary action against Sri Paritosh Kumar, Senior Manager of bank, who has refused to accept the three cheques in Court."

Learned counsel has submitted that the Debts Recovery Tribunal had at the first instance no authority of law to impose settlement upon the Bank on his own opinion. It is submitted that the Presiding Officer had taken a view that the account be settled at Rs. 1.75 Lakhs in full and final settlement. This power was not available with the Presiding Officer and no such settlement was required to be imposed upon the Bank. It is submitted that in such circumstance, if the Senior



Manager refused to accept the cheques, it was neither permissible nor desirable on the part of the Presiding Officer to issue a direction to the Chairman of the Bank to take action against the Senior Manager.

I find substance in the submission of learned counsel representing the Bank. In S.A. No. 98 of 2016 the applicant had challenged the possession notice dated 07.05.2016 issued by the authorized officer of the Bank. It was an application under Section 17 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act of 2002") which reads as under:

"17. Right to appeal – (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application alongwith such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken: [Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]



[Explanation – For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the creditors assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate



and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

[Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section(1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may,



on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]”

It is evident from perusal of the aforesaid provision that upon filing of an application under Section 17(1) of the Act of 2002, the Presiding Officer has to consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditors for enforcement of security are in accordance with the provisions of the Act and the Rules made thereunder. If he will come to a conclusion that the measures taken by a secured creditor are not in accordance with the provisions of the Act and the Rules, he may pass any of the kind of orders as enumerated in Clause (a), (b) & (c) of sub-section (3) of Section 17. If the Presiding Officer comes to a conclusion that the recourse taken by



the secured creditor is in accordance with the provisions of the Act and the Rules then notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures.

The Debts Recovery Tribunal is a creature of a statute and it is well settled in law that a creature of a statute must derive its power from the statute itself. The Presiding Officer of the Debts Recovery Tribunal has to, therefore keep his orders within the boundaries of the powers conferred upon him under Section 17 of the Act of 2002. He cannot travel beyond the powers conferred upon him by taking upon himself a power to direct the Bank to enter into a settlement only because he thinks it just and proper. The learned Presiding Officer, in the opinion of this Court cannot impose a compromise by settling terms out of his own will which is not acceptable to the Bank and its authorities.

Further, the Presiding Officer has neither any



judicial authority nor any administrative power to issue a direction to the Chairman of the Bank or any other authority of the Bank in any form or manner whatsoever with regard to the administrative functions and the decisions of the authorities of the Bank in relation to a matter pending before the Tribunal. The Tribunal has certain powers for the purpose of taking evidence etc. only in order to adjudicate the issues pending before it but by no stretch of imagination a direction in the nature of the present one calling upon the Chairman to take action against the Senior Manager of the Bank could have been issued by the Tribunal. This is where the Tribunal has gone beyond its jurisdiction in issuing such direction.

This court is reminded of the judgment of the Hon'ble Supreme Court in the case of **General Assurance Society Ltd. Vs. Chandmull Jain** reported in **AIR 1966 SC 1644** to take a view that no court can create a contract for the parties howsoever good it may



be. The relevant part of paragraph '11' of the judgment is quoted hereunder for a ready reference:

"11. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves"

Here the Debts Recovery Tribunal is not even a 'Court'. It is a 'Tribunal' having no statutory power to impose a compromise. The Tribunal has to look into the documents and evidences on record to reach to a conclusion.

Learned counsel for the Bank as well as learned counsel for the respondent no.2 have informed this court that many kind of routine orders are also being communicated to the Chairman of the Bank and sometimes even non-appearance of the Advocate is communicated to the Chairman as if the Tribunal has got jurisdiction to do all kind of supervisory work for and on behalf of the Bank.



It appears that Tribunal seems to have got angry when the Senior Manager of the Bank refused to receive the cheques. In the opinion of this court, the Senior Manager was fully justified in not accepting the cheques when he was not ready for settlement on terms dictated by the learned Presiding Officer. A fair and dispassionate view of the matter was required to be taken.

For all these reasons, this court would set aside and expunge the directions and observations made by the learned Presiding Officer of the Tribunal as regards Sri Paritosh Kumar, Senior Manager of the Bank. The observations and directions are set-aside, those are expunged and shall not be treated to have existed in the impugned order. This Court trusts and believes that the learned Presiding Officer, Debts Recovery Tribunal shall not take upon himself any jurisdiction and authority to pass such orders and directions which are not within the framework of the statute.



The Writ Application stands disposed off
accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-**AFR**

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