IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1136 of 2017

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1. Nidhi Jha Wife of Sri Santosh Kumar, Resident of Flat No. 122, Jamuna Apartment, Boring Road, P.S. S.K. Puri, Town and District - Patna.
2. M/s Desire Engicon Pvt. Ltd., Duly constituted company under the Companies Act, 1956 having its Head Office at Road No. 1, Tilak Nagar, Rukanpura, P.O. B.V. College, town and District – Patna through it's Director Nidhi Jha.

... ... Petitioner/s

Versus

1. The Debts Recovery Tribunal, 2nd Floor, A & B Wing, Karpuri Thakur Sadan, C.G.O. Complex, Ashiana-Digha Road, Patna.
2. The Recovery Officer, The Debts Recovery Tribunal, 2nd Floor, A & B Wing, Karpuri Thakur Sadan, C.G.O. Complex, Ashiana-Digha Road, Patna.
3. The Karnataka Bank Limited, a company Incorporated under the Indian Companies Act, 1956 carrying the Banking Business having its registered and head Office at Mahaveera Circle, Post Box No. 599 Kankady, Mangaluru, Karnataka- 575002, through its Chairman.
4. The Branch Manager, The Karnataka Bank Limited, Patna Branch, Dukhan Ram Plaza, Ground Floor, Exhibition Road, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Mohan, Advocate
For the Respondent/s	:	Mr. Manish Kishore, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

4 08-08-2019 It appears that the Debts Recovery Tribunal has passed the judgment dated 26.07.2016 in O.A. Case No. 370 of 2015 on an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The petitioner has been found liable to pay a sum of Rs.86,88,315/- together with interest *pendente lite* and future interest at the contractual rate from 15.09.2015 till its realization. For recovery of the amount a recovery

proceeding bearing no.328 of 2016 has been filed.

Mr. Rajesh Mohan, learned counsel for the petitioner submits that the Presiding Officer, Debts Recovery Tribunal has not followed the statutory procedures and for that reason alone the impugned judgment is liable to be set aside.

Learned counsel for the bank submits that this writ application is not fit to be entertained because the petitioner has got a statutory remedy of appeal before the Debts Recovery Tribunal where he can seek his remedy after depositing 75% of the amount under the certificate. It is submitted that instead of pursuing his remedy in appeal if the petitioner has moved this Court in its writ jurisdiction, it is not an appropriate remedy applied for.

This court is however not impressed with the argument inasmuch as it appears to this court that the Debts Recovery Tribunal may in appropriate case not required to summon the witness however these are the matters which may be agitated before the Appellate Authority if an appeal is preferred by the petitioner. Once under the special statute there is a remedy provided, the petitioner cannot be allowed to circumvent that remedy as in no case Article 226 of the Constitution of India may be a substitute to the alternative remedy.

Recently in the case of **Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603; Nivedita Sharma Vs. Cellular Operator & Ors.** reported in **(2011) 14 SCC 337 & M/s Maa Durga Enterprises Vs. Bihar Industrial Area Development Authority and others** reported in **2009 (2) PLJR 1000;** the Hon'ble Supreme Court as well as Hon'ble High Court have reiterated that the writ jurisdiction of the court is not a substituted remedy for the statutory appeals and alternative remedies. In the case of **Authorized Officer of State Bank of Travancore and Another Vs. Mathew K.C.** reported in **AIR 2018 SC 676** the Hon'ble Supreme Court has reiterated that where under the special statute a remedy of appeal is provided writ application need not be entertained subject however in certain cases of jurisdictional error. No such jurisdictional error has been found in the impugned judgment.

This Court finds substance in the submission of the learned counsel for the Bank. There is an order of adjudication and determination by the Debts Recovery Tribunal and a statutory appeal is provided against the same under the Statute itself. In such circumstance, there is no reason for this Court to entertain this writ application.

In case the petitioners want to avail their statutory remedy, they can do so within a period of 30 days from today and in case a question of limitation arises for consideration before the Debts Recovery Tribunal, it will be considered keeping in view the period spent by this petitioner before this Court.

This writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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