

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5744 of 2017

Deepak Ashok, Son of Sri Ashok Kumar Jain, Resident of - 404, Om Complex, S.P. Verma Road, P.S. Gandhi Maidan, P.O.- G.P.O., District and Town- Patna.

... .. Petitioner

Versus

1. The Debts Recovery Tribunal, 2nd Floor, A & B Wing, Karpuri Thakur Sadan C.G.O. Complex, Ashiana-Digha Road, Patna through its Registrar.
2. The Recovery Officer, The Debts Recovery Tribunal, 2nd Floor, A and B Wing, Karpuri Thakur Sadan, C.G.O. Complex, Ashiana-Digha Road, Patna.
3. Asset Reconstruction Company (India) Limited (ARCIL) registered office at the Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar(W), Mumbai-400028.
4. Manager Legal-cum-Authorised Signatory Asset Reconstruction Company (India) Limited (ARCIL) Branch Office at-Office No.4, 2nd Floor, Centre Court Building, 3/C, Park Road, Hajratganj, Lucknow-226001, Uttar Pradesh.

... .. Respondents

Appearance :

For the Petitioner/s :	Mr.Sandeep Kumar, Advocate Mr. Rajesh Mohan, Advocate
For the Respondent/s :	Mr.Anant Kumar Sharan, Advocate Mr. Prabat Kumar Sharan, Advocate Mr. Hemant Kumar Sharan, Advocate Mr. Jayant Kumar Sharan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 23-08-2019 Learned counsel for the parties have made their further submissions today. Yesterday after hearing the learned counsel for some time this Court passed the following order:-

“Re.: I.A. No. 6310 of 2017

I.A. No. 6310 of 2017 has been filed on behalf of the Assets Reconstruction Company Limited (in short the ‘ARCIL’) to allow them to be substituted in place of the State Bank of India, the present respondent no. 3.

The application has been filed in the light of the provisions as contained in sub-section (5) of Section 5 of the Securitization and



Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act 2002”).

In the given facts and circumstances of the case there is no opposition to the present application for substitution of ARCIL in place of State Bank of India.

Let I.A. No. 6310 of 2017 be allowed.

The ARCIL and it's Manager Legal-cum-Authorised Signatory, ARCIL be added as party respondent and the name of State Bank of India be expunged.

Re.: CWJC No. 5744 of 2017

This writ application has been filed challenging the order dated 20.06.2014 passed in M.A. No. 487/2013 (Annexure '7/A') by which the Presiding Officer, Debts Recovery Tribunal, Ranchi and Patna has held that after the recovery certificate was issued by the Debts Recovery Tribunal (in short the 'DRT') in terms of Section 19 of the Recovery of Debts due to Financial Institution Act, 1993 (hereinafter referred to as the 'Act of 1993') and no appeal before the Appellate Tribunal or Review before the DRT was filed, the Presiding Officer of the Tribunal should not have entertained the miscellaneous applications and no order could have been passed changing the basic character of the recovery certificate. In fact the Presiding Officer, DRT has in the impugned order held that the previous orders reflecting on the sanctity of the recovery certificate were wholly without jurisdiction, hence those were liable to be recalled.

The order dated 20.06.2014 passed in M.A. No.487/2013 has been challenged in the present writ application after almost three years when in the recovery proceeding being R.P. No. 73/2013 the Recovery Officer proceeded to issue an attachment order.

In course of hearing, Mr. Sandeep Kumar, learned counsel for the petitioner has submitted before this



court that the impugned order has been passed without appreciating that on 17.12.2013, the Debts Recovery Tribunal had passed an order whereunder the Bank was directed to consider the objection filed by the defendants on charging of interest and the same was a consent order. It is submitted that once the order was a consent order, the Bank could not have objected to the same by filing M.A. No. 487/2013.

On the other hand, Mr. Prabhat Kumar Sharan, learned counsel representing the ARCIL submits that this writ application is nothing but a pretext to delay the disposal of the recovery proceeding. It is pointed out that the learned Presiding Officer has rightly taken a view in the impugned order that once the DRT had issued a certificate of recovery and the same was under execution in the recovery proceeding, there was no reason for the then Presiding Office of the DRT to entertain a Miscellaneous Application and to issue a direction to the Bank to consider the objection of the defendants with regard to charging of the interest. It is submitted that if the earlier illegal orders have been recalled by the impugned order, it has only effect of setting at naught the illegal orders passed by the DRT and hence even if the contention of learned counsel for the petitioner that the impugned order is illegal is taken for consideration the same need not be interfered with because the ultimate effect of this order is to take away the effect of another illegal order. The remedy under Article 226 being discretionary in nature the court



has refused to entertain the writ applications in such circumstances and the same principle be followed in the present case.

The court is prima-facie convinced that there is no illegality in the order dated 20.06.2014 passed in M.A. No.487/2013, however, as prayed by learned counsel for the petitioner, one opportunity is being granted to the learned counsel to satisfy this court with any other argument that he wish to take tomorrow.

List this case tomorrow (23.08.2019) maintaining it's position."

Today Mr. Sandeep Kumar, learned counsel representing the petitioner submits that he may be allowed to withdraw this writ application with liberty to seek his remedy before any other appropriate forum in accordance with the provisions of the Act of 1993.

Learned counsel for the respondents submits that they would have no objection to petitioner pursuing his remedy before any other forum in accordance with law, however, this writ having remained pending before this Court for over two years and at this stage when the Court has expressed some prima-facie view the petitioner wants to withdraw this writ application, this Court could at least observe that now the pending recovery proceeding should go on.

In the given facts and circumstances of the case, the



writ application is permitted to be withdrawn with liberty to the petitioner to seek his remedy before any other forum in accordance with law. If any such remedy is applied for, the same will be considered independently and without being prejudiced by the observations of this Court as recorded in the order dated 22.08.2019 and in case any question of limitation arises for consideration the same will be considered keeping in view the time spent by the petitioner before this Court in the present writ application.

By virtue of the withdrawal of the writ application now the interim order stands vacated and the Recovery Officer would be at liberty to proceed with R.P.Case No. 73 of 2013.

The writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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